

JUDGE'S INTERPRETATION (STUDY ON THE CRIMINAL ACTION OF INSULTING TO THE HEAD OF STATE AND VICE HEAD OF STATE)

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Abstract

This study aims to find out the judge's discovery of the criminal act of maltreatment against the Head of State and Deputy Head of State and the ideal concept of confiscating judges for the criminal act of maltreatment against the Head of State and Deputy Head of State. The research method uses a doctrinal approach in the form of normative juridical. Sources of data consist of secondary data, namely library materials and primary data in the form of statements from related parties. Methods of data collection through library research and interviews, then analyzed using qualitative normative methods. The results of the study show that the Panel of Judges in adjudicating cases related to criminal offenses against the Head of State and Deputy Head of State considers the elements contained therein which are stated to be involved have fulfilled the element of intent in committing a crime in accordance with the disclosure of the facts in the dispute, will but the panel of judges should in convicting and linking the article not only normatively, but also consider elements of other laws and regulations, so that the elements contained in the article governing the Head of State and Deputy Head of State can be refuted, because this is a citizen's constitutional right to freedom of expression in conveying criticism, suggestions and opinions to the authorities in order to create a better system. Meanwhile, the ideal concept in detaining judges for the crime of mistreatment of Heads of State and Deputy Heads of State is sociological or theological detention, where the law is placed in society so that its application is in line with people's lives based on the principle of justice.

Keywords: judge imprisonment, crime, treatment

INTRODUCTION

Indonesia is currently underway to improve and update the Criminal Code (KUHP) which will be used as an effort to reform national laws that have been used for years in this effort to renew not only because the Code The old Criminal Code (KUHP) was no longer in accordance with demands for developments in society, but also because the Criminal Code (KUHP) that we use today is a legacy from the Dutch Colonial government and therefore in this case also inconsistent with the way of life of the independent and sovereign Indonesian nation.

This is based on the spirit of the Draft Criminal Code (RKUHP) itself which is to carry out penal reform or renewal of criminal law which in essence contains a meaning of efforts to reorient and reform criminal law in accordance with socio-political values, socio-philosophical as well as socio-cultural Indonesian society which underlies social policies, criminal policies and law enforcement policies. So the efforts made by the drafting team for the RKUHP, which had been initiated since 1963 during the Old Order era, were to reform the Criminal Code which was total and not partial.

In connection with the Draft Criminal Code (RKUHP) there are many changes to the articles whose contents are contained in the Draft Criminal Code which will be ratified later, one of these articles is related to one of the articles that will be included in the Draft Criminal Code (RKUHP) is about the Article on Insulting the Head of State and Deputy Head of State which will be included, namely Articles 264 to Article 266 of the Draft Criminal Code (RKUHP) and in the Criminal Code. The Criminal Code (KUHP) is related to the Articles on Insulting Heads of State and Deputy Heads of State listed in Articles 134, 136 bis, 137, 154 and Article 155 of the Criminal Code, in this case the article regarding Insulting Heads of State and Deputy Heads of State has been removed based on Decision of the Constitutional Court Number: 013-022/PUU-IV/2006 which was issued on December 4 2006 and has no binding legal force, and while it relates to the statement that a Head of State and Deputy Head of State are a symbol and emblem of the state, this is a wrong statement because based on Law No. 24 of 2009 contained in Article 1 which contains provisions that the Head of State and Deputy Head of State are not symbols or symbols of the state, which are symbols and symbols of the state are the language, national anthem and flag so that in Article 134 contained in the Book of Laws -The Criminal Law Act which contains insult to Head of State and Deputy Head of State does not have binding legal force.

Meanwhile, in the theory of criminal law, in the opinion of Emong Sapardjadja, who argues that legislators may not apply retroactive criminal provisions, and all criminal acts must be contained in the clearest formulation of offenses, and judges are prohibited from declaring the defendant, committed criminal acts based on unwritten law or customary law. Based on the theory above, the Article on Insulting the Head of State and Deputy Head of State cannot be used as a basis for imposing sanctions on someone who will criticize the Head of State and Deputy Head of State.

