

## Manifestation of Eastern Cultural Values by Re-arranging Norm on Insulting the President and Vice President

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### Abstract

The draft criminal code (RKUHP) has again received a sandstone in its ratification. This is due to several articles that are judged by some people. One of them is about the re-entry of the Article of contempt for the head of state which again reaped polemics in the community. So that with the re-regulation of the article, it is feared by many circles to be a form of defiance of the constitution and violations of free speech which eventually enter into violations of human rights. With the emergence of the article, there has been a lot of polarization in the community between those who support the existence of the article and the contras to the article. To discuss this, normative legal research methods with a conceptual approach, a statutory approach and a historical approach are used. The results of the study show that the reappointment of the article of contempt for the head of the nation's values is not contradictory because the article falls into the category of *rechterdelicten*. This contempt clause is present because the President and Vice President are icons of the country that can have an impact on the potential for division of society and also harm to other countries.

### Keywords

Easter Cultural Values; Insulting President; Re-arranging Norm

### Introduction

The legal mind in the renewal of criminal law continues to be echoed by various parties. This is because the current criminal law is a legacy of the Dutch colonial colonial state, with the principle of concordance the Indonesian government still enforces criminal law which is the result of the construction of the Dutch criminal law. With a fairly old age even if reconstructed, this criminal law can be said to be older

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than the age of the establishment of the Indonesian State and cannot reach the development of a rapidly growing society, so it is not surprising that many from various circles to echo the renewal of criminal law in Indonesia. Furthermore, when talking about legal reform, the discussion is not always about policy in a normative aspect (Bahiej, 2003). Even in the renewal of criminal law, it is not always synonymous with the renewal of the Criminal Code (KUHP), but also related to policies towards legal structures and cultures that develop both structurally and non-structurally in society (Bahiej, 2003).

Barda Nawawi Arif in his book explained that the renewal of criminal law would be meaningless if it only focused on the Criminal Code without being accompanied by changes to the science of criminal law. Changes to criminal law reform or legal substance reform must also be followed by the renewal of science about criminal law (legal/ criminal science reform). It must also be followed by the renewal of the legal culture of the community and the renewal of the structure or legal apparatus/legal structure reform (Nawawi Arief, 1998). Barda Nawawi Arif in his book explained that the renewal of criminal law would be meaningless if it only focused on the Criminal Code without being accompanied by changes to the science of criminal law. Changes to criminal law reform or legal substance reform must also be followed by the renewal of science about criminal law (legal /criminal science reform). It must also be followed by the renewal of the legal culture of the community and the renewal of the structure or legal apparatus.

The inclusion of the Draft Criminal Law (RKUHP) in the 2022 national legislation program (Keputusan Prolegnas 2022.) has brought a breath of fresh air and at the same time a sense of worry that raged in the community due to the trauma that had been felt by the previous community which in the end the RKUHP which had previously entered the 2019 prolegnas there was a deadlock and finally the discussion and ratification became delayed. If you look back at the bill that was rejected by almost all levels of society in the 2019 legislation program, this rejection is caused because there are several articles that are considered to have the potential to become a new problem, namely the potential authoritarian attitude of the government if this regulation is passed (Idhom, 2022).

Of the several demands filed at that time, one of them was the rule on Contempt of the President which was contained in Article 218 and Article 219 of the Criminal Code. This provision is considered a colonial legacy that should not need to be regulated in the Criminal Code which also has a great potential to threaten freedom which is regulated in the 1945 Constitution. Dio Ashar as the chairman of the Indonesian Judicial Monitoring Society considers that this article is very dangerous with its flexible nature so that it can become a weapon of the government to criminalize the public just for criticizing the president's policies. Furthermore, the Constitutional Court in its decision number 013-022/PUU-IV/2006 has abolished the article of contempt of the president and vice president in the Criminal Code (KUHP).

