

CRIMINAL REGULATION USING LANGUAGE IN THE CRIMINAL LAW CODE

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Abstract

The purpose of this research is to determine and analyse whether the legal resolution of criminal acts using language is currently in line with the objectives of justice, certainty, and legal utility. This research uses the statutory approach, conceptual approach, and case approach methods. Legal materials were collected through literature study by obtaining legal materials from documents such as legislation, books, reports, and scientific research results, as well as other library materials and inventories of legal materials, including primary, secondary, and tertiary legal materials. The results show that the application of criminal acts using language in the national life of Indonesia has not yet fulfilled the principles of justice, certainty, and utility. Indicators found in this research are many unclear and overlapping regulations that lead to interpretations. Currently, there are three regulations governing criminal acts using language, namely (1) the Criminal Law Code (2) the Information and Electronic Transactions Law and (3) the Law on the Elimination of Racial and Ethnic Discrimination. Some problematic issues are as follows: (1) The justifying reasons in Article 310 of the Criminal Law Code are not explained whether they are the same as the justifying reasons regulated in Article 49 of the old Criminal Law Code. (2) Defamation articles regulated in both the old Criminal Law Code and the new Criminal Law Code may or may not be applied not because of the basis of the act but because of the subjective value of the judge. (3) The meaning of "group" in the criminal act of spreading hatred against race and ethnicity has no limitations. (4) The article on insulting the president is reintroduced in the new Criminal Law Code, thus this article undergoes re-criminalization because it has been declared invalid by the Constitutional Court's decision, similarly with the incitement article which, in the Constitutional Court's decision, changes from a formal criminal act to a material criminal act in the new Criminal Law Code, returning to being a formal criminal act.

Keywords: Criminal Acts; Language; Law.

INTRODUCTION

In daily life, we cannot be separated from language. Language plays an important role in communication. The importance of communicating using language is considered as something common, as common as breathing and walking. Language also has a strong influence on individuals or groups of people, as language functions not only for daily interactions but also for expressing opinions and influencing others.

Language is a sine qua non, something essential for culture and society, therefore, all aspects of community life will always have a close relationship with language. Through language, humans get to know culture and create various ideas, activities, and means to fulfill their living needs. Language becomes one of the most important elements that affect human life and culture. Language is an organized communication tool in the form of units, such as words, phrases, clauses, and sentences expressed both orally and in writing. One definition of language is a human communication system expressed through structured sound arrangements or written expressions to form larger units such as morphemes, words, and sentences. Using language in daily life is a human right, even within minority groups. In the International Covenant on Civil

and Political Rights, Article 27 states that: In countries where there are ethnic, religious, or linguistic minorities, individuals belonging to those minorities shall not be denied their right within their community to enjoy their own culture, to profess and practice their own religion, and to use their own language. In Indonesia, in the 1945 Constitution, Article 28E paragraph (3) states that every person has the right to freedom of association, assembly, and expression of opinion. Meanwhile, Article 28F of the 1945 Constitution states that Every person has the right to communicate and obtain information to develop their personality and social environment and has the right to seek, obtain, possess, store, process, and convey information using all available channels. Issues arise when language is then used to attack others, disturb, harass, or even used as a tool to commit crimes that are considered inhuman or cruel. For example, language is used to insult people, influence people to hate each other, deceive, spread lies, or threaten others.

In the study of the ontology of language crimes, we seek the essence of language crimes themselves. Primordially, language is an oral tradition (speech), while written language comes later to preserve oral language. Language is closely related to form and meaning. Language crimes emerge when language usage does not align with the noble values that live and evolve within society. In Indonesia, these values are encapsulated in the national philosophy of Pancasila. Therefore, the essence of language crimes is written or spoken actions that do not align with Pancasila. The use of language that does not align with its purpose needs to be regulated so that its consequences do not become more widespread. This regulation then becomes a legal task. Law requires order and regulation that provide a sense of inner peace. One area of law that regulates language use is criminal law. Criminal law is different from other laws because it imposes sanctions that are hurtful. Therefore, its use must be cautious. In criminal law, there is the concept of criminal acts, which are actions regulated by law that carry criminal sanctions for those who violate them.

