

PARAMETERS OF THE REASON FOR SPECIAL CRIMINAL REMOVAL IN THE CRIMINAL ACT OF INSULTING THE PRESIDENT AND/ OR DEPUTY PRESIDENT

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Abstract

Currently, a new Criminal Code has been passed on December 6, 2022. One of the articles passed is about the criminal act of Contempt of the President or Vice President which until now has become problematic because it is considered to violate freedom of expression. However, there are specific grounds for criminal removal if it is done in the public interest or in self-defense. The issue is what parameters can be used as a basis for the act to be in the public interest and self-defense. The research method in this paper entirely uses literature studies (normative juridical), in addition to analyzing existing legal theories and legal principles but will also carry out legal interpretation using legal discovery methods in the form of interpretation or hermeneutics. The result of this study is that the parameters of the reason for the abolition of special crimes "in the public interest" that eliminate the unlawful nature of the act of attacking the honor, dignity, and dignity of the President and/or Vice President are accusations against the President and/or Vice President must be true in fact, meet the values of decency and fairness and are intended to protect the wider community. While the reason for the abolition of a special crime of self-defense has parameters that there must be an attack first, the attack can be in the form of his dignity and dignity, decency, property, body/life which must be unlawful in the sense that the action cannot be justified based on applicable laws and regulations, and the person attacked then accuses the President and/or Vice President can be justified if the accusation It really happened (the fact). Thus, guidelines are needed to provide interpretation of the implementation of the special criminal removal reasons so that they can be used as a guideline for law enforcement officials in enforcing the law in the event of an alleged criminal act of insulting the President and/or Vice President.

Keywords: Contempt; President or Vice President; Special Criminal Abolition Reasons

1. INTRODUCTION

Improving Human Rights protection in Indonesia can enhance the people's trust in the Government, thus reducing protests based on Human Rights issues. This will contribute to public safety and order, resulting in national stability. According to the concept of a democratic rule of law, as adopted by Indonesia, security and order require not only the absence of disturbances to public safety and order but also the welfare of the people and the guarantee of individual rights. (Yusrizal et al., 2023)

The regulation of digital intermediaries in order to force them to take action on their users' content, as a way of implementing anti-health-misinformation policies, should also take into consideration the same checks and balances. Individuals' protections against abusive behaviour from digital intermediaries are still diminished, and State regulation of freedom of expression via such entities should not be used to achieve a result that would have been inadmissible if done directly (Marecos et al., 2023)

Freedom of expression is one of the important aspects of democracy. A democratic state is reflected in the protection of freedom of assembly, expression of opinion, and open discussion. (Powell, Jr., 2009). As a country with sovereignty in the hands of the people, protection of freedom of expression and opinion can support supervision, criticism, and advice on the administration of



government. (Yusrizal et al., 2023) Article 1 of the Universal Declaration of Human Rights states "All persons are born free and have equal dignity and rights. They are endowed with reason and conscience and should associate with each other in brotherhood." (DEKLARASI UNIVERSAL HAK-HAK ASASI MANUSIA, 2006) One of the universalities of freedom of expression is regulated in Article 19 of the UDHR, which states:

"Everyone has the right to freedom of opinion and expression, in this case including the freedom to hold opinions without interference, and to seek, receive and express information and opinions in any way and regardless of boundaries. (UNIVERSAL DECLARATION OF HUMAN RIGHTS, 2006)

Freedom of expression (*freedom of expression*) is basically a right owned by every individual guaranteed by the Constitution of the Republic of Indonesia which is regulated in several articles in the Constitution. One of the articles that regulates it is Article 28 of the Indonesian Constitution of 1945 which reads:

"Freedom of association and assembly, expressing thoughts orally and in writing and so on are stipulated by law" (Article 28 of the Constitution of the Republic of Indonesia Year 1945 (Supplement to the State Gazette of the Republic of Indonesia Number 75, 1959), n.d.)

