



Critical Review of Criminal Accountability for the Perpetrators of a Crime Committed Against the President via Social Media Facebook (Number Rule Study 278/Pid.B/2020/PN.Gns)

Muchammad Daing Azimattara; Eko Soponyono

Master of Law, Faculty of Law, Diponegoro University, Indonesia

E-mail: Azimattaradaing@gmail.com

<http://dx.doi.org/10.47814/ijssrr.v6i4.1194>

Abstract

A felony offense against a President is a felony which attacks a person's right to defame a good name or honor which is, of course, regulated by the law, the President is the head of state and the vice President is the vice President. With such a position, both the President and the vice President have honor and a good name, a man of such rank should be honored. The purpose of this study is to examine critically how a criminal accounting for a criminal offense is against the President and whether the judge's ruling on rule number 278/ pid. B/2020/ pn is already at the point of idleness. This research method USES the normatif juridical and empirical juridical approaches, the data used is primary and secondary data collection with library studies and interviews. The accused has the ability to take responsibility in psychic conditions and there is a deliberate error, no excuse for forgiveness or correction, action that prompts a consequence is prohibited by the law and conforms to the elements of the judge's verdict in rule number 278/ pid. B/2020/ pn GNS has met the purpose of idling, that the perpetrators get a punishment according to the results of the evidence. and some of the tools and goods and evidence presented at trial so that the criminal elements in 207 criminal articles have been met to meet the perpetrators.

Keywords: *Criminal Liability; Criminal Insults; President*

Introduction

Legal matters are discussed critically and under judicial analysis as well as criminal liability. The problem that arises in settling a legal matter regarding criminal actions has to do with moral values is injustice and legal certainty. It is not uncommon that the settlement of a criminal case leads to polemic in the justice seeking community (yustisiben) because the ruling by the judge is judged to be damaging to one of the litigating parties. In the case of legal certainty, which shows how weak current legislation was or positive law in arranging a specific legal matter of criminal wrongdoing.

Criminal proceedings in increasingly complex societies are targeting not only material goods, lives and bodies but also many harmful actions for national and national life. The principles of the democratic legal state are one of the principles or resources used by those who practice legal systems. Indonesia, of course, is one of the many countries that use legal and democratic systems and regulations. In strengthening the governmental arrangement, the constitution restricts Indonesia. Therefore, Indonesia is in a sense a legal state, either because within its governmental arrangement or its law enforcement is restricted by power. In this case, a criminal defamation of the Internet is such that the law must be one of the solutions to the problem by fully supporting or sustaining it by law. 11th year 2008 about information laws and electronic transactions.¹

Neither the President nor the vice President is the head of state at the same time as the head of government and has the highest authority from a state, as governed by article 4 verse (1) the constitution of the state of the republic of Indonesia in 1945 the President holds the rule of government by the constitution of basic law." The President as the head of both state and as the head of his own government has authority to be respected by his people.² In regard to the growing cybercrime, governments have issued a policy with the release of 2016's no. 19 law on information and electronic transactions (act 11) enacted on April 21, 2008. The information and electronic transactions act has been called a legal directive that first significantly governed cyberlaw or maybetween in Indonesia.³

Certain situations or conditions or circumstances that are discussed or published in social media are considered to be sacrilisations or libel when they are not right for the person to be harmed or victimized, whether it is defamatory or defamatory or offensive to the victim. Communication about the other party may be a 'smear' or an insult or offense of honor, carried out with two (2) criteria of open words or text as well as with hidden forms of connotation attacking honor, damaging one's reputation or somebody. As of late there have been many cases of contempt for the President, public via statements on social media or elsewhere, as in cases of number 278/Pid.B/2020/Pn.GNS, whose perpetrators made a mockery of the President through his social media which has attacked the President's honor as head of state.

Criminal accountability is called no criminal without error that gives rise to a principle of error (*a culpability principle*), based on a monodualistic balance that a principle of error based on the value of justice should be equated with a legality principle based on a definite value and thereby evoke the *avwezigheid van alle matrialle wederetelijkheid*. While criminal accountability is by mistake, but in some ways it does not preclude the possibility of (vicciliarity) or replacement accountability and (lactation) of strict accountability.⁴ The question of perverseness concerning his situation (error facti) as well as perverseness concerning his law or commonly called a mad person is one reason to be forgiving so that the perpetrator is not condemned unless his guilt is his. Related to the description the authors are interested in doing research on how the criminal accountability of the perpetrator of the President is the title. Critical Review Of Criminal Accountability For The Perpetrators Of A Crime Committed Against The President Via Social Media Facebook (Number Rule Study 278/Pid.B/2020/PN.Gns)