Language can make someone commit a criminal act. This can happen if the language used meets the elements of a criminal act. The elements of a criminal act arise when there is a rule that contains criminal sanctions that prohibit certain actions. Criminal acts that involve language are then referred to as language-related criminal acts. Generally, crimes known to society are those related to physical actions. They are carried out physically and result in consequences on the body/physical, even death. Examples of such actions include assault, murder, rape, and even theft resulting in loss of property, all of which are carried out physically. Indeed, the first crimes to occur on earth were also physical in nature. However, crimes involving the use of language, whether oral or written, have recently begun to dominate criminal cases. Language-related criminal acts often have wide-ranging impacts, causing more extensive losses, and often resulting in victims. Insults directed at someone can cause that person to become depressed or even lead to thoughts of suicide. Hate speech directed at a particular group of people can lead to division, property damage, or even mass violence. The case that occurred in East Lombok at the end of 2021, which resulted in vandalism at the As-Sunnah Islamic Boarding School, was also triggered by a series of statements considered insulting to another group by the community. The leader of the As-Sunnah Islamic Boarding School said, "makam selaprang, Ali Batu, Batu Layar, kuburan tain acong, keramat tain acong

(dog's excrement)". The community felt offended by these statements as they considered the kyai (religious leader) to be insulting the tradition of the Lombok community, which involves visiting graves or venerating ancestors.

Turning language into a criminal act must be done with careful consideration, observing the principles of criminalization. The essence and existence of language always project the unlimited and complex nature of human life. Care must be taken not to criminalize the use of language in a way that prevents a well-ordered and peaceful society from being achieved. This is in line with Jan Remmelink's¹ statement that many criminal acts are not morally reprehensible at all, and conversely, many behaviors are morally reprehensible but irrelevant from a criminal law perspective. Guidelines for sentencing in cases of language-related crimes are also important to regulate. This is because there is currently no sentencing guideline for judges, often resulting in significant disparities in sentences for similar cases. Furthermore, the resolution of criminal acts through restorative justice, which has recently emerged as an alternative, also needs to be carefully considered. Currently, there is no integrated regulation among the Police, the Public Prosecutor's Office, and the courts regarding its implementation, resulting in a lack of a cohesive criminal justice system in resolving cases of language-related crimes. The need to find a good formulation for resolving cases of language-related crimes becomes more prominent as the digital era dominates society's lives. The rapid spread of words or phrases that fall under the category of language crimes is one of the negative effects of technological advancement. Additionally, people nowadays tend to report incidents to each other more frequently, leading to an increase in language-related crimes. Therefore, sound criminal law policies for addressing language-related crimes are crucial, both in substantive criminal law and procedural criminal law. These policies must be reviewed from various policy aspects, especially criminal justice policy.

METHOD

Research Type

This research is conducted based on the normative legal research method, which is a type of research commonly conducted in the development of legal science, generally known as doctrinal legal research.

Problem Approach

The problem approach to this research uses the statutory approach, conceptual approach, case approach, comparative approach, and philosophical approach.

Research Legal Materials

Legal materials are used to solve legal issues regarding what should be considered as research sources. Legal research sources can be distinguished into primary legal materials and secondary legal materials.² Primary legal materials have authoritative characteristics, consisting of legislation, official records or minutes in the drafting of legislation, and court decisions.³

The primary legal materials used consist of:

1. Criminal Code
2. Law No. 1 of 2023 concerning the Criminal Code
3. Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions
4. Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008
5. Law No. 20 of 2008 concerning the Elimination of Racial and Ethnic Discrimination
6. Constitutional Court Decisions related to language-related crimes
7. Court decisions on crimes involving language

Secondary legal sources consist of all publications about the law that are not official documents. These publications include textbooks, legal dictionaries, law journals, and commentaries on court decisions.⁴ Secondary legal materials that can be used as references are legal materials that must be related to the study and resolution of legal issues faced.

Technique of Legal Materials Collection

The collection of legal materials is done through library research, obtaining legal materials from documents such as legislation, books, reports, and scientific research results, as well as other library materials, as well as an inventory of legal materials, including primary, secondary, and tertiary legal materials.

Analysis of Legal Materials

Analysis of legal materials is a method used to find answers to the problems faced. The methods used in this research are as follows:

- a. Identifying legal facts and eliminating irrelevant matters to determine the legal issues to be solved;
- b. Collecting legal materials deemed relevant to this research
- c. Conducting an analysis of these issues using the collected legal materials
- d. Drawing conclusions in the form of legal arguments in addressing the issues at hand;
- e. Providing prescriptions in the form of suggestions and recommendations based on the arguments developed in the conclusion.