However, in this case, the freedom of expression does not mean being free at will without limits but must still be limited. Such restrictions are due to respect for the right to honor, dignity, and dignity of others. The honor, dignity, and dignity of others also need to be upheld. Even the Universal Declaration of Human Rights (UDHR) Accepted and promulgated by the United Nations General Assembly on December 10, 1948, through resolution 217 A (III) provides arguments regarding the restriction of the right to freedom of expression in order to guarantee the right to respect for the rights of others.

In order to ensure respect for the dignity and dignity of others, including respect for the President and/or Vice President. After the enactment of RI Law No. 1 of 2023 concerning the Criminal Code, it has revived insults against the President and/or Vice President as stipulated in Article 218 of RI Law No. 1 of 2023 concerning the Criminal Code which reads:

Paragraph (1)

Any person who publicly attacks the honor or dignity and dignity of the President and or Vice President shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of category IV.

Paragraph (2)

It shall not constitute an attack on honor or dignity as referred to in paragraph (1) if the act is done for public interest or self-defense.

In addition to regulating the revival of insults to the President and/or Vice President in Article 218 ayat (1) of RI Law No. 1 of 2023 concerning the Criminal Code, it also regulates the reasons for special criminal removal in Article 218 ayat (2) of RI Law No. 1 of 2023 concerning the Criminal Code if the act insults the President and/ or the Vice President is done in the public interest or self-defense. This can be interpreted if in alleging acts that attack the honor, dignity, and dignity of the President or Vice President are intended with other appropriate purposes, namely self-defense or for public interest purposes, then the unlawful nature of the act of attacking the honor, dignity, and dignity of the President or Vice President becomes erased. So as to eliminate the unlawful nature of the act which results in the perpetrator cannot be criminalized.

The problem is that there is a **legal blur** regarding the meaning of the reason for special criminal removal if the insulting act is done for public interest or self-defense. The reason for the vagueness of the law is what kind of insult can be justified if it is categorized as in the public interest because the meaning of the public interest itself is **very broad and** multiinterpretive which can be interpreted differently between law enforcement officials. **Second**, the explanation section of Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code does not provide a definite meaning because the explanation is associated with the right to opinion and democratic rights such as protests, democracy, and so on. This can lead to misapplication of the law if there are no clear parameters. Meanwhile, the meaning of self-defense can also be used as a reason for the abolition of special crimes, There is also a legal vagueness, namely **first**, related to the



similarities and differences in forced defense as stated in Article 34 of RI Law No. 1 of 2023 concerning the Code of Law Crime and self-defense as stated in Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code. **Second**, whether it can be equated between self-defense and forced defense so that the parameters of self-defense can follow the parameters contained in Article 34 and its explanation in Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code. **Third**, the explanatory part of Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code does not provide meaning regarding self-defense in the context of the reason for the specific criminal removal of the President and/or Vice President.

This study aims to provide clear parameters regarding parameters for public interest and self-defense as reasons for special criminal removal in the criminal act of insulting the President and/or Vice President. These parameters are important to be used as a benchmark so that law enforcement has a *guideline* for implementing rules that are considered ambiguous and misinterpreted. Thus, insulting the President and/or Vice President does not become a rubber article that can ensnare certain parties who are opposed to the government, and on the other hand, also protect people who criticize the policies of the President and/or Vice President.

Thus, on the basis as described above, this study will formulate parameters in the public interest and self-defense parameters in Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code as a reason for special criminal removal in the criminal act of insulting the President and/or Vice President who viewed from the perspective of protecting freedom of expression. Therefore, the researcher took the title **Parameters of Reasons for Special Criminal Abolition in the Criminal Act of Contempt of the President and/or Vice President**.

2.METHODOLOGY

This research is normative juridical research that is entirely based on literature studies of various legal materials. The legal materials used are primary legal materials including basic norms, basic regulations, laws and regulations, codified legal materials, jurisprudence, and so on. In addition, secondary legal materials such as draft laws, research results, scientific works in the field of law, law books, and so on. All legal materials are analyzed with various doctrines, principles, and theories conceptually. The approach used is to use a *statutory approach*, concept approach, analytical approach, and case approach.