The Constitutional Court in its decision number 013-022 / PUU-IV / 2006 gave a strong argumentation in its legal considerations, namely the Constitutional Court held that as a state of law with democratic principles that also ended up high human rights as stated in the 1945 Constitution, it became irrelevant if in the KUHP The sentence still

contains articles such as article 134, Article 136 and Article 137 which negates the principle of equality before the law by reducing the freedom of expression of opinions and thoughts expressed in various forms, as well as reducing the freedom to access information and the principle of legal certainty can hinder the process of democracy in a country. This is because in the arrangement of the article it can be used by officials who are interested in shutting down their opponents who are not in line with their thinking.

By re-presenting Article 218 and Article 219 of the Criminal Code, which is allegedly substantiated from the Article, it has fundamental similarities with the Article that has been cancelled by the Constitutional Court as described above, so that it has revived the trauma of the community. What this means is that reviving Article a quo can be said to be a form of defiance of the constitution, considering that the Constitutional Court is a fully authorized institution to maintain Pancasila and become the sole interpreter institution of the constitution (Rahmawati, 2022). On the other hand, mapping problems in the RKUHP has often been carried out by many people. Another example besides the contempt rule on the president also comes the regulation on treason which is also regulated by the bill but the bill does not define treason as a form of attack. But in its definition it has the potential to become a rubber article that can be used to suppress its political opponents and the suppression of freedom of expression and freedom of expression (Rahmawati, 2022).

When comparing it with the United States, which is used as a mecca for democracy by almost all countries in the world because the mature concept of democracy in that country does not regulate the regulation of insults to heads of state or presidents. Based on the first amendment to the United States constitution (United States Of The United States Constitution, 2021) it has been expressly said that the state gives free freedom to its citizens including also making the president a subject of ridicule both public policy and private ones such as making fun of his physical appearance presented in the form of memes, satire to humor. It is based on an understanding that says that citizens are better off being in a self-managed society by discussing the public interest (VOA, 2022).

What needs to be observed is that in the development of society caused by the current of globalization, it has affected the national legal system of a nation a lot. This influence is actualized by the presence of the state today which tends to be infinite. So that what happens is that the existing legal norms are required to be able to adjust to the changes that occur without having to reduce the values adopted in a nation, such as the value of the nation to the ideology of a country which in this case is the 1945 Constitution of the Republic of Indonesia and Pancasila which has become the source of all sources of law (Sutrisno, 2011).

Barda Nawawi Arief it is stated that the renewal of criminal law is essentially obliged to pay attention to the hopes and ideals of reform in accordance with the central socio-political values, socio-cultural values of Indonesian society and the state ideology, namely Pancasila (Arief, 2011). So from the description above, do not let the renewal of the law in Indonesian criminal law not provide aspects based on a democratic state but what happens in the renewal of criminal law causes a narrowing of the legal mind that

should not even be used as a tool to crack down on political opponents, people who oppose policies without being given a recognized and legally valid channel.

If dissecting slowly in the criminal rules, overall basically the purpose of the criminal rule is to have a legal purpose that wants to be protected, for example, protecting property through the prohibition of stealing as well as protecting lives by means of a prohibition of killing and so on (Trans 7, 2021). So in the article about such insults both to the president, vice president and public officials will be the question which is what is to be protected.? In fact, *mutatis-mutandis* every regulation to be made must be proportional and in accordance with the principles of Human Rights. Based on the presentation of the background, a form of problem formulation is formulated which will be stated in the next discussion.

## Method

The method used in discussing this is a normative research method, with primary legal material consisting of legislation and secondary legal material consisting of literature. The approach used is the Statutory approach in this case is the Presidential Contempt Article in the Criminal Code and the Draft Criminal Code and the conceptual approach. The research was conducted with various efforts to achieve coherence truth by linking the results of identifying harmony between applicable regulations and/or legal principles that apply in society (Marzuki, 2017). Researchers use data analysis using deduction patterns to explain various regulatory norms related to legal issues first and then explain legal facts later. Data analysis is organized systematically, regularly, logically, carefully, and explained holistically and in detail. Thus, the pattern of reasoning is systematically organized so that a conclusion is reached from the legal issues studied (Putra D., Dkk 2021).