Based on the above background, the problem that will be studied in the study is to understand, understand and analyze the criminal accountability for the perpetrators of the offense against the President. And whether the judge's ruling is consistent with the point of idleness. As for the purposes of

¹ Benni, V. M., Nance, M. A., & Pratiwi, A. W. (2021, June 17). *The Implementation Of The Responsibility Of Criminal Offenders Without Legal Right To Distribute And Transmit Information That Has Insulting Content Or Insults (Study Number Decision : 867/Pid.Sus/2018/PN.Tjk.)*. Vol 1 FH.UNILA

² <https://www.kompas.com/skola/read/2020/05/29/133000469/kewenangan-presiden-sebagai-kepala-negara-dan-kepala-pemerintahan>, diakses pada 10 januari Pukul 21 : 23

³ Wawan Tunggal Alam. 2012. Pencemaran Nama Baik di Kehidupan Nyata dan Dunia Internet. wartapena, Jakarta, hlm. 7

⁴ Nawawi Arief, Barda. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Citra Aditya Bakti. Bandung, 2001.

this research, it is theoretically expected that the results of research are useful for the development of law studies specifically criminal law and are practically able to offer benefits to law enforcement officers especially judges, prosecutors, police and lawyers in resolving legal matters and making decisions and policies, especially in criminal offenses against and/or defamation. Gave the public a better understanding of and/or defamation of the President.

Criminal accountability is a person who commits a criminal will be dealt with according to the law, depending largely on whether the perpetrator in the committing of the criminal would be capable of a guilt element or a culpability principle of deliberate (*dolus*) or omission (*culpa*). Certainly concerning the principle of accountability in the strict penal law. Stating "no crime without error". These are perceived by the maker's (subjective) inner relationship (subjective) and willful ACTS (*dolus*) and omissions (*culpa*).⁵ A crime is an act prohibited by a rule of law, a prohibition with which a specific criminal was prohibited for anyone violating it. In Dutch terms it's a felony it's called strafbaarfeit. As for the delict that comes from *delictum* Latin. The Anglo Saxon state criminal offense or a criminal act.

In some cases felony insults are also generally used for felony assault of honor. Viewed in terms of the objective or object of delict, and the purpose or purpose of the chapter is to protect honor. A felony of honor or contempt is a verbal or verbal crime and is executed outright in an attack on a person's right to defame or honor. The President is the head of state and the vice President is the vice President. With such power the President/vice President has the honor and the good name, and a man of such rank to be honored. Therefore, to be respected does not mean the will of the person who holds the office of President/vice President but by virtue of the propriety or propriety living in the general public or the majority because of contempt is one of the violations of human rights.⁶

Problems or cases of criminal offenses against presidents, vice presidents, and state agencies, including ordinary delict and not complaint, mean that law enforcement can take the initiative to investigate and prosecute without a complaint or an injury report. The logic of these provisions is that presidents, vice presidents, and state agencies are symbols of countries that should be kept to their dignity. Furthermore, his position of office did not allow them to act as traitors.

Formulation of the Problem

- 1) How will criminal accountability be for criminals who commit crimes insult the President.
- 2) Whether the judge's ruling was consistent with the purpose of idleness.

Research Methods

Legal research is a series of processes to find rules and principles as well as doctrines to answer actual legal issues. Whereas methods of legal research are the study of law regularly (systematically). Further effort to obtain needed data in conducting research requires scientific methods of getting objective and accurate data, then in processing and concluding and solving a problem. This research researcher use a kind of normative empirical legal research. The applied law study of normative empirical (applied law research) is legal research on enforcement or application of normative legal provisions (legalizing, legislation, or contracts) in action at any legal event that occurs in society.

Researchers are using quantitative research to expose criminal accountability for the perpetrators of the alleged crime of the President and then release the perpetrators of an analysis of Indonesian

⁵ Mahmud Mulyadi, *Niat Jahat (Mens Rea) dalam Tindak Pidana Korupsi*, Jurnal Fakultas Hukum Universitas Sumatera Utara, 2016, hlm. 37.

positive law. Researchers use the normative approach, which is to examine the law as a norm or code in society, and to refer to each person's behavior based on positive regulatory norms, legislation, laws, government regulations and so forth, and legal norms written by the judge law and the law by the self-interest and empirical approaches, to examine the laws conceptualized as actual behavior, as unwritten social symptoms that affect everyone in human relations.

Discussion

1. Critical Review of Criminal Accountability for the Perpetrators of the Criminal Offense Against the President

According to what R. Soesilo says that section 207 of the penal code remains necessary to ensure the instrument of state power to be honored and to anyone who attacks by the spoken word or writing can be applied to this chapter as to the governor, President, police, regent, camat, etc.⁷ According to Heni Siswanto, a professor at Lampung University Law School that the penal department of defense against the President was repealed a constitutional court ruling a few years ago, in a draft of the new penal law act based here again, so there is a legal positioning from this clause.