The analysis of legal materials used in this normative juridical research is to use deductive logic through qualitative normative analysis methods. The normative analysis method is a way of interpreting and discussing research materials based on legal understanding, legal norms, legal theories, and doctrines related to the subject matter. Legal norms are needed as major premises, then correlated with relevant facts (*legal facts*) used as minor premises, and through the process of syllogism, conclusions will be obtained (*conclusion*) on existing problems.

3.RESULTS AND DISCUSSION

3.1 The First Results and Discussion: Parameters In The Public Interest As A Reason For The Abolition Of Special Crimes In The Criminal Act Of Insulting The President and/ Or Vice President Seen From The Perspective Of Protecting Freedom Of Expression

In the previous discussion, it was mentioned that one of the reasons for special criminal removal in Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code, one of which is that it does not constitute an attack on honor or dignity if the act is done in the public interest. However, the parameters to be categorized as public interest are very multiinterpreted, so they can be interpreted subjectively by law enforcement officials which can result in errors in the application of the law. Therefore, it is necessary to interpret the meaning of the public interest so that it can be determined what parameters can be said that the act of insult against the President and/or Vice President cannot be punished based on reasons in the public interest.



Public interest is defined as the interests of the nation and state, and/or the interests of the wider community. The concept of "public interest" gives rise to an evaluative and vague understanding. Evaluative meaning requires comprehensive clarity, so it must be "clear and precise". The vagueness of the meaning of "public interest" has implications for legal uncertainty. The parameter "public interest" is an absolute necessity to facilitate the operationalization of the meaning of the public interest. (Agustalita & Yuherawan, 2023) Other meaning interests are very necessary, and very important (precedence), so the notion of interests one of them is prioritized. The public interest in question is the interest of the state/nation and the wider community. So, the public interest here must be interpreted as interests in all aspects of state, nation, and society in the broadest sense and which concerns the interests of the wider community (Kaban, 2013)

When looking at the opinion of **Satochid Kartanegara** stated that the public interest is the interest of the people and every interest must be maintained so that it is not violated, all of which are intended for the benefit of society consisting of rights (*rechten*), relations (*rechts betrekkingen*), conditions (*toestanden*) and public relations (*sociale instellingen*). (Kartanegara, n.d.)

According to **Sudikno, Mertokusumo** argues that the public interest must take precedence over other interests, which concern the interests of the nation and state, public services in the wider community, the people and/or development in various fields of life with fixed attention to proportions of importance and respect the interests of others (Mertokusumo, 2019). According to **Adami Chazawi**, expressing apa that is meant by public interest (*algemeenbelang*) is a legal interest for the public or beneficial for the crowd. The public interest is all circumstances relating to the public, which can have an effect on the public interest. The content of this paper can bring good to the interests of law, state, and society (Chazawi, 2016). The protection of the Law in the public interest is more important than the protection of the Law for private persons. This proves how strong the public nature of criminal law is (Chazawi, 2016).

As **Leden Marpaung** argues acts done in the public interest require accuracy to be truly accounted for and it can be said that the actions that have been done are the best alternative and in reality it is easy to make excuses "in the public interest" but in order, for these reasons to be accepted, it is necessary to present arguments and evidence about the "danger" or "harm" of the general public who It can be avoided or deterred from that thing or deed so that it appears that the general public with that deed, benefits more. (Marpaung, 2010)

In relation to the criminal act of contempt, it can be the ratio decidendi of the Central Jakarta District Court in the decision of the Times Magazine case against Suharto with Decision No.09/Pdt.G/2003/PN.Jkt.Pst, which relates to the public interest on the basis of *ratio decidendi* as follows:

From the sound of the MPR Tap (Tap No. XI / MPR / 1998 dated November 13, 1998, concerning Clean and KKN-Free Implementation), it can be concluded that the MPR according to the embodiment of all Indonesian people suspects the old government including former President Suharto as a Plaintiff, is suspected of having carried out KKN during his reign. Therefore, news about KKN related to the plaintiff during his reign is reasonable enough to be broadcast, by electronic media, newspapers, magazines, and so on. The Tribunal believes that Suharto's reporting by that time can be qualified for public interest and in accordance with the needs of the times, so that according to the law the news carried out by the defendant is not included in the qualification of blasphemy or blasphemy with writing as in Article 310 paragraph (3) of the Criminal Code. (Syamsuddin, 2008)

The decision No.09/Pdt.G/2003/PN.Jkt.Pst was upheld by the Central Jakarta High Court, but Suharto's party filed a cassation to the Supreme Court on April 8, 2001, and Time Magazine was found guilty and had to pay compensation and apologize through print media. The basis for the Supreme Court of the Republic of Indonesia to decide otherwise by winning the plaintiff Suharto is because the actions of the defendant, namely Time Magazine, are considered to have gone against the principles of propriety, thoroughness, and prudence that defamed Suharto's good name and honor. Therefore, the Supreme Court of the Republic of Indonesia granted the immaterial lawsuit requested by the party who wanted to take it (Suharto) worth 1 (one) trillion and rejected the material claim because it was not clearly detailed. Then the Times Magazine conducted a Review and granted the



request for a Review of the Times Magazine by returning to Decision No.09/Pdt.G/2003/PN.Jkt.Pst.(12 Years Ago, Suharto Won against Time Magazine, 2019)

If you look back at the *ratio decidendi* of the Surabaya District Court Decision dated August 2, 1972, in Decision No. 500 / Pid.B / 1972 / PN. Sby made criteria regarding the public interest, namely:

The act must be such that the public interest can be enhanced, really it is directly related to the public interest, there is really no other way to enhance the public interest than the deed. (Surabaya District Court Decision dated August 2, 1972 in Decision No. 500/Pid.B/1972/PN. Sby, 1972)

Based on some of the above Court Decisions, it seems that it is still ambiguous and subjective in determining actions in the public interest. However, presumably the Central Jakarta District Court Decision No. 253/Pdt.G/2007/PN.Jkt provides clearer and more acceptable parameters. The *ratio decidendi* of Central Jakarta District Court Decision No. 253/Pdt.G/2007/PN.Jkt provides parameters for the public interest in the press/journalistic perspective, namely **First**, the action disclosed must be correct. This is clearly stated in the *ratio decidendi* of Central Jakarta District Court Decision No. 253/Pdt.G/2007/PN.Jkt:

A statement or news that contains an accusation of a matter or action put forward in the public interest must be a thing or action that contains truth. The truth here is journalistic truth, meaning truth at the time information is received from news sources. Journalistic truth is sometimes not the same as legal truth or supposed truth, but that does not mean a lie. This is related to the source of the news, if it comes from an official agency or Government Institution, then the truth is the responsibility of the agency or embargo. If the news source comes from an individual or from an unofficial private party then the information must be clarified with the object of the news, then it is already considered as truth. (Syamsuddin, 2008)

According to Amir Syamsuddin in the words protecting the public interest in general, it has been concluded it that what is stated is correct. So, what is put forward must be a fact. May it be a logical principle (Syamsuddin, 2008). As for Adami Chazawi, for example, an employer published an announcement in a daily in which he said that an employee of his company named Amor ran away with some money and warned the public that si; The employer was no longer responsible for his actions on behalf of the company because he has been fired. The former employer warned the public to be careful of people with announced characteristics and identities. The requirement for the public interest is not only objectively useful for the public interest as in the example above as a preventive effort to avoid harm to many people. However, also the content of the alleged act must be true, and not a false accusation (Chazawi, 2016). However, even if the content is true, it must still be the purpose of the action aimed at the wider interest.