## Discussion

### 1. Reanimation of contempt for the president and vice president based on theories in criminal law

The Talking about theories in the development of criminal law has been born by many figures who have been consensual in the field of criminal law. The birth of various kinds of existing theories is one of the thesis or answers to the complexity of the development of society (Yuntho, E., 2007). Furthermore, law as a policy made by the authorized institution in its implementation always bases on the components that develop in the academic world in this case legal theory with its philosophical schools and is also based on the development of the typology of society that develops in the area where the law will later be enforced (Ramdan, 2020).

Therefore, in every legal update, especially criminal law, it is mandatory to pay attention to the typology of the development of society which will eventually be value-oriented (Ramadhan, rafiqi, 2021a). Also, in every renewal carried out, it must pay attention to the principles that develop in the Indonesian State, namely democracy. So that its output in the renewal of criminal law is the protection of society by achieving social welfare (Ramdan, 2020).

If you look deeper into the science of criminal law, several theories have been arranged that have always been doctrines in almost all countries in the world. Eddy O.S Hieariej in his book explains that the science of criminal law has an important role in the application of a policy of a positive law (Hieariej, 2016). This important role, among others, is to find out the objectivity of the positive criminal law, besides that in substance criminal law is a form of law that regulates prohibited and ordered acts. Furthermore, regarding acts prohibited in criminal law, it is classified into two properties, namely as *rechtsdelicten* and as *wetsdelicten* (Sahetapy, 2014).

*Rechtsdelicten* in essence it means that all acts that are prohibited as violations of the law have since been considered an injustice, therefore they are prohibited. Deeds that fall into the category of *rechtsdelicten* are usually born from religious norms and moral norms that develop in a particular society (Rafiqi, 2021b). This is because before the advent of criminal law, religion was a primary basis of socio-community control. In contrast to *rechtsdelicten*, *wetsdelicten* also has the meaning of all prohibited acts as an offense. But the difference is in the *wetsdelicten* an act can be said to be a prohibited act if it is stated by the framer of the law and stated in writing by the framer of the law who pays attention to the development of the community (Sahetapy, 2014).

The end is that every legal product must have a character that is based on the personality of a particular nation. So that every character of the legal product made will be in accordance with the value of a nation. For the people of Indonesia, Pancasila is a value system that also determines the direction of national development policies and programs. With the spirit of Pancasila, every legal product in this case the criminal law included in the 2022 national legislation program should have a responsive and fair character (Atmasasmita, 2017).

The presence of articles or regulations on insults to the president, vice president and other public officials that result in polarization in the midst of society, it can be said that this stems from the value of society in Indonesia. The revival of regulations governing contempt for the president and/or vice president in today's developments has always been a question, has the reactivation of the article of insult of dignity and dignity to the president and/or the president been in accordance with Pancasila as the source of all sources of law? Zulfirman as a argues that the president is the head of state as well as the head of government who is also part of the symbol of the Indonesian state as a sovereign state, so the need for arrangements for the president and/or vice president to protect his dignity and dignity (Tampi, 2016). The same thing was also said by Krisnadwipayana and Indriyanto Seno Adji who argued that the arrangement about insulting the president and/or vice president is a result of another rule, namely about the symbol of statehood, which is still maintained so that the president as head of state as well as the head of government needs these arrangements to protect his dignity and dignity as a state (Tampi, 2016),

In contrast to the opinion of the legal figure above, Mardjono Reksodiputro argued by asserting that considering the development of basic social values (fundamental social values) in a democratic society, it is forbidden to form regulations that regulate social-society that can hinder "criticism" and "protests" against all government policies from the central to local governments, including its officials (Reksodiputro, 2009). So that by referring to these fundamental social values, the article on insults to the president



and/or vice president does not need to be revived. In addition, in a country in the form of a republic there is a distinction between the interests of the president and the interests of the state, this is different from the state in the form of a kingdom where in a royal state all acts of the state are carried out by the king, so that the interests of the king and the state become a unit (Widyati, 2017).

