



INTERNATIONAL AND REGIONAL ORGANIZATION: ORGANIZATIONS AND THEIR ROLES IN MARITIME DELIMITATION OF THE INDIAN OCEAN

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Article	Abstract
<p>Keywords: <i>Criminal acts; Defamation; Freedom of expression</i></p> <p>Article History Received: Jan 19, 2022; Reviewed: Jan 21, 2022; Accepted: Jan 22, 2022; Published: Feb.10, 2022</p>	<p>Freedom of opinion, especially on social media, is currently widely misunderstood and misused by society, because the exercise of the right to freedom of expression is a matter of society many people commit acts that turn into insults, accusations without evidence or evidence defamation that causes harm to certain individuals. Problems in research this is how the law regulates crimes and violations of the abuse of the right to freedom opinions on social media and what criminal sanctions are for criminal acts of defamation under the guise of freedom of expression. Method used In preparing this article, the author used a qualitative approach by looking at it from a normative juridical perspective. This research on law is based on legal principles, legal systematics, legal synchronization both horizontally and vertically. This data collection was obtained from previous journal/paper references. This research concludes that freedom in Opinion is not absolute freedom, but opinion must be appropriate with ethics and norms in society and in accordance with legal regulations without harming parties.</p>

1. INTRODUCTION

Indonesia is a democratic country, where all its people are free to express opinions, criticism, suggestions and freedom of expression according to what is in their minds. So people often express their opinions through social media with various opinions, including state, legal and political issues. Because of this, everything cannot be separated from the existence of human rights which guarantee equality and equality in living together in accordance with Article 28 of the Law of the Republic of Indonesia of 1945, namely "Freedom of association and assembly to express thoughts verbally and in writing as implemented in the Law". Thus, it can be stated that freedom of opinion is an essential element in democracy.

With the increasing development of technology, it also has an impact on improving the quality of democratic coverage to society. Through technological advances in internet access, which has become a revolutionary start in facilitating public access to open spaces for deliberation, expanding citizen participation, so that over time, technological developments

have followed the development of modern democratic technology.

If seen from one side, people accessing social media express their opinions in the form of criticism of the government. With the legal basis for freedom of opinion, people think they are free to express their thoughts and ideas. However, in practice, many problems arise related to the public conveying criticism of the government via social media.

Quoting information from the Minister of Home Affairs, he stated that freedom of expression in public and freedom of association or assembly are not absolute. In this freedom, there are still limitations in that you must respect the human rights of other people, you must pay attention to public and public order in accordance with ethics, norms and morals, you must maintain grammar in expressing opinions. By looking at the high level of problems related to defamation and the spread of hoaxes, especially through social media, this proves that our society is still not aware of the limitations in carrying out activities on social media.¹

Moreover, Indonesia is a rule of law country, so in practice freedom to express opinions includes criticism of the authorities or state/government institutions which is often considered a criminal act of insult under applicable law. In Indonesia itself, insults against authorities and state/government institutions are regulated in a special insult list in the Criminal Code (KUHP) which contains regulations regarding insult crimes outside Chapter XVI of the Criminal Code concerning Insults. The object of insults regulated in the special insult section of the Criminal Code is regarding insults to the Head of State of the Republic of Indonesia or his deputy, namely those regulated in Article 134 of the Criminal Code. Meanwhile, in the draft Criminal Law Book (RKUHP). Meanwhile, in the latest Draft Criminal Code (RKUHP), insulting the President of the Republic of Indonesia is regulated in articles 217 to 220 of the RKUHP. Apart from the regulations in positive law and the law that is aspired to, there are also several Constitutional Court decisions in the past which can be used as references or precedents for the legal politics of regulating criminal acts against authorities and state/government institutions, namely Constitutional Court Decision No. 013-022/PUU-IV/2006 concerning Insults against the President/Vice President, as well as MK decision no. 6/PUU-V/2007 regarding insults to the Indonesian government.²

One concrete proof of the violation of freedom of expression is the case of insulting the President. To be precise, in December 2023, quoted from the Tempo.CO.Jakarta website, it was stated that on Friday, December 8 2023, a billboard was put up in front of the UGM roundabout with a picture of President Jokowi. The billboard shows half of Jokowi's face in a black suit

¹ Rahmawati, Nur, et al. "Kebebasan Berpendapat terhadap Pemerintah melalui Media Sosial dalam Perspektif UU ITE." *Widya Pranata Hukum*, vol. 3, no. 1, 2021, pp. 62-75, doi:10.37631/widyapranata.v3i1.270.