In connection with Article 137 which is contained in the Criminal Code concerning Insults of Heads of State and Deputy Heads of State, there are problematic in society at this time, for example in the case involving Eggi Sudjana which was contained in Supreme Court Decision No. 153/PK/Pid/2010 where the case began when he was at the Corruption Eradication Commission (KPK) office in the interest of his client in this matter while at the Corruption Eradication Commission (KPK) office lobby in the presence of other people or before the press, both from print and electronic media, he uttered or uttered words that attacked the good name, dignity or majesty of the President of the Republic of Indonesia which included clarification with the Chairman of the Corruption Eradication Commission (KPK) and his staff that there were businessmen who gave cars to the Government, Secretary of Cabinet, spokesperson for the President and the President who was later used by his son, therefore the courage to disclose lies with the Corruption Eradication Commission (KPK) which is said to eradicate corruption indiscriminately, this happened in the palace and palace people did it.

In this case Eggi Sudjana's statement was put forward or uttered by the defendant referred to as the President of the Republic of Indonesia and pronounced in front of all the media and categorized that the defendant's actions fall into the category of criminal acts of insulting the president and the defendant in this case the decision of the Central Jakarta District Court No.1411/PID.B/2006/PN.JKT.PST dated 22 February 2007, apart from that a similar issue related to the case of insulting the Head of State and Deputy Head of State was a teenager from Medan named Ringgo Abdillah who was arrested by police officers because they were judged to have insulted the Head of State and Deputy Head on their Facebook page. Based on the case above that insults the Head of State and Deputy Head of State listed in Article 134, based on the case above, it is necessary to understand the contents of Article 134 of the Criminal Code (KUHP) related to the interpretation of the word insulting the Head of State and Deputy Head of State before being

included in the Draft Law on the Criminal Code (KUHP) and whether the article has binding legal force or not because the article on insulting the Head of State and Deputy Head of State has been revoked by the Constitutional Court through Decision No. 013-022/PUU-IV/2006.

Based on the background above, the authors hereby raise this issue with the aim of knowing the judge's interpretation of the crime of insulting the Head of State and Deputy Head of State and the ideal concept of a judge's interpretation of the crime of insulting the Head of State and Deputy Head of State.

RESEARCH METHOD

This study uses a doctrinal approach in the form of normative juridical descriptive. Data sources consist of secondary data, namely library materials, including the Criminal Code (KUHP) and Law Number 9 of 1998 concerning Freedom to Express Opinions in Public or others, including Decision of the Central Jakarta District Court No.1411 /Pid.B /2006/PN.Jkt. Pst, District Court Decision No. 196/Pid.Sus/2014/PN.BTL, District Court Decision No.292/Pid.B/2014/PN.Rbi, District Court Decision No. 232/Pid.B/2010/PN.Kdl, District Court Decision No. 1832/Pid.B/2021/ PN.Jkt.Sel. While the primary data is in the form of statements from the parties involved with the object being studied, which in this case is meant to better understand the purpose and meaning of the existing secondary data. Methods of data collection through literature study and interviews. The data analysis method uses normative qualitative methods, namely research using natural backgrounds, with the intention of interpreting the phenomena that occur, and discussing the data that has been obtained and processed based on legal norms, legal doctrines and existing legal theory.

RESULTS AND DISCUSSION

Judge's Interpretation of the Crime of Insulting the Head of State and Deputy Head of State.

According to Leden Marpuang, the term criminal act of contempt is generally also commonly used for crimes against respect. Viewed from the point of view of the target or object of the offense, which is the intent or purpose of the article, namely to protect honor, then a crime against honor is more appropriate. The crime of honoring contempt is a crime that attacks a person's rights in the form of damaging a person's good name or honor.¹

According to the author, humiliation is an attack on someone's honor and good name. As a result of this attack, usually the sufferer will feel embarrassed. The honor under attack here is not honor in the sexual sphere, but honor which includes reputation. The definition of insult according to the legal dictionary is an intentional attack on honor or name both orally and in writing with the intention of being known by the public in the decisions handed down by the panel of judges, namely there are three decisions related to the criminal act of insulting the president and vice president in the decision Blora District Court with Decision Number 47/Pid.Sus/2017/PN.Blora which orders a decision from the District Court.