Previously, arrangements on insults aimed at each person had been regulated in Articles 310 to 321 of the Penal Code. In the Criminal Code, it is classified into five forms of humiliation, namely: first, *menista* or *smaad* either in oral form. Second, insults that take the form of writing which is also called slander (*laster*). Third, mild insults (*eenvoudige belediging*). Fourth, an insult that takes the form of slanderously complaining (*lasterlijk aanklacht*). Fifth, the latter classification of contempt is that which takes the form of accusations (*lasterlijke verdachtmaking*). The five forms of contempt that have been described above are in the nature of complaints that have been explicitly stated in the Criminal Code (Hiariej, 2016).

Furthermore, regarding the arrangement of the contempt article to avoid the misuse of this article, Ari Wibowo argues that improvements are needed by formulating it in the rules as a material offense or formal offense using clear and unequivocal parameters. It is also to avoid disparities in court decisions, so that it is necessary to harmonize the Criminal Code with the Electronic Information and Transaction Law which also regulates the same to relate to the criminal weight threatened (Haryanto, 2003). By reviving the article, which is regulated in the criminal code, it also revives the deep traumatics of society. The concern of the community is that in practice the application of articles on the criminal act of humiliation is always used by the government to suppress its political enemies. The end is that everyone who makes criticisms and demonstrations against the government will be perceived as insulting the president while being regarded as anti-government (Haryanto, 2003). At the theoretical level the article that regulates this is called the *lese-majeste* article.

*Lese majeste* always translated as a law that places the head of the state in absolute terms so that everything done by the head of the state is inviolable (Eddyono, 2007). Historically, the article has always been used to ensnare citizens either individually or in groups that are contrary to government politics. So, with this event that empirically true happened in the past but was reorganized the RKUHP today has reminded and revived the old wounds of the community so that the peak is that during the discussion process of the RKUHP in 2019 there have been demonstrations to chaos in various places in Indonesia to reject the RKUHP.

Actually, in the current Criminal Code, there is also an article provision that regulates the contempt of the head of state in this case the President but in the course of time the provision was revoked by the Constitutional Court through judicial review. The Constitutional Court in its decision number 013-022/PUU-VII/2006 has revoked and canceled the article in the applicable Criminal Code. But what needs to be noted is that the Constitutional Court in the judgment that repealed the provisions of the article is to fall into the category of ordinary deliberations. Meanwhile, in the drafting and discussion of the current bill carried out by the House of Representatives (DPR RI) and the Government in including articles on insults, it is in the form of a complaint (ONE, 2021).

What this means is that if in the provisions of the Criminal Code, the regulation of the article on contempt of the president is included in the category of complaints, then theoretically the one who can complain if later it is true that there is an insult of dignity to the president and/or vice president who has the right to report is the President and/or vice president himself as his person (ONE, 2021). So that at the level of implementation is a form of contempt for the dignity and dignity of the president and/or vice president will be processed by law enforcement if the president and/or vice president himself directly report it.

Actually, through this provision, including an article on contempt of the president and/or vice president in the classification of complaints, it is very appropriate according to the author. This is because as a leader in a country formally or materially, his dignity should be protected and respected of course. By and large all countries of the world in their Penal Code also regulate provisions on contempt of the head of state. For example, in Germany, contempt for the head of state falls into the category of general offenses, but in its implementation in Germany when the investigation process is carried out and completed in the process, the file should be transferred to the prosecutor's office and prosecuted by the prosecutor. But in Germany regarding the contempt of the head of state the prosecutor does not necessarily carry out the prosecution, this is because during the prosecution process the prosecutor must obtain the approval of the head of state in this case the president and/or vice president (Nasrullah, 2021). What this means is that although in Germany the contempt of the head of state enters on ordinary deliberations but in the course of his prosecution he also requires the consent of the person concerned, so this is what causes a process in the article of contempt a quo to be floating and as if it were between ordinary deliberations and complaints. So this is the limiter for article a quo not being used haphazardly by law enforcement.