This is confirmed in the judgment of Hoge Raad for his arrest law (11-12-1899) which states:

To accuse something true is defamation, when the maker does so not in the public interest, but with the desire to insult or injure people. (Chazawi, 2016)

From the sound of the legal considerations of Arrest Hoge Raad, it is implied that although what is alleged is true if from the way it contains the intention to humiliate the intended person, then here too there is pollution and not slander. (Chazawi, 2016) So when interpreted *mens rea* from this matter lies in the intention of expressing or accusing something with the intention of whether to degrade the honor, dignity, and dignity of the President or Vice President there is another justifiable purpose. In addition, the **second** parameter is that it must meet the appropriateness and fairness in expressing it. This is stated in the Decision of the Supreme Court of the Republic of Indonesia No.1265 K / Pdt / 1984 dated May 8, 1987, with a *ratio decidendi* that:

The act by means of disclosure by writing of the respondent cassation has exceeded the limits necessary to achieve the aims and objectives in the public interest and based on the facts necessary to achieve the aims and objectives in the public interest and based on the facts that occur in the *Blue Bird Taxi* Company concerning employees, driver, so it is judged to have offended the feelings and honor and personal life of the cassation applicant (The Decision of the Supreme Court of the Republic of Indonesia No.1265 K / Pdt / 1984 dated May 8, 1987).

Against this can be seen in the case of Akbar Tanjung who was insulted because of impropriety in the news that carried an image of Akbar's face with the body of a man without wearing clothes with the



memory of pouring and sad faces has insulted and defamed the person concerned. As a result, Akbar and his family, as well as the Golkar Party and its sympathizers became very embarrassed. (*Free People's Leader Sentenced to Five Months in Prison*, 2003) The appropriateness is also very closely related to the actions of the limits of reasonableness in the expression of opinions or expressions. Impropriety and impropriety even if the content is true can also be categorized as an act of insult. This was also confirmed in the decision of the Hoge Raad (Supreme Court of the Netherlands) in its decision dated 26 November 1934 which read:

"If the publication is in the public interest, then the perpetrator must mention it sufficiently. By blaming someone with angry words, it cannot be said that the public interest can be defended." (Lamintang & C.D. Samosir, 1983)

The *third* parameter is to protect the interests of the community through the right to freedom of expression and the right to democracy. This is stated in the explanation of Article 218 paragraph (2) of the Law of the Republic of Indonesia No. 1 of 2023 concerning the Code of Criminal Law, namely:

What is meant by "done in the public interest" is to protect the interests of the public expressed through the right to expression and the right to democracy, for example through protests, criticism, or opinions that differ from the policies of the President and/or Vice President. In a democratic country, it is important as part of freedom of expression that is constructive wherever possible, even if it contains disapproval of the policy actions, or actions of the President and/or Vice President. Basically, criticism in this Article is a form of supervision, correction, and advice on matters related to the interests of the community. (Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code (Supplement to the State Gazette of the Republic of Indonesia Number 6842), n.d.)

In the explanation of Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code mentioned above, to be declared public interest, the action/act must meet the *first condition*, it must be aimed at protecting the community. *Secondly*, the action must be based on 2 (two) rights, namely the right to freedom of expression and democratic rights, such as protests, criticism, or opinions that differ from the policies of the President and/or Vice President. *Third*, the meaning of public interest in the explanation of this article is more focused on an act of constructive criticism of the President and/or Vice President.

If in the public interest, it is interpreted in the explanation above more as a protest, criticism, or dissent with the policy of the President or Vice President, it will be examined more deeply about what is meant by this. The meaning of **the protest** is:

A rally or demonstration ("demo") is a protest movement carried out by a group of people in public. Rallies are usually held to express the opinion of the group or opponents of policies implemented by a party or can also be carried out as an effort to suppress political by group interests. Rallies are generally carried out by student groups and people who disagree with the government and who oppose government policies. But the protests were also carried out by other groups with other purposes. (*Rally*, 2023)

While what is meant by criticism According to the Big Dictionary Indonesian what is meant by criticism is criticism or response, sometimes accompanied by good and bad descriptions and considerations of a work, opinion, and so on. Criticism can also be interpreted as the process of analyzing and evaluating something with the aim of increasing understanding, expanding appreciation, or helping to improve work Criticism comes from the (Curtis et al., 1996) Greek *criticos* which means "to be discussed". The word *kritikos* is taken from the word *krenein* which means to separate, observe, weigh, and compare. (Jazuli, 2001)