According to the author, in this case, guided by the articles contained in the Criminal Code, the judge's decision regarding the criminal act of insulting the Head of State and Deputy Head of State does not have legal certainty based on the principle of justice in society. However, in the application of the law carried out by judges in determining decisions against criminal acts of insulting the Head of State and Deputy Head of State, it creates legal imbalances that exist in society, causing controversy and causing problems in society, the article related to the criminal acts contained in the Book The Criminal Law Act, which is used as the basis for determining decisions using the three methods described, does not have permanent legal force and tends to only reflect on decisions made by makers of statutory regulations, the article related to the criminal act of insult committed by that person against The Head of State and Deputy Head of State has a legal vacuum.

According to the author, the criminal act of insulting the Head of State and Deputy Head of State is not a criminal act, so in this case the judge in determining the interpretation in making decisions related to the criminal act of insulting the Head of State and Deputy Head of State is not only based on the three theories the interpretation of the judge used to sentence the criminal to the perpetrator who committed the crime.

By looking at the statement above, the criminal act of insulting the Head of State and Deputy Head of State is listed in the Criminal Code contained in Articles 134, 135, 136 and 137, this act of insult is included in the the category of insulting a state symbol in which a Head of State and Deputy Head of State is a symbol in a country which is an identity of that country. Therefore the judge in

¹<http://www.negarahukum.com/hukum/delik-penghinaan.html>. Accessed on 10 October 2019.

making an interpretation in determining a decision regarding the criminal act of insulting the Head of State and Deputy Head of State uses three basic interpretations as stated in the decision of the Blora District Court Decision Number 47/Pid Sus/2017/PN Blora, the decision of the Blora District Court Central Jakarta State No. 1411/PID.B/2006/PN.JKT.PST, Decision of the Bangli District Court Number 81/Pid.Sus/2018/ PN.Bil, which in which the defendant was legally and convincingly proven guilty of committing the crime of "Intentionally and without rights disseminating information which is intended to create hatred or hostility towards certain individuals and/or community groups based on SARA on an ongoing basis", therefore the panel of judges in examining the decision subsequently sentenced the defendant to imprisonment by taking into account the subjective elements committed by the defendant therefore, the judge determines the interpretation by using historical interpretation. By tracing the history of the background to the formulation of a statutory regulation, the judge can find out the intention of making it, and therefore the judge must interpret it by examining the history of the birth of a particular article.

The second is to use an authentic interpretation carried out by the legislators themselves or agencies determined by statutory regulations and may not be anyone or any party. This interpretation is subjective.

The third is by using interpretations that connect one article with other articles in a relevant legislation or in other legal legislation and in this case these three interpretations are important points used by the panel of judges in making a decision. related to the act of insulting the Head of State and Deputy Head of State.

According to the author, regarding the statement above, this is contrary to the theory of freedom of expression regulated in laws and regulations where freedom of expression is protected in Article 5 paragraph (1), Article 20 paragraph (1), and Article 28 of the 1945 Constitution. .which in the article contains Freedom to express opinions in public is a Human Right guaranteed by the 1945 Constitution.

According to the author in the Universal Declaration of Human Rights. The freedom of every citizen to express opinions in public is a manifestation of democracy in the order of life in society, nation and state. To build a democratic state that implements social justice and guarantees human rights, it is necessary to have an atmosphere that is safe, orderly and peaceful. The right to express opinions in public responsibly in accordance with the provisions of the applicable laws and regulations. And also contrary to other laws and regulations which state that the right to freedom of opinion is a human right that is used to convey criticism or suggestions in order to create a healthy democracy and in criminal acts to state that the right to freedom of opinion is a right owned by someone who owned by someone and the right to freedom of expression is a right that is protected by human rights and in Law No. 9 of 1998 emphasized that freedom of expression is a fundamental right in life that is guaranteed and protected by the state.