Taking into account these provisions, the president and/or vice president have two forms of body, namely the president and/or vice president as citizens whose provisions are also regulated in the article on contempt also in the Criminal Code and the president and/or vice president as a state official which is also a form of special position that requires a special arrangement also to protect the dignity and dignity of the head of state. So that in the regulation of criminal law, the President and/or vice president can report an insult to himself as a person using the same offense as the subject of law in general or an ordinary citizen. Meanwhile, this will be different if the insult to the dignity and dignity of the president and vice president as heads of state, then its use is a special article or provision, namely what will be regulated in the upcoming bill.

The author basically agrees on the existence of this article because sociologically and culturally Indonesian culture and Indonesian social values have not wanted to insult each individual for a long time. Basically, the Indonesian people have high-ended the value of civilization to the dignity of a person from the party who has the potential to degrade this dignity (Soedarto, 207 C.E.). Including respect for every official, king, ustadz or cleric and community leader is an intimacy value which is a form and characteristic of the Indonesian nation which is basically a form of respect as a form of respect for them as the person in charge of all levels of society.

Anthropologically, the Indonesian nation since ancient times has been known as a nation that has a high level of culture. Even its values and traditions have also remained stable in the midst of modern-day progress. Cultures such as the way of dressing tend to be closed, are not individualistic and tend to prioritize common interests, a high level of religiosity which makes the country of intimacy, especially Indonesia, have high beliefs. This is evidenced by that most of the culture in Indonesia is a squeeze from religion. Even in the Minangkabau custom, it is expressly known the term "*adat besandi syarak, syarak besandi kitabullah*" (custom relies on religion, religion relies on the book of Allah) (Putusan Mahkamah Agung, 2021).

Even further, the attitude of tolerance that has always been upheld from the past to the present, this attitude is reflected by not blaspheming others excessively, berating for not agreeing and agreeing, as well as the habit of not insulting and degrading the dignity of others which is the customary value of the Indonesian nation so that it is known by outsiders as a friendly nation. The attitude of the Indonesian nation that is reflected in every Indonesian nation is commonly referred to as the attitude of the Indonesian nation *welas asih* which was finally channeled with the ideology of the Indonesian nation, namely Pancasila (Yudi Latif, 2014).

Discussing the issue of not demeaning and insulting others or other institutions and tribes, also includes an attitude of tolerance that is always upheld by the Indonesian nation is also affirmed in the teachings of all religions and beliefs that exist and are recognized in Indonesia. In Islam it is expressly in our case in Q.S Al Hujarat verse 11 which says that "*O people of faith, let not one people make fun of another, for it may be that those who are mocked are better than those who make fun of.*" The fragment of the meaning of the verse has confirmed that insulting others is a *zhalim* and cursed deed in the eyes of God. In addition to Islam, insulting is also prohibited by other religions because it will cause tremendous chaos that can lead to bloodshed (Wahib, 2016).

In general, violations of norms that have lived in society *ajeg* so that it is reflected as a national culture carried out by individual people will usually be subject to social sanctions such as being shunned by the community. There are even some values that if violated such as insulting both to others and to regional leaders will get corporal punishment because the effect caused can also divide a society. This value is what is referred to as *rechdelicten* in criminal law (Adhiatma & Prayogo, 2020).

Insulting the leader is as much a form as insulting the entire society he leads, this is what is stuck in the customs of the society of intimacy. In Japan, whose *notaben* is also included in the category of an eastern state that has a limit by its cultural values, it is stated in its constitution that the emperor is a symbol of the state and the unity of the nation. Even this value has also lived and developed in Indonesia since the time of the kingdom as explained in the previous paragraph (Sutrisno, 2011).

This means that religiously, which is also part of the formation of the values and culture of the Indonesian nation, has expressly prohibited these insulting acts, especially against state leaders. Because respect for their elders including leaders, preachers and so on is a sacred value of the custom of intimacy that should be embodied in every existing legislation.



Finally, the form of humiliation is a form of despicable act even though it is not regulated in positive law, this act is regulated and condoned in the value of society. So including an arrangement about contempt on the bill is the right move because basically insults need to be posited especially to protect the dignity and dignity of the president and vice president. Contempt is theoretically a form of criminal offence referred to as *rechdelicten*. However, the arrangement of such insults must also be done carefully with the use of phrases that should not contain multiple interpretations. So the author agrees on an arrangement about contempt for the bill with clear and unequivocal boundaries that do not have a multi-interpretation.