To draw conclusions, the author uses interpretation methods to analyze normative issues. The normative issues in this study are the ambiguity of norms and norm conflicts. Therefore, the interpretations the author uses to analyze are:

1. Grammatical Interpretation

Interpretation according to grammar means giving meaning to a term or word in accordance with everyday language or legal language.

2. Systematic Interpretation

Interpreting all legal provisions by connecting all articles in the law, legal regulations, or other laws with the entire legal system.

3. Theological Interpretation

Seeking the purpose or intention of a legal regulation. This interpretation also looks at the meaning and essence of all legal regulations governing crimes using language.

RESULTS AND DISCUSSION

1) Defamation and/or slander Crimes

The defamation (belediging) crimes established by the legislature, whether general or specific, are intended to provide protection for public interests regarding such feelings. Especially self-esteem regarding honor (eer) and self-esteem regarding the good name (goede naam) of individuals. Everyone has a sense of self-esteem regarding honor and self-esteem regarding the good name. Similarly, everyone will feel that their self-esteem is compromised if their honor and good name are tarnished or attacked by others. For this reason, there are sometimes members of the community who defend their self-esteem by retaliating against those who injure their self-esteem with their own actions, whether by hitting, retaliating with insults, or even killing.

Forms of defamation have evolved, initially only interpreted narrowly in the form of formal insults (formele belediging), where insults are determined by their manner, so a statement that is clear and clearly harsh. An example of formal defamation is when A and B are both civil servants, then in an argument A says, "B is a notorious corruptor".

In the Criminal Code, no definition is given of what is meant by defamation. The word defamation is found in Chapter XVI of the old Criminal Code, which consists of several articles regulating different matters. Whereas in the new Criminal Code, this defamation is found in Chapter XVII entitled Defamation Crimes. The following are articles in the Criminal Code that contain defamation and/or slander. Article 310 of the old Criminal Code states that: (1) Whoever intentionally attacks the honor or good name of a person by accusing something, with the intention of making it publicly known. Threatened with defamation by imprisonment for a maximum of nine months or a fine of up to four thousand five hundred rupiahs; (2) If it is done in writing or with pictures that are published, shown, or affixed in public, then threatened with written defamation by imprisonment for up to one year and four months or a fine of up to four thousand five hundred rupiahs; (3) It is not defamation or written defamation if the act is aimed at public interest or forced to defend oneself.

In the New Criminal Code, this is regulated in Article 433 which reads as follows: (1) Anyone who orally attacks the honor or good name of another person by accusing something with the intention of making it publicly known. Shall be punished for defamation with imprisonment for a maximum of 9 (nine) months or a category II fine (2) If the act as referred to in paragraph (1) is committed in writing or with pictures that are published, shown, or affixed in public

places, shall be punished for written defamation with imprisonment for a maximum of 1 (one) year and 6 (six) months or a fine of up to category III; (3) Acts as referred to in paragraphs (1) and (2) are not punishable if done for public interest or in self-defense.

2. Slander

Slander crimes are regulated in Article 311 of the old Criminal Code as follows: (1) If the perpetrator of defamation or written defamation crimes is allowed to prove the truth of the accusation but fails to prove it and the accusation contradicts what is known, then he/she is liable for slander with imprisonment for a maximum of four years; (2) Revocation of rights based on Article 35 nos. 1-3 may be imposed.

In the new Criminal Code, this slander article is regulated in Article 434 which reads as follows: (1) If anyone as referred to in Article 433 is given the opportunity to prove the truth of the accusations but fails to prove it and the accusation contradicts what he/she knows, he/she shall be punished for slander, with imprisonment for a maximum of 3 (three) years or a fine of up to category IV; (2) The proof of the truth of the accusations as referred to in paragraph (1) can only be done in the following cases: (a) The judge deems it necessary to verify the truth of the accusations to consider the defendant's statement that the defendant committed the act for public interest or because forced to defend oneself or; (b) Officials accused of doing something in carrying out their duties; (3) The proof as referred to in paragraph (2) cannot be made if the accused matter can only be prosecuted upon complaint, while no complaint is filed.