Furthermore, in matters relating to symbols and symbols of the state, the purpose of implementing the article on insulting the Head of State and Deputy Head of State in the Criminal Code is contained in articles 134, 135, 136, 137 by looking at the interpretation used by judges using 3 methods. historical interpretation, interpretation and authentic interpretation, the judge is of the view that in the Criminal Code the aim is to protect a legal object not a person but an object that is highly respected by all Indonesian people and by insulting the state symbol it can be felt by all people Indonesia as used in the Decision of the Blora District Court with Decision Number 47/Pid Sus/2017/PN this is stated in Law 24 of 2009 concerning Flags, Languages, State Emblems and National Anthem, 1945 Constitution Chapter XV UUD 1945, where Articles 35 to 36B mention, the Indonesian state flag is the Red and White, the national language is Indonesian, the national symbol is Garuda Pancasila with the motto *Bhinneka Tunggal Ika*, and the national anthem is *Indonesia Raya*.² In this case the panel of judges is of the opinion that a Head of State and Deputy Head of State is a state symbol whose dignity must be protected in relation to legal subjects related to the statement above which in the view of the panel of judges that a Head of State and Deputy Head of State is a state symbol and in their interpretation, the panel of judges was of the view that the article passed on the perpetrator was correct.

According to the author regarding the statement above, a Head of State and Deputy Head of State is not a symbol of a country. This is proven that in Law Number 24 of 2009 which is stated in Article 1 which reads the Symbol of the Unitary State of the Republic of Indonesia, hereinafter referred to as the State Symbol, is the Garuda Pancasila and the motto of Unity in Diversity, then in this case a Head of State and Representative The Head of State cannot be referred to as the symbol of the state, so with the interpretation of judges that aims to protect the dignity of a Head of State and Deputy

²Undang-Undang 24 Tahun 2009 tentang Bendera, Bahasa, Lambang Negara dan Lagu Kebangsaan.

Head of State cannot be implemented against the article on insulting a Head of State and Deputy Head of State as the article contained in the Code Criminal Law Articles 134, 135, 136, and 137.

As is known in the article on insulting Heads of State and Deputy Heads of State listed in the Articles of the Criminal Code, it is included as a criminal act. Moeljatno translated the term "strafbaar feit" into a criminal act. In his opinion, the term "criminal act" is an act that is prohibited by a legal regulation which prohibits it accompanied by a threat (sanction) in the form of a certain crime, for anyone who violates the prohibition, where this criminal act has the elements listed in the article.

According to the author, by looking at the elements of a crime related to the theory of a crime, it is clear that in an act of crime, the form of accountability to someone who commits a crime is an element of intent that can be used as the basis for the act. where this intentional element is used as the basis for an assessment in the judge's interpretation to determine a form of responsibility carried out by that person, in a criminal act of insulting the Head of State and Deputy Head of State in the event that the intentional element cannot be proven because that the element of intention is if seen from a language or word, it cannot be used as a basis for the interpretation used by the judge in making the decision because language and words are not an act that is done intentionally and if the judge makes a decision using the method e interpretation that has been explained above, the judge's decision cannot be used as a basis for imposing a criminal sentence on someone who has committed the crime of insulting the Head of State and Deputy Head of State and the judge, in this case, must also observe carefully and the judge must also be able to distinguish between acts included in a criticism or entered into an unpleasant act against someone, because criticism and acts of humiliation are actions that are considered indistinguishable from the intentions of the perpetrator's actions.

According to the author, in uttering words against someone who is involved in an act of insult, it must be assessed carefully because that from a subjective point of view, the act of insult, which is seen from a subjective point of view, is aimed at the Head of State and Deputy Head of State, while in this article, insulting the president can only apply and can be implemented. if it is based on the person's subject, not the agency or position held by that person, this is considering in the Criminal Code that related to the existence of regulations governing the act of criminal insults can only be proven to people who really feel honor is violated caused by the perpetrator or other person who has the intention to commit a crime with urgency against the person and the criminal act of insulting the Head of State and Deputy Head of State cannot be equated with the right to freedom of expression can be owned by every Indonesian citizen in statutory regulations where freedom of opinion is protected in Article 5 paragraph (1), Article 20 paragraph (1), and Article 28 of the 1945 Constitution, which in the article contains Freedom of expression in public is a human right guaranteed by the 1945 Constitution and the Universal Declaration of Human Rights. The freedom of every citizen to express opinions in public is a manifestation of democracy in the order of life in society, nation and state. To build a democratic state that implements social justice and guarantees human rights, it is necessary to have an atmosphere that is safe, orderly and peaceful. The right to express opinions in public responsibly in accordance with the provisions of the applicable laws and regulations.³

In this case, when the panel of judges examines the criminal act of insulting the Head of State and Deputy Head of State by using the three methods of interpretation using Satrijo's theory which states that an act of simple insult is an action or attitude that violates the good name or an attitude that is contrary to the manners in paying attention to the self-interest of others in daily life. Attacking other people's honor will result in shame and tearing of one's self-esteem. There are two sides of subjective and objective values.