## 2. Articles of Insulting as a Form of Protection against the Head of State

Basically, the revival of the contempt clause against the president and/or vice president is a form of protection for the president himself as head of state. Because the dignity of the president should be seen as a form of policy that aims to protect the country from social reproach as well as to protect against political attacks that will certainly have the potential to disrupt order in the social-society. Thus, if the provision is deleted or not regulated, it is alleged that it will give birth to a form of subsociality (Adhiatma & Prayogo, 2020).

Jan Remmelink argued that the non-regulation of provisions on the protection of the president as head of state would cause subsociality, that is, a cause that would cause chaos in society. Still according to Remmelink, he emphasized that by not regulating the rules, there will be a high potential for polarization between groups of people, this is very reasonable because rationally the head of state is a *marwah* and a spirit for the country. If a head of state is in dignity and dignity insulted and harassed, it will have the potential to degrade the value and loss of authority of a country.

Basically, the law was created to provide protection, especially protection against the interests of one's self-esteem and honor (*eer*) to the good name of a person (*goede naam*) including in it against certain offices in this case the dignity and dignity of the president and/or vice president. However, what needs to be considered is that every regulation made must pay attention to aspects of Human Rights, this is an implication of the existing state system in Indonesia that has recognized human rights and is shaped as a democratic country that is obliged to respect human rights. Human rights itself has given an obligation to the state in this case the government to provide protection.

If you look at the provisions of the Criminal Code that apply today, it has actually been regulated regarding the contempt article contained in Article 310 and Article 311 of the Criminal Code. The article is a form of protection of human dignity and dignity in this case as an Indonesian citizen. So that if examined more deeply in the article is a form of protection from the state against its citizens, including the president and vice president as individuals of Indonesian citizens. Looking at the provisions contained in articles 310 and 311 of the Criminal Code, the President and Vice President can actually use the article if they feel that their personality is insulted by others (Chazawi, 2013).

But what needs to be noted in the bill is that there are special arrangements governing insults to the president and vice president. The arrangement is used on the president

and vice president as state officials who must be respected and protected by their dignity and dignity (Rohmana, 2017). So according to the author, what distinguishes between the arrangements contained in the applicable Criminal Code and the criminal code that has been entered in the 2022 prolegnas lies in the position of state official and the president and vice president as private citizens who need to be protected by their dignity.

Normatively, the office of president is the highest office held by a citizen in a particular State. In Indonesia, the privilege of the office of president is that the president is the sole executor in the state obligations he imposes for the welfare of the community. In addition, the privilege possessed by the president is that he can declare war or make peace with other countries. So that with this privilege, the president has a responsibility for the welfare of the community, economic stability or the stability of circumstances that can threaten the division of the nation. Furthermore, with this obligation, the president in every embodiment of the ideals of the state as stated in the fourth paragraph of the 1945 NRI Constitution is realized through a work program that is technical in nature to target the community so that what is produced is welfare as mandated (Hidayat et al., 2019).

In the realization of his program, each head of state has a special mechanism that is in accordance with the laws and regulations, even sometimes the program run by the head of state cannot reach all levels of society and even biased so programs aimed at the prosperity of the wider community raise pros and cons. With the attitude of the pros and cons is a natural form, in the country the democracy of the contra group is given access to voice its disapproval of all the programs launched by the head of state that is what is referred to as criticism. (Hidayat et al., 2019).

However, not infrequently also the counter attitude will lead to the instability of the state condition caused by excessive counter-attitudes, thereby reducing the form of criticism to an insult to the head of state, for example, "due to inappropriate policies according to some groups, the head of state is equated with animals and so on." This is a form of violation that needs to be regulated by laws and regulations.