Article 435 of the new Criminal Code regulates further matters regarding slander. This article reads as follows:

- 1) If a final and binding court decision declares the insulted person guilty of the accusations as referred to in Article 434, they cannot be punished for slander
- 2) If with a final and binding court decision the insulted person is acquitted of the accusations, the decision is considered as perfect evidence that the accusations are untrue
- 3) If criminal prosecution against the insulted person has commenced due to the accusations against them, prosecution for slander shall be suspended until there is a final and binding court decision regarding the accusations.

3. Penghinaan Ringan

Article on light insult is also another form of insult or defamation of character. It is called light insult when a person insults another person but does not accuse a specific act. This is regulated in Article 315 of the old Criminal Code and Article 436 of the new Criminal Code. The articles state:

Article 315 of the old Criminal Code, every intentional insult that is not defamatory or written defamation committed against a person, whether in public orally or in writing, whether in the presence of that person orally or in writing or by letter sent or delivered to him/her, shall be punishable by a maximum of four months and two weeks or a fine of up to four thousand two hundred rupiahs.

Article 436

Insults that are not defamatory or written defamation committed against another person either in public either orally or in writing sent or delivered to them, shall be punished for light insult with imprisonment for up to 6 (six) months or a fine of up to category II

The difference between Article 310 or 433 and Article 315 of the old Criminal Code and Article 436 of the new Criminal Code is that in Article 310 of the old Criminal Code or Article 433 of the new Criminal Code, the perpetrator must accuse a specific act. Whereas in Article 315 of the old Criminal Code and Article 436 of the new Criminal Code, it is an insult that does not accuse a specific act. For example, with words like "you dog", "rude", "immoral", and so on.

In Article 315, the term insult (beleediging) is found in its formulation. Whereas in Article 314, there is the term "the insulted person" (beledigde). The definition of insult is indeed not explained in the Criminal Code. However, light insult as part of insult, the meaning of insult can be taken from the formulation of Article 310 paragraph (1) regarding defamation. As stated by Wirjono Projodikoro that "if the specificity or nature of this defamation is eliminated, only the act of attacking the honor or good name of a person remains, then it must be considered that the insult directly attacks the honor and good name of a person⁵, Both according to the old Criminal Code and the new Criminal Code, this insult is carried out by:

1. With Oral Utterance in Public

Oral utterance in public signifies an act conducted to attack someone's reputation or honor by speaking words or sentences in front of a crowd. The crowd here has no specific limit. Meanwhile, "in public" refers to a place accessible by the general public, such as markets, streets, playgrounds, workplaces, and so forth. The decision of the Supreme Court (12 May 1902) has broadened the understanding of "in public" not only as a place commonly visited by the public but also as a place visible to the public.⁶

2. With Written Expression in Public

This act of defamation is not spoken but written. Words or sentences that defame someone's honor and reputation are expressed in writing. This writing doesn't necessarily have to be in the form of a letter but can also be on banners, cloth, or paper intended to be known by many people or the public. In modern times, writing to be known by ordinary people is often done on social media platforms across various platforms such as Facebook, Twitter, Instagram, TikTok, and other social media platforms. The term "writing" here also includes images containing derogatory meanings towards specific individuals.

C. With Oral Utterance in Front of the Person Themselves

Uttering words directly in front of the intended person. Here, it doesn't matter whether it's in public or not; what matters is that the person targeted hears the utterance directly. If the target doesn't hear it directly, it means they weren't present when the speaker uttered the insulting words. If the place is public, it falls under light defamation by oral utterance in public, not defamation in front of the person themselves.

This can be exemplified, for example, when A and B fight against each other, then A says to B, "You're a ringworm." Harsh words or harsh sentences that hurt people's feelings are generally acts of mild verbal insults in front of the person themselves.

D. With Acts in Front of the Person Themselves

This refers to active acts or physical actions (material acts), meaning using bodily movements or parts of the body by the perpetrator. There are two possibilities for bodily movements:⁷

- a. The first possibility is directed towards the target, such as spitting on their face or spitting in their face, pressing or pushing the victim's head, taking off someone's cap and spitting on it or throwing it or stepping on it. But these acts must not cause physical pain; if they do, it falls under light assault.
- b. The second possibility is actions not directly aimed at the victim but clearly contain insults towards them. These actions can be gestures, but they signify an insult that is generally considered offensive, such as a mother turning her back on a woman she envies, bending over while pulling up her skirt, revealing her buttocks, which for certain communities is a gesture of insult towards the targeted person.