According to the author, in this case the interpretation carried out by the judge using the three methods of interpretation is contrary to statutory regulations which, when viewed with the intentional element contained in the Criminal Code, cannot be proven if the act is not a crime. concrete actions because the Penal Code does not contain elements of words and language which are not used as a guide for judges in making interpretations used to determine decisions to impose punishment on someone who has committed a criminal act of insulting the Head of State and deputy head.

The Ideal Concept of a Judge's Interpretation of the Crime of Insulting the Head of State and Deputy Head of State

In this case the judge passed a decision regarding the criminal act of insulting the Head of State and Deputy Head of State based on the Articles of the Criminal Code in Chapter II in Articles 134, 136bis and Article 137, this is in line with the judge's considerations in making decisions based on with the interpretation above where the judge in interpreting the law aims to protect the dignity of a Head of State and Deputy Head of State where the article used by the judge in making the decision is

³Pasal 5 ayat (1), Pasal 20 ayat (1), dan Pasal 28 Undang-Undang Dasar 1945.

an article adopted from Dutch law which according to the theory of crimes against the state In Roman law, in this case, it is divided into two types, namely *perduellio* and *crimen maiestatis imminuate*.

However, the determination of the boundary between the two types of crime is not very clear. In German law, which in its development received great influence from Roman law, it also turned out that it had not succeeded in making limitations regarding which types of crimes could be included in the definition of types of crimes aimed at the State. When the Dutch Criminal Code (WvS)⁴ which was the forerunner of the Criminal Code was to be prepared, at that time considered that the state was the most important source and even the only source of law.

According to the author, however, if we refer to the Criminal Code which contains articles on insulting the Head of State and Deputy Head of State contained in Articles 134, 136 and in Article 137 based on the interpretation made by the judge in making the above decision is clearly interpreted by the panel of judges, here it is contrary to the principle of freedom of opinion that has been regulated in the 1945 Constitution, where the principle of freedom of speech here contains elements of democracy where freedom of expression such as criticism and suggestions is directly or through electronic media does not provide a limit if someone submits criticism and suggestions to someone who has a position because these criticisms and suggestions aim to assess the performance of that person in doing something related to the impact of actions that have an impact on the community environment akat, and when we examine the offense in the article on defamation of the Head of State it has a broad meaning whereas this offense contained in Article 134 has various meanings.

In providing an interpretation of the decision of the panel of judges, namely in the theory of interpretation it is divided into two perspectives, namely an internal perspective and an external perspective, theoretically the internal perspective refers to the approach used by H.L.A Hart, Hans Kelsen and Ronald Dworkin, Hart relates his theory to the concept of legal system consisting of a complexity of rules that autonomously provide a standard of reference for all parties in a legal system, while the internal perspective in Hans Kelsen's theory concerns the notion of a legal system as norms that are autonomous, completely self-contained, and interconnected logically and systematically in a hierarchical structure.⁵

In contrast to the internal perspective, the external perspective interprets the Constitution (UUD) from a different point of view from the general standard that is patterned in the behavior of actors who are seen every day in the legal system, in other words if the internal perspective is the perspective of the perpetrator or participant, then the external perspective is the point of view of observers outside the text/legal system, this external perspective departs from the assumption that text has a number of possible meanings and at the same time incorporates freedom from interpreters.

According to the author, in this case the judge should before passing a decision related to the criminal act of insulting the Head of State and Deputy Head of State cannot immediately use the interpretation described above. In this case the panel of judges should have an ideal concept in determining the interpretation of the article contempt for defamation of the Head of State and Deputy Head of State, in this case relating to the ideal concept that can be used by judges in determining the ideal concept to give decisions related to the criminal act of insulting the Head of State and Deputy Head of State, there is a theory related to the interpretation of the judge in giving a decision on the article which still do not have binding legal force.