Criminal acts of defamation or what is also referred to as contempt have been formed by policymakers with a general purpose and a special purpose to provide a protection for legal interests regarding one's self-esteem, especially in terms of values of society in Indonesia attacking self-esteem, namely in the form of honor (*eer*) or insulting someone's good name (*goeden naam*) is a form of crime or despicable act (Chazawi, 2013).

In the conception of the protection of human rights, the Indonesian state that has ratified the International agreement on human rights as stated in Law No. 39 of 1999 concerning Human Rights, which is explained basically human rights, prohibits degrading human dignity and dignity in the form of humiliation, because human beings are *fitrah* he is born free with the same dignity and the same degree to a pure mind and heart that is not a gift from anyone, for he is attached to man as a perfect being of God.

In the International Convention on Civil and Political Rights, it is stipulated that a state, especially those who adhere to democracy, is prohibited from making regulations that will later restrict the freedom of opinion and expression of its citizens (PBB, 1966). However, this provision is also not necessarily interpreted carelessly, this is because in the next provision, namely in article 19 paragraph (3) of the International Convention on Civil and Political Rights, it is emphasized that all forms of freedom of expression or freedom of expression if they threaten the existence and national integration of a state, then such freedom can be limited by the state for the sake of state security from all forms of threats of a nature internal as well as external. This means that the form of freedom of opinion and freedom of expression is not absolutely an unlimited conception of human rights, but the state is present and has the right to restrict it if has the potential to threaten national integration (Ramadhan, rafiqi, 2021).

The Constitution of the Republic of Indonesia of 1945 as the *Grundnorm* of the State of Indonesia has regulated freedom of opinion, association and assembly (Rafiqi, 2021a). This is *mutatis-mutandis* regulated in article 28F of the Indonesia Constitution. So that this provision becomes an affirmation of all forms of laws and regulations that are made later not to limit the right of every citizen to exercise this form of freedom. However, in the Constitution of the State of Indonesia, the regulation of freedom is not absolute, this is because in the next article, namely article 28G paragraph (1) of the Indonesia Constitution which explains that "Everyone has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right." Further to the same Article in subsection (2) it reads that "Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country."

This means that if you look at the provisions in article 28G of the 1945 NRI Constitution, it has explicitly said that, the Indonesian State basically recognizes freedom of expression but the implementation is not absolute, the meaning is that the Indonesian State is to delegate all acts of freedom with a form of restriction that is allowed only freedoms that it does not attack or degrade others, including here is the dignity of dignity to honor (Qurbani, rafiqi, 2022). Here about the interpretation of honor can be either a position or an honor to a person's personality. So that here the state has the right to be present in restricting these freedoms that will have the potential to attack and degrade the dignity of dignity and honor through laws and regulations under the constitution (PBB, 1966).

With the regulation of the Article on contempt for the president and/or vice president contained in article 218 of the RKUHP, the conception of human rights is in accordance because it is based on the argument that all forms of freedom of expression or freedom of expression if they threaten the existence and national integration of a country, then such freedoms can be limited by the state for the sake of state security. The urgency is that contempt for the president and vice president has the potential for polarization in the midst of the community, namely between sympathizers or supporters of the president and vice president and those who commit insults, if this happens, it will indirectly threaten the unity of the nation with class divisions. So this provision needs to be regulated.

Furthermore, if you look at the provisions of *grundnorm* Indonesia which has recognized freedom but is not absolute and with its translation that the protection of honor which has the meaning of personal honor as a human being also includes honor for state office in this case the president and vice president (M. Yanto, S.H., 2019). With this explanation, the presence of an article about contempt for the president and vice president becomes well-founded and quite grounded (Ramadhan, rafiqi, 2022). Because the president and vice president as a form of icon or face of the country whose honor and dignity dignity also need to be specially protected as heads of state and heads of government (Farida Indrati S, 2020).