E. Through Letters Sent or Received

This involves sending either an open or closed letter, either through intermediaries via postal services or personally delivered. The content must consist of light insults that do not constitute written defamation. This means the content shouldn't be an accusation of specific actions, such as accusing someone of theft or corruption, but rather contain vulgar language or insults.

4. False Accusation Report

False accusation report is a form of criminal act where someone reports to the authorities about someone else's actions, but the report is untrue. This can be done both orally and in writing. The article governing this act is Article 317 of the old Penal Code or Article 437 of the new Penal Code.

Article 317 paragraph (1) of the old Penal Code states:

"Whoever intentionally makes a false accusation or notification to the authorities, whether in writing or to be written, about someone, causing harm to their honor or reputation, shall be punished for false accusation, with imprisonment for up to four years."

Article 437 of the new Penal Code reads as follows:

"Anyone who submits a false complaint or notification in writing, or asks another person to write a false complaint or notification to an authorized official about another person, thereby attacking the honor or reputation of that person, shall be punished for defamation by imprisonment for a maximum of 3 (three) years and 6 (six) months or a fine of the highest category IV."

In this defamation complaint article, there are two essential elements of conveying the complaint:

- a. The conveyance of information by a rightful person about the commission of a criminal offense by someone;
- b. A clear request to the competent authority for an examination to initiate criminal prosecution by the state.

This article's object is not the action itself but the person misrepresented. Articles 317 and 437 both mention "about someone," not about the action. So, the false accusation is about the person, not necessarily the action. The alleged action may indeed be true, but it's not the accused person who committed it. For example, X knows about a corruption offense, then X reports that Y committed the corruption offense, whereas X knows that Z is the one who committed the corruption offense. This tarnishes Y's reputation. In this scenario, there may indeed be corruption, but it's not Y who committed it, but Z.

Another requirement in this article is that there must be an attack on honor or reputation. So, the alleged action doesn't necessarily have to be a criminal offense, but a specific action deemed offensive or embarrassing by society. Thus, if this action is reported, it will tarnish that person's honor or reputation in the eyes of the public.

The term "authority" in this article is broader than "official" because what is reported is not just criminal acts usually reported to the police but can also be reported to authorities who are not officials, such as the village head or the person's employer. So, the term "authority" (overheid) in Article 317 contains two objective alternative measures:

- a) According to statutory regulations, an authority is authorized to receive and handle a complaint or report, such as police officers and public prosecutors.
- c. Not according to written regulations, but according to common practice in society, someone is authorized to receive and handle complaints or reports about certain matters.

The complaint in this defamation article differs in meaning from the complaint in previous offenses. The complaint in Article 1 number 25 of the Code of Criminal Procedure (KUHap) is stated as a notification accompanied by a request by an interested party to the competent official to legally act against someone who has committed an actionable offense. This complaint article is not limited to acts included in actionable offenses but also includes other acts, whether criminal or not.

Unlike other types of defamation or defamation, in this false accusation, it must be stated or written. Written means the accuser reports or files a complaint by writing (letter) and then submits it to the official/authority. Submitting in writing doesn't just mean delivering it directly; it can also be done through intermediaries or couriers. Currently, this complaint can be submitted electronically via applications like WhatsApp, Facebook inbox, Instagram Direct Messenger, or Short Message Service (SMS), and other applications. Submitting in writing means it's not the perpetrator who writes the complaint, but someone else, namely the authority to whom the perpetrator presents.

This article doesn't have the same provisions as defamation, where the accused is given the opportunity to prove the accusation, although both are referred to as defamation. The accused may not be burdened with proving the accusation because the false accuser does not disclose what is being accused publicly, but only in front of the authority where the defamation occurred.

So, the Penal Code does not provide safeguards. What if the matter reported to the authority is not defamation but something actually done by the accused? This article only emphasizes that the consequence is tarnishing the reputation of the accused person. Isn't tarnishing the reputation of the accused person only possible if someone else knows about the complaint? The consequences required in defamation and false accusation are the same, namely tarnishing the reputation of the defamed person or accused of defamation.