In carrying out the operation, the external perspective uses the method introduced by Jacques Derrida as the deconstruction method. The deconstruction method is basically a radical hermeneutic method which assumes that every text contains the possibility of a number of hidden meanings and interpretation is carried out to determine one meaning and choose one of them. In this case, there is one more theory regarding the internal perspective, the internal perspective put forward by Dworkin is to relate to law as a whole which is obtained only by postulating that law is written by a single author, namely the embodiment of community. In this context, Dworkin's perspective of interpretation uses the hermeneutic method.

Given this, the judge should have a view in determining the ideal concept by using a sociological/teleological interpretation (sociological/teleological interpretation). Sociological interpretation is an interpretation that is adapted to social conditions in society so that the application of law can be in accordance with its objectives, namely legal certainty based on the principle of community justice. This interpretation is in accordance with Dworkin's opinion which relates to internal interpretation using the hermeneutic method.

⁴Suyanto mengutip dari Pompe (2018). *Pengantar Hukum Pidana*. Sleman: CV. Budi Utama, p. 40.

⁵Ahmad. 2020. "Tafsir Konstitusi Studi Putusan Mahkamah Konstitusi tentang Hak Menguasai Negara atas Sumber Daya Alam dalam Perspektif Demokrasi Ekonomi". *Disertasi*. Universitas Muhammadiyah Surakarta, p. 22.

According to the author, by using this interpretation the judge will be able to reject the imposition of an unfounded sentence related to the right to commit the crime of insulting the Head of State and Deputy Head of State contained in the Criminal Code because the principle of this interpretation is to make the article insulting the Head of State The State and Deputy Heads of State contained in the Criminal Code which do not have binding legal force can be implemented in this regulation in order to protect a person's honor and also protect the rights of perpetrators, this is when viewed from the elements contained in Article on insulting the Head of State and Deputy Head of State.

According to the author, by looking at the theory above, the person who committed the crime of insulting the Head of State and Deputy Head of State can be accounted for for his actions so that even though the article on the crime against insulting the Head of State and Deputy Head of State is repealed by a Constitutional Court decision, but in the context of accountability the criminal sentence imposed on that person can be imposed on the perpetrators of the criminal act of contempt against the Head of State and Deputy Head of State because the context of this form of accountability is in line with the internal interpretation method of judges using the hermeneutic method which is used by judges to decide on the form of punishment contained in the Draft Book Criminal Law in the future, because in this case the actions committed by the perpetrators were intentional because in the article on insulting the Head of State and Deputy K the Head of State, in this case there is an element of intent in this case the act committed by that person is based on the intention to commit the act so that it can cause formal and material harm because it can demean the victim even though the victim has a position even though in criminal law theory there is a reason The reasons for forgiveness contained in the theory of reasons for justifying and forgiving are the two main reasons for abolishing crimes in Indonesia in accordance with the teachings of daaddader strafrecht (reasons for abolishing crimes), but reasons related to accountability are reasons for apologizing. Forgiving reasons are different from justifying reasons, because excuses are the basis for eliminating the defendant's guilt while justifying reasons are the basis for eliminating the unlawful nature of an act. In Indonesian criminal law, the law defines circumstances that can cause the maker not to be held accountable.

This formulation is closely related to the repressive function of criminal law and the accountability of a person in criminal law is a necessary condition for imposing a sentence on a person who commits a crime. As for the reasons that can erase the defendant's guilt, namely not being able to take responsibility (stipulated in Article 44 of the Criminal Code) in Article 44 of the Criminal Code does not formulate the meaning of being unable to be responsible but mentions two kinds of mental states of people who are unable to be responsible for the actions they have committed. The articles are: (1) A mentally disabled person is a mental defect (abnormal) that is attached to a person from birth. For example: embartil, idiot, and others; (2) Disabled soul due to disease, is an abnormal mental state that is suffered not from birth, but after birth caused by disease factors that attack a person's psyche. For example: crazy and epilepsy.⁶

According to the author, by looking at the theory above, if the perpetrator commits the crime of insulting the Head of State and Deputy Head of State if he is physically and mentally healthy, then the judge can impose a sentence based on the article on insulting the Head of State and Deputy Head of State. contained in the Criminal Code by using the internal method of interpretation which uses the hermeneutic method without any reduction in punishment, so that by looking at the decision handed down by the judge using the internal method it is used as a way out to provide a sense of justice for victims who have experienced acts criminal act of insulting the Head of State and Deputy Head of State and providing a deterrent effect against the perpetrators.

