

Penerapan pasal 134 KUHP tentang penghinaan terhadap presiden dan wakil presiden di Indonesia: studi kasus putusan pengadilan tahun 1998-2013 = The implementation of article 134 Indonesian penal code regarding defamation towards president and vice president in Indonesia: case studies on court decision 1998-2013

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Abstrak

Ketentuan mengenai penghinaan terhadap Presiden dan Wakil Presiden diatur dalam pasal 134, 136bis, dan pasal 137 KUHP. Pasal ini muncul sebagai adopsi dari pasal penghinaan terhadap Raja dan Ratu Belanda yang turut diberlakukan di Indonesia pada era sebelum kemerdekaan berdasarkan asas konkordansi. Setelah kemerdekaan, ketentuan tersebut dipertahankan namun dengan penyesuaian berupa perubahan pada frasa "Raja" dan "Ratu" menjadi "Presiden" dan "Wakil Presiden". Sejak periode rezim pemerintahan Soeharto, ketentuan tersebut, khususnya pasal 134 KUHP banyak digunakan untuk mengkriminalisasi ungkapan, tulisan, atau perbuatan yang dinilai mencemarkan nama baik Presiden dan Wakil Presiden. Ketiadaan parameter untuk mengidentifikasi rasa keterhinaan menyebabkan unsur menghina dimaknai secara kabur oleh para hakim yang mengacu pada politik hukum pidana masing-masing rezim tanpa mempertimbangkan situasi kebatinan yang ada. Adanya potensi kelenturan pemaknaan pasal yang bisa melanggar kebebasan berekspresi mendorong adanya pencabutan pasal penghinaan terhadap Presiden dan Wakil Presiden oleh Mahkamah Konstitusi. Skripsi ini berusaha membuktikan kecenderungan pemaknaan pasal 134 KUHP secara luas melalui analisis terhadap putusan pengadilan, ditunjang dengan dokumen-dokumen sejarah yang ada, di samping membandingkan keberadaan ketentuan tersebut dengan ketentuan serupa di beberapa negara lain.

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Defamation towards President and Vice President of Republic of Indonesia is regulated in Article 134, 136bis, and article 137 Indonesian Penal Code. These articles were adopted from the originals regulating defamation towards King and Queen of Dutch Monarch, which was enforced in Indonesia in pre-independence period upon concordance basis. After the independence, those articles were maintained after getting through a conformation-replacement of "King" and "Queen" phrases with "President" and "Vice President". Since the Soeharto era, those articles, especially article 134, were regularly used to criminalize oral or written expression, and also dissent behavior which were valued as insulting and jeopardizing the image of President or Vice President. The absence of parameter to identify the feeling of being insulted caused the obscure interpretation of the "defaming" aspect in article 134. The judges gave the interpretation in the compliance with the politics of criminal law of each regime, neglecting the ongoing social situation. The possibility of interpreting the law widely could result on the abuse of freedom of expression, and according to it, Constitutional Court of Republic of Indonesia decided those existing laws on defamation towards President and Vice President were void. This thesis aims to prove the flexibility in interpreting the law, through analyzing court decisions supported with studies on historical documents regarding defamation towards the head of the State. This thesis also compared the law of defamation, especially defamation towards the President and Vice President in Indonesia with other countries.