The constitutional court says there should be no specific offense to the President, but the formulation of laws designed to rule the law of the penal code finds that these requirements still need to be seen as still within the penal code, which is rather unique because in one country the way the terms are viewed could be different.

The accountability of the perpetrators who committed the offense against our President returned to the legal theory of elements criminal in particular regarding criminal liability, that is the second problem in criminal law specifically criminal law. The target will be held accountable for his criminal actions, and will be subject to criminal liability.

Due to the fact that the culprit would be considered criminal, that the element of error would be the primary element. It is not regulated in criminal law laws it is governed in science criminal law. It has a tremendous influence even with the present conditions of law enforcement officials stating that the element of error is the primary one to answer for the crimes committed by the perpetrator. Because of the remarkable principle of *geen straf zonder schuld*, where no crime is without fault, there will be no fault, but in the changing of science, it also regulates the links of the actions of others, such as *strich*, a criminal liability, without the need for any element of error or vicliability.⁸

According to Goddess Erna, as professor of law school at Lampung University, this element of accountability is very important because from this frame of mind it will be tested to declare there is no criminal accounting against that person who just did the ex-clause of the penal code. The element of error is manifest in the form of an inner attitude, an inner attitude toward the case the accused in legal accountability of his actions must be proved on the basis of the law and a proven legal basis of criminal events (the legal code of criminal events).

That under section 184 of the penal code. There are several instruments of evidence that can prove the defendant guilty by means of evidence of witness testimony, expert information, letters, clues as well as statements of the defendant. That in addition to some of the exhibits presented at the trial would have to

⁷ Soesilo R. *Kriminologi (Pengetahuan tentang Sebab – sebab Kejahatan)*. Politea. Bogor. 1985.

⁸ Soedarto. *Kapita Selekta Hukum Pidana*. Alumni. Bandung. 1986.

be the defendant to meet elements of the chapter that the public prosecutor was charged with. That in the case of the offender is charged and charged under section 207 of the penal code. Where the elements are:

- 1) Who-who.
- 2) Intentionally, by word of mouth or by writing, you insult a ruler or an agency based in Indonesia.

According to gilang febry, ananda, as an investigator, said that in order to be funded by the public, it was required that the crimes committed meet the predetermined elements of the act. Judging from the Angle of the action forbidden. An individual would be held accountable for his actions, when they went against the law, there was no inducement, a law-abiding trait for his crimes. Judging from a sense of irresponsible ability that can be held accountable for his actions.

According to the blessing of r. sefident, judge of the MMH district court, that the perpetrators of the offense against the President have been found guilty of the crimes set out in article 207 of the penal code. This is seen in the proof of the elements within the chapter in the evidentiary process in the trial

2. The Judge Ruled in Accordance with the Purpose of the Criminal Offense Against the President

Idleness is not for satisfying absolute demands from justice. Vengeance has no value but as a means to protect the interests of the community and protect the interests of public order. A criminal is not just to take vengeance on a person who has committed a crime, but has certain goals to be beneficial.⁹

Judge verdict 278/Pid.B/2020/pnGNS has met the purpose of idling, as in the relative theory that a criminal is not merely to give recompense for his actions but is more likely to provide protection to the community and benefit the community in its wake of justice and to have a learned effect on the perpetrators and educate the public that an act of contempt for the President is illegal. The verdict given by the judge has been consistent with the legal purpose of creating justice, legal certainty, and fatality for all societies, it is known that the decision of idling for the offender will create both justice for the victim and a deterrent to that justice can be fulfilled.¹⁰

The creation of a legal certainty, that the judge's ruling would provide a conviction of the law to the perpetrator, that the perpetrator had been punished according to the results of the evidentiary in the trial on the basis of several tools of evidence and of the evidence presented at the trial so that the criminal elements in 207 article of the penal code had been fulfilled so that the perpetrator could be convicted.¹¹

Then, in this regard, there are, of course, many who are wronged such as lawmakers through legislators who have made and designed laws through various considerations in such a way as to be observed and followed and still be infringed. Then the loss of any criminal action is that there are casualties in this case that are the state. Therefore, with the ruling of the judge who gives the perpetrators the perpetrators will benefit in the future from repeating the same act and from educating the public that the act of insulting the President is a criminal that can be treated as a potential deterrent.