CONCLUSION

The judge's decision in the Blora District Court Decision with Decision Number 47/Pid Sus/2017/PN Blora in accordance with Article 134 of the Criminal Code concerning insulting the Head of State and Deputy Head of State because the elements in the article are proven Judge's decision which is in accordance with Article 134 based on the authentic interpretation model because in the case of judges in deciding the criminal act of insulting the Head of State and Deputy Head of State based on the characteristics of authentic interpretation contained in the judge's considerations, where authentic interpretation is an interpretation of law which officially refers to the intent of the provisions of a legal regulation contained in the legal regulation itself because the interpretation originally came from the law maker himself.

A number of issues regarding the article on insulting the president and vice president are not firm, definite and limitative. This condition has the potential to open wide gaps in interpretation,

⁶Andi Zaenal Abidin. 1983. *Hukum Pidana I*. Jakarta: Sinar Grafika, p. 260.

especially regarding the phrase "attack on the honor or dignity" of the president or vice president. The existence of a wide gap in the interpretation of this phrase opens up quite broad interpretation space or is multi-interpretative. As a result, it has the potential to create confusion between what actions are categorized as criticism and what are categorized as attacks on the honor or dignity of the president or vice president. In addition, wide gaps in interpretation also do not reflect the principle of clarity of formulation as part of the principle of forming statutory regulations, which emphasizes that each statutory regulation must meet the technical requirements for drafting statutory regulations, systematics, and choice of words or terminology, as well as the legal language is clear and easy to understand, so it does not give rise to various interpretations in its implementation.

Therefore, this provision is inconsistent with Article 5 letter f of Law Number 12 of 2011 concerning Formation of Legislation (UU P3) which emphasizes the principle of clarity of formulation as part of the principle of forming statutory regulations. In addition, the arrangement for insulting the president and vice president is not in line with the principles of a democratic rule of law. He emphasized that Indonesia is a democratic country as emphasized in the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. One of the elements of a democratic country, he said, is the involvement of the community to participate in the process of making decisions and government policies. This has also been confirmed in the provisions of Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia which guarantees the right of everyone to associate, assemble and express opinions. This participation can be in the form of expressing opinions or criticism in various forms, both in writing and orally.

The decision of the Bangli District Court Number 81/Pid.Sus/2018/PN Bil is in accordance with Article 134 of the Criminal Code regarding insults to Heads of State and Deputy Heads of State because the elements in that article are proven. The judge's decision in accordance with Article 134 of the Criminal Code is based on a systematic interpretation model because in the case of judges deciding the criminal act of insulting the Head of State and Deputy Head of State it is based on the characteristics of a systematic interpretation, namely an interpretation carried out by observing arrangements related to other articles, either in the same law or with other laws.

Lately, there have been many public pushes to revise the ITE Law and the article on insulting the president and/or vice president and other public officials. The product of this legislation has made discursive culture in the political arena in this country dead. In fact, it is this discursive culture (ability to reason) that needs to be maintained for the sake of healthy democratic growth. Indonesian people are not unaware of the importance of discursive culture in democracy. However, the hegemonic practice (excessive domination) of the authorities makes people's awareness slowly sublimate. On the one hand, the general public, activists, students, journalists, academics and civil society organizations are creatively trying to use various media as a medium for political discourse, political participation and political protest. However, on the other hand, the ruling group did not respond positively to this effort. Instead of responding with argumentation and open debate, the authorities actually took advantage of the vulnerabilities of the ITE Law to weaken the movement.

The ideal concept of a judge's interpretation of the criminal act of insulting the Head of State and Deputy Head of State is a sociological or theological interpretation, in which the law is placed in society so that its application is in line with people's lives based on the principle of justice. The panel of judges is required to be able to innovate with the aim of making a basis for determining decisions in handling cases related to criminal acts of insulting the Head of State and Deputy Head of State. This will also have an impact on the form of accountability carried out by the perpetrator regarding the criminal act of insulting the Head of State and Deputy Head of State where the form of accountability is a form of sanction that must be applied in criminal acts where this form of accountability will later have a deterrent effect on perpetrators of insults, besides that it is necessary to pay attention to the protection of the dignity of victims who are harmed in terms of defamation in the theory of acts of accountability.

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