The different regulations regarding the burden imposed on the perpetrator in defamation and false accusation, according to the compiler, do not reflect justice. If in defamation the perpetrator is given the opportunity to prove what is alleged, thereby tarnishing the perpetrator's reputation, in the case of false accusation, the perpetrator should also be given the right to prove it."

5. Insulting the President/Vice President

Insulting the head of state, king, or ruler is often referred to as *lèse-majesté* or *lese majesty*. Adopted from the French language, it is an act or crime that shows disrespect towards a king or queen in a monarchy or towards a ruler. It is *laesa maiestas* in Latin, which means injured sovereignty⁸. Insulting the President or Vice President in the old Penal Code is regulated in Articles 134, 136 bis, and 137, which state as follows:

Article 134

Insulting the President or Vice President with intent is punishable by imprisonment for a maximum of six years or a fine of up to four thousand rupiahs.

Article 136 bis

The definition of insult as intended in Article 134 also includes the formulation of actions in Article 135, if done outside the presence of the insulted person, whether in public or not in public, orally or in writing, but in front of more than four people, or in front of a third party against their will, thus causing offense.

Article 137

(1) Anyone who broadcasts, displays, or posts in public writings or drawings containing insults against the President or Vice President with the intent for the insult to be known or better known by the public, is punishable by imprisonment for up to one year and four months or a fine of up to four thousand five hundred rupiahs.

(2) If the offender commits the crime while performing their duty, and at that time has not passed two years since a final conviction for such a crime, they may be prohibited from performing that duty.

Articles 134, 136 bis, and Article 137 of the old Penal Code have been declared to have no binding legal force by Constitutional Court Decision No. 013-022/PUU-IV/2000. The Constitutional Court assessed that these articles could create legal uncertainty (*rechtsonzekerheid*) because they are prone to multiple interpretations and could potentially hinder the right to freedom of expression through speech, writing, and expression. In its considerations, the Constitutional Court also found Articles 134, 136 bis, and 137 of the Penal Code to be irrelevant for application in Indonesia, which upholds human rights as explicitly stated in the 1945 Constitution.

Experts present at the trial had differing opinions. Mardjonno Reksodiputro and J.E. Sahetapy stated that the articles regarding insulting the President or Vice President should no longer be enforced. Mardjono argued that the definition of insult should utilize the understanding that has evolved in society regarding Articles 310-321 of the Penal Code (*mutatis mutandis*). According to Mardjono, there is no longer a need for specific criminal acts of insulting the President or Vice President, and it is sufficient to rely on Articles 310-321 of the Penal Code. Mardjono also emphasized that in a republic, the state's interests cannot be linked to the personal interests of the President or Vice President as is the case for a king in a kingdom.

J.E. Sahetapy also suggested that Article V of Law No. 1 of 1946 serves as a test stone (*toetsteen*) regarding the relevance and *raison d'être* of the Penal Code articles. Article V of Law No. 1 of 1946 states, "*Criminal legal regulations that are wholly or partially currently unenforceable, or contradict the position of the Republic of Indonesia as an independent state, or are no longer meaningful, must be considered wholly or partially temporarily ineffective.*" Regarding the provisions of Article V, Sahetapy viewed that Articles 134, 136 bis, and 137 of the Penal Code are no longer relevant in the era of democratic reform and have lost their *raison d'être*.

On the other hand, experts who argued that these Articles still need to be enforced include Zulfirman and Indriyanto Seno Adji. They stated that the President is both the head of state and the head of government, as well as the symbol of the sovereign Indonesian state. Moreover, the President is closely associated with the interests and powers of the state, necessitating legal norms regulating their dignity and honor to be well maintained.

Another expert who agreed was the Criminal Law Expert at Krisnadwipayana University, Indriyanto Seno Adji, who believed that the articles regarding insulting the President or Vice President in the draft Penal Code should not be repealed and must be maintained because, universally, rules regarding insulting the head of state or national symbols are still upheld. Regardless of whether the President or Vice President is a symbol of the state, the Constitutional Court at that time stated in its considerations that the criminal offense of insulting the President or Vice President should be covered by Articles 310-321 of the Penal Code when the insult (*belediging*) is directed at their personal qualities, and Article 207 of the Penal Code in the case of insults directed at the President or Vice President as officials (*als ambtsdrager*).