² Adami Chazawi, *Kejahatan Penghinaan*, (Jakarta:PT Rajagrafindo Persada, 2011), p. 43.

wearing a king-style crown, while the second image is Jokowi's face at UGM's alma mater with a cap. In the middle of the billboard, there was a sentence written "Most Embarrassing UGM Alumnus Nomination Submission" with a statement from Mr. Joko Widodo. Apart from that, the Chair of the UGM BEM said that Jokowi seemed power-hungry in his final term of office. He also did not hesitate to call Jokowi cunning and unethical.³

In this article, the author will discuss: 1. Regulation of criminal law for insulting authorities and state/government institutions based on the Criminal Code, RKUHP, and Constitutional Court Decisions. 2. How is the constitutional right to freedom of speech in accordance with Law Number 11 of 2008 concerning ITE, especially article 27 paragraph 3 of the Law if viewed from the 1945 Constitution, article 28 concerning freedom of opinion but must still pay attention to ethics. 3. What sanctions are given for insulting the Head of State?

2. RESEARCH METHODS

In preparing this article, the author used a qualitative approach by looking at it from a normative juridical perspective. This research on law is based on legal principles, legal systematics, legal synchronization both horizontally and vertically. This data collection was obtained from previous journal/paper references.

3. RESULTS AND DISCUSSION

Basically, the presence of criminal law in society aims to provide comfort, a sense of calm without any worries about threats or actions that could harm individuals in society. According to the object, the object of public humiliation is more towards a person's personal attack, while the object of insult is more towards the dignity of the group. In the Criminal Code, criminal acts are divided into two types, namely general insults which are regulated under Chapter XVI Book II of the Criminal Code and special insults which are regulated outside Chapter XVI Book II of the Criminal Code.⁴ The criminal act in this case is a crime of honor or defamation which is an action carried out by someone to attack with the intention of degrading someone's honor or good name and someone's reputation.

This means that the context is focused on the head of state who receives criticism but exceeds the rules so that it gives the impression of insulting the head of state, whether they are a personal subject or an institution⁵. If it is related to criminal law regulations, it certainly cannot be

³ Pribadi Wicaksono, "Dituding Anak Caleg, Ketua BEM UGM Pengeritik Jokowi Ambil Sikap Santai" <https://nasional.tempo.co/read/1810046/dituding-anak-caleg-ketua-bem-ugm-pengeritik-jokowi-ambil-sikap-santai>. Accessed on December 14, 2023.

⁴ *Ibid.*

⁵ Laden Marpaung, *Tindak Pidana Terhadap Kehormatan: Pengertian dan Penerapannya: Dilengkapi dengan putusan-putusan Mahkamah Agung RI*, (Jakarta: PT Rajagrafindo Persada, 1997), p. 9.

separated from discussions regarding criminal legal policy and legal policy. Criminal legal policy is an effort with the aim of realizing and forming laws and regulations in accordance with the criminal field in line with current and future conditions. Meanwhile, legal policy is the formulation of a legal regulation in which the essence of making and updating it is adapted to the needs of society in accordance with the implementation of legal provisions.⁶

In this case, the analysis regarding criminal law regulations for heads of state will be reviewed based on the Criminal Code, RKUHP, and Constitutional Court decisions. As regulated in Chapter 8 of the Criminal Code regarding Crimes against the Head of State, this is regulated in Article 207 of the Criminal Code, which reads: "*Any person who intentionally in public, verbally or in writing insults any authority existing in the Indonesian State or an assembly The general population there will be sentenced to imprisonment for a maximum of one year and six months or a fine of up to Rp. 4,500*" and Article 208 paragraph (1) of the Criminal Code reads "*Anyone who prepares, displays or sticks up writing or pictures containing insulting content for a public assembly there, with the intention that the insulting content becomes known to the public, is punished by imprisonment for a maximum of four months or a fine of up to Rp. 4,500.*"