As a state icon that needs to be protected, the position of head of state is a very sacred position for the history of the Indonesian nation. The royal age of the leader of a kingdom is highly respected because the leader is defined as a parent to the society he leads so that any form of humiliation during that era can result in very severe punishment. Even if traced in the regional cultural customs that have developed in Madura which is applied to this day by all Madurese people (Sampang, 2019) there is a language for the level that must be respected in the social structure of the community, the language is "*Bhepa' (father), Bhebu' (mother), Ghuru (teacher), ben Rato (queen/leader)*" which means that in the social structure of society that must be respected are parents who give birth, teachers who provide knowledge to leaders who have the meaning of being someone who is responsible for all the welfare of their population. This confirms that the custom of intimacy in this case the Indonesian people have forbidden to commit insults to a head of state (Sampang, 2019).

Finally, the author argues that in general the article of contempt for the president and vice president regulated in the bill is very appropriate and straightforward. This is because presidents and vice presidents who have multiple personalities also need protection against all forms of humiliation and degrading the dignity of the head of state. If this is opposed on the grounds that it is feared that it will result in the loss of the freedom to criticize citizens is not appropriate. Because terminologically insulting, attacking dignity and *maartabat* and degrading honor with criticism are two different things. And criticism is a form of freedom that is based and protected in a democratic state while humiliation is a crime that must be regulated and criminalized.

Also, the contempt article contained in the criminal code is an article that he falls into the category of complaints. What this means is that the provisions of the contempt article that enter the complaint are a form of firm attitude of the government together with the House of Representatives to disseminate the article so that it is not used haphazardly by law enforcement or it can be translated that by its inclusion in the complaint, it means that the president has an important role in every action of the act. The point is that in the complaint, the report can be processed if the alleged person who self-reported without being represented by anyone (Epicenturm & Said, 2022). In addition to its inclusion in the complaint, the phrase insult in the article has been essentially limited by being classified into two forms, namely: The first form is *material beledhiging* which means to declare a person the same as an animal and the second is slander which has the meaning of accusing someone of committing a criminal act but cannot be proven (Hiariej Mata Najwa 2022). These two things are restrictions placed by regulators in anticipation of the article being used haphazardly by certain people or law enforcement. Therefore, the regulation will also be a point of assessment of the

regime in power whether it will be a thick-eared regime or an irritable regime and also whether a regime in power is a dictator who violates human rights . Therefore, in terms of the conception of human rights and the Constitution of the 1945, the article is valid and constitutional which aims to avoid polarization as well as avoid all forms of degrading the president and vice president as icons of the state which are also at stake in the international arena.

## Conclusion

Based on the results of the discussion, it can be concluded that first first, even in the Minangkabau custom, it is expressly known the term "*adat besandi syarak, syarak besandi kitabullah*" (custom relies on religion, religion relies on the book of Allah). And in the Madurese tribe as part of the cultural values of the Indonesian state which provides the value of the level of respect contained in the structure of society called "*Bhepa' (father), Bhebu' (mother), Ghuru (teacher), ben Rato (queen/leader)*" has expressly said that since a long time ago, the Indonesian nation is a nation that has its own values to respect its leader in this day is the head of state. Even in the religious values and beliefs that exist in Indonesia as a nation that in addition to a cultured nation is also religious has expressly prohibited insulting the leader. Simultaneously both religiously and religiously developing beliefs in Indonesia and also cultural values that live in the midst of society which also grows from religious values is a form of consistency that maintaining the dignity of the head of state by not insulting him is an obligation. Of course, with the current developments with the re-regulation of the RKUHP, it is the right step that has paid attention to the development of social and cultural values of the community.

Secondly, by circumventing the contempt clause against the president and vice president, the contempt clause in the bill with the inclusion of the arrangement as a complaint is one form of avoiding the rubber nature of this article. Furthermore, the article of contempt for the president and vice president has conceptually and theoretically been in harmony with human rights and in the Indonesian constitution recognizes freedom but is not absolute and with its translation that the protection of honor which has the meaning of personal honor as a human being also includes honor for state office in this case the president and vice president. The presence of the contempt article actually aims to avoid polarization as well as avoid all forms of degrading the president and vice president as icons of the country which are also at stake in the International arena. Also in criminal law that exists in all parts of the world, almost all countries regulate and include articles of contempt for the head of state with provisions that are adapted to the values and cultural culture of each country.

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