Article 207 of the old Penal Code reads as follows:

"Anyone who intentionally, in public, orally or in writing, insults a ruler or public body in Indonesia, is punishable by imprisonment for up to one year and six months or a fine of up to four thousand five hundred rupiahs."

Article 207 does not specifically refer to the President/Vice President, but rather to rulers in general. So, even though the article regarding insulting the President/Vice President has been declared inapplicable by the Constitutional Court, if someone insults the President or Vice President, this article can be applied.

What if someone insults the President? Maedjono argues that in case of insult, it should refer to Article 310 of the Penal Code if it attacks the personal qualities of the President or Vice President. Mardjono Reksodiputro also asserts that considering the development of fundamental social values in modern democratic societies, the criminal act of insult should no longer be used to hinder "criticism" and "protest" against central or regional government policies and officials. Referring to these fundamental social values in modern democratic societies, there is no longer a need for specific criminal acts of insult against the President or Vice President. According to Mardjono, in a republic, the state's interests cannot be associated with the interests of the President or Vice President, as is the case for the personal interests of a king in a monarchy.

As for the issue of the "obscure" meaning of "insult" in Article 134, according to Mardjono Reksodiputro, because the Dutch East Indies Penal Code (translation of the WvS Hindia Belanda 1918) does not have authentic explanations, the explanations of Article 134 and Article 136 bis of the Penal Code must be seen in the *Memorie van Toelichting* (MvT) of its counterpart (based on the principle of concordance) in the Netherlands, namely Article 111 of the WvS Belanda, which has similar formulations. According to W.A.M. Cremers, the meaning of "insult" (*belediging*) is the same as Article 261 of the Dutch Penal Code (Article 310 of the Penal Code). Furthermore, according to C.P.M. Cleiren, Article 111 of the WvS Belanda (Article 134 of the Penal Code) is a specificity of criminal acts in Chapter XVI of the WvS Belanda concerning Insult (Chapter XVI of the Penal Code concerning Insult). So, the meaning of insult in Article 134 of the Penal Code is related to the meaning of insult in Article 310 - Article 321 of the Penal Code. Thus, after this Constitutional Court decision, there is no longer regulation regarding insult against the President/Vice President in the governance of Indonesia. This article has been decriminalized.

CONCLUSION

The application of criminal acts involving language in the nation's life in Indonesia has not yet fulfilled the principles of justice, certainty, and usefulness. Indicators found in this research are numerous unclear legal regulations, overlapping regulations, and interpretations. Currently, there are three regulations governing criminal acts involving language: (1) the Penal Code, (2) the Electronic Information and Transactions Law, and (3) the Law on the Eradication of Racial and Ethnic Discrimination. Some problematic issues include: (1) The justifying grounds in Article 310 of the Penal Code are not explained whether it is the same as the justifying grounds regulated in Article 49 of the old Penal Code. (2) The defamation article regulated in both the old and new Penal Code can be applied or not because of subjective judgment of the judge. (3) The interpretation of "groups" in the criminal act of spreading hatred against race and ethnicity

does not have limitations. (4) The article on insulting the president is reintroduced in the new Penal Code, thus experiencing re-criminalization because it has been declared inapplicable by the Constitutional Court, as well as the incitement article, which in the Constitutional Court decision changed from a formal criminal act to a material criminal act in the new Penal Code, returning to a formal criminal act. Articles on insulting the president and incitement are articles that potentially lead to arbitrary power abuse due to their high subjectivity value. These issues can cause injustice and legal uncertainty.

Footnotes

- 1) Jank Rummelin, *Hukum Pidana, Komentar atas pasal-pasal terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, Gramedia Pustaka Utama, Jakarta 2003, hlm 23
- 2) *Ibid*, hlm.141
- 3) *Ibid*, hlm. 141
- 4) *Ibid*, hlm. 142
- 5) Wirjono Projodikoro, *Tindak-Tindak Pidana Tertentu di Indonesia*, Penerbit, P.T Eresco, Jakarta-Bandung, hlm 101
- 6) R. Soesilo, *Kitab Undang-Undang Hukum Pidana beserta komentarnya*
- 7) Adami Chazami, *op.cit*, hlm 117
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