Meanwhile, in the latest draft of the RKUHP, it is stated that the regulations regarding insulting the head of state can be seen in Article 240 of the RKUHP which reads "Any person who publicly insults the legitimate government resulting in riots in society shall be punished with a maximum imprisonment of 3 years or a maximum fine many, category IV reads "Any person who broadcasts, displays or pastes writing or pictures so that they are involved by the public, listens to recordings so that they can be heard by the public, or disseminates by means of information technology that contains insults against the legitimate head of state or government with the intention that the contents of the insult public knowledge that results in riots in society is punishable by a maximum imprisonment of 4 years or a maximum fine of category V.

As a result, several important decisions were born relating to material review regarding articles on insulting the head of state/government, such as Constitutional Court Decision No. 6/PUU V / 2007 concerning Insults against the Indonesian Government. The existence of the ITE Law has caused a lot of controversy, such as whether it is not in accordance with the 1945 Constitution, such as regarding freedom of speech. Where the body of the 1945 Constitution guarantees every citizen the freedom to express opinions and speak both in writing and orally. However, if we look at article 27 paragraph 3 of the ITE Law, it is controversial, such as suppressing every citizen's right to speak. It can be seen that the freedom of opinion and speech

⁶ Mahfud MD, *Politik Hukum di Indonesia*, (Jakarta: Rajawali Pers, 2009), p. 8.

regulated in the 1945 Constitution does not exist and even creates a problem that could criminalize someone wanting to express an opinion and speak, because nowadays there are many media that people use to express their opinions in cyberspace (the internet). And the ITE Constitution states that if someone writes an opinion, either intentionally or unintentionally, that offends someone or makes someone's good name threatened, they can be sentenced to either imprisonment or a fine with quite heavy threats.

However, if seen according to the Constitutional Court, although a person has the right to communicate and obtain information, this does not eliminate the state's right to regulate the freedom to communicate and obtain information, it does not violate the rights of other people to obtain personal protection, family, honor, dignity and good name. which is also guaranteed by the constitution. The state's authority to regulate can be justified, it is even the responsibility of the state, especially the Government, including by enshrining it in law (vide Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution) to create a situation that is more conducive to the fulfillment of the right to protection of one's personal self, family, honor, dignity and good name. An act of criticizing/suggestions against the government is often considered an offense. The value protected in the offense of insult is human dignity, in criminal law there is a difference, namely criminal law itself, namely that it recognizes the existence of an intentional act which provides a cause and effect in the form of suffering for the perpetrator in the form of punishment in the form of imprisonment, fines and penalties. die if the crime committed is classified as a serious crime.

Freedom of assembly and freedom to express opinions are regulated in articles 28, 28E, 28F of the 1945 Constitution. Article 28F states that every individual has the right to communicate and obtain information both for his own development needs and those of his social environment and has the right to seek, obtain, own, store information obtained through electronic media. Insults have long been part of criminal law itself. Basically, until now Indonesia still inherits and uses the Dutch East Indies legal system. Basically, insult law in Indonesia is organized into two groups, namely the criminal law group itself and the civil law group. And in both legal regulations there are several articles that regulate insults. Defamation committed on social media is included in a criminal offense. Can be charged under articles for insulting an individual and for insulting a good name, in accordance with what is stated in the Criminal Code. The perpetrator of a criminal act of defamation causes moral and material losses to one of the parties, and on this basis the perpetrator of a criminal act of defamation can be punished.

4. CONCLUSION

Freedom of opinion is an essential element in democracy because freedom of opinion is one

of the characteristics and principles of democracy. However, in its application there is still a misunderstanding of what is effective, perhaps the suggestion is that we use polite language in criticizing and no matter how much we hate the performance or whatever, we must still respect the head of state.

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