Conclusion

The accused has the ability to take responsibility in psychic conditions and there is a deliberate error, no excuse for forgiveness or correction, action that prompts a consequence is prohibited by the law and conforms to the elements of the judge's verdict in rule number 278/ pid.B/2020/pn.GNS has met the

⁹ Rosidah, Nikmah. *Asas-asas Hukum Pidana*. (Pustaka Magister: Semarang). 2011.

¹⁰ Saleh, Roeslan. *Stelsel Pidana Indonesia*. Aksara Baru. Jakarta. 1998.

¹¹ Rahardjo, Satjipto. *Masalah Penegakan Hukum*. Sinar Baru. Bandung. 1983.

purpose of idling, that the perpetrators get a punishment according to the results of the evidence. and some of the tools and goods and evidence presented at trial so that the criminal elements in 207 criminal articles have been met to meet the perpetrators

The advice from researchers should be that law enforcement, such as police, public prosecutors, and judges should be more careful and careful in their task so as to prove clearly and convincingly that the defendant is guilty of incorrectly applying the law so that the legal objective of justice, legal certainty and expediency can be achieved. And judges should be able to promote a more fair sense of justice to both the accused and the victims in each verdict so that the aim of the law, which they expect, can be well achieved and does not injure the sense of justice in the community.

References

- Bawengan G.W. *Pengantar Psikologi Kriminal*. Pradnya Paramita. Jakarta. 1997.
- Kansil C.S.T. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Pradnya Paramita. Jakarta. 1989.
- Kartanegara, Satochid. *Hukum Pidana I*. (Balai Lektur Mahasiswa: Jakarta). 1996.
- Friedmann, Laurence M. *Teori dan Filsafat Hukum : Idealisms Filosofis dan Problema Keadilan Susunan 11. PT*. Raja Grafindo Persada. Jakarta. 2009.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Prenada Media Group. Jakarta, 2005.
- Marpaung, Leden. *Tindak Pidana Terhadap Kehormatan Pengertian dan Penerapannya*. PT Grafindo Persada. Jakarta. 2007.
- Moeljatno. *Asas – Asas Hukum Pidana*. Rineka Cipta. Jakarta. 2003.
- Muhammad, Abdulkadir. *Hukum dan Penelitian Hukum*. PT. Citra Aditya Bakti. Bandung. 2004.
- Muladi dan Barda Nawawi Arief. *Teori-Teori dan Kebijakan Pidana*. Alumni. Bandung. 1998.
- Mulyadi, Lilik. *Kekuasaan Kehakiman*. Bina Ilmu. Surabaya. 2007.
- Nawawi Arief, Barda. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Citra Aditya Bakti. Bandung. 2001.
- Prodjodikoro, Wirjono. *Asas-Asas Hukum Pidana di Indonesia*. Eresco. Jakarta. 1981.
- Rahardjo, Satjipto. *Masalah Penegakan Hukum*. Sinar Baru. Bandung. 1983.
- Rosidah, Nikmah. *Asas-asas Hukum Pidana*. (Pustaka Magister: Semarang). 2011.
- Sahetapy JE. *Paradoks dalam Kriminologi*. Jakarta. 1992.
- Salah, Roeslan. *Stelsel Pidana Indonesia*. Aksara Baru. Jakarta. 1998.
- Santoso, Topo dan Eva Achjani Zulfa. *Kriminologi*. PT Raja Grafindo Persada. Jakarta. 2003.
- Soedarto. *Kapita Selekta Hukum Pidana*. Alumni. Bandung. 1986.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Rineka Cipta. Jakarta. 1983.

- Soesilo R. *Kriminologi (Pengetahuan tentang Sebab – sebab Kejahatan)*. Politea. Bogor. 1985.
- Syarifin, Pipin. *Hukum Pidana Di Indonesia*. CV. Pustaka Setia. Bandung. 2000.
- Tongat. *Dasar-Dasar Hukum Pidana Indonesia dalam Perspektif Pembaharuan*. UMM Pres. Malang. 2008.
- Tunggal, Alam Wawan. *Pencemaran Nama Baik di Kehidupan Nyata dan Dunia Internet*. Wartapena. Jakarta. 2012.
- Utrecht. E dan Moch Saleh Djindang. *Pengantar Dalam Hukum Indonesia*. Sinar Harapan. Jakarta. 1983.
- Direktori Putusan Mahkamah Agung, Putusan Nomor: 278/Pid.B/2020/PN.Gns.
- <https://www.kompas.com/skola/read/2020/05/29/133000469/kewenanganpresiden-sebagai-kepala-negara-dan-kepala-pemerintahan>.
- <http://www.pngunungsugih.go.id/main/tugas-pokok-dan-fungsi/tentang-pengadilan/uraian-tugas>, Diakses pada 1 Januari 2022 Pukul 20.30.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).