Thus, with the explanation mentioned above, it can be distinguished which is criticism, protest, and insult to the President or Vice President. The legal argument when connected with Article 218 paragraph (1) of the new Criminal Code and 219 of the New Criminal Code is *first*, if criticism, protests, or opinions differ from the policies of the President and/or Vice President then it is not personal to the President or Vice President, while if insulting then it is more personal to the President or Vice President. *Second*, committing insults can be done by blasphemy (accusing a certain act), blasphemy by personifying with a certain being, or slander that cannot be proven true by the



perpetrator who revealed it. However, if it criticizes, protests or differences of opinion are directed more towards the performance and position as Head of State and/or Head of Government within the scope of duties and authorities as President or Vice President. **Third**, if it criticizes, protests, or disagreements with the President or Vice President it will be more constructive and provide an alternative solution in an objective way, but if it insults the President or Vice President then it is more offensive to the honor, dignity, and dignity of the President or Vice President as described above with condescension, drop the sense of self-esteem of the President or Vice President. **Fourth**, insulting is more destructive, using assumptions, and emotional without using existing data and facts, while criticizing is more solutive, and constructive in accordance with existing data and facts.

As for the example of the description as outlined above, for example: President X can only bark like a dog but cannot work. Then the expression can be categorized as insulting because it personifies with animals and is inappropriate to say. However, if it is critical or different, opinions can be exemplified by President X, his performance is poor, and many campaign time promises are not kept. So, it is still in the category of criticism and expression of freedom of opinion or expression. Thus, it is not included in the category of criminal offenses of contempt.

Based on what has been described above, a common thread can be drawn regarding the phrase "in the public interest" in the criminal act of insulting the President and/or Vice President, namely **first**, the act of expressing an expression to the President and/or Vice President must be true in fact. **Second**, it must meet the values of appropriateness and fairness in expressing such opinions or expressions to the President and/or Vice President. **Third**, the intention to express an opinion/expression must be aimed at protecting the interests of the community and benefiting the wider community. All three parameters are cumulative, if any of these parameters are not met cannot be fulfilled in the public interest. Although the explanation does not require the truth of facts, appropriateness, and fairness in expressing opinions/expressions, these parameters must remain inherent and remain one of the conditions for the public interest. Remember, the act of expressing opinions addressed to the President and/or Vice President intended for the public interest but if in fact not true will have implications for fake news (*hoax*), and if it is also done without the value of appropriateness and fairness that is objectively assessed then it is not in accordance with the eastern customs of the Indonesian nation. For example, democracy by replacing the President's head with a monkey's head, of course, this action does not meet the value of propriety and fairness even though it is intended for the benefit of the wider community.

3.2 The Second Results and Discussion: Self-Defense Parameters As A Reason For Special Criminal Removal In The Criminal Act Of Insulting The President and/or Vice President Seen From The Perspective Of Protecting Freedom Of Expression

In the previous discussion, it was mentioned that one of the reasons for special criminal removal in Article 218 paragraph (2) of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code, one of which is that it does not constitute an attack on honor or dignity if the act is done in self-defense. However, the explanation of Article 218 paragraph (2) of the Republic of Indonesia Law No. 1 of 2023 concerning the Criminal Code, does not provide an explanation of what is meant by self-defense. Therefore, definite parameters are needed to be said to be self-defense in the context of freedom of expression or expression to the President and/or Vice President.

When related to forced defense as contained in Article 34 of RI Law No. 1 of 2023 concerning the Criminal Code, it reads:

Any person compelled to commit a prohibited act shall not be punished, if the act is committed in defense of an unlawful assault or instantaneous attack on himself or others, honor in the sense of decency or property of himself or others. (Article 34 of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code (Supplement to the State Gazette of the Republic of Indonesia Number 6842), 2023)

There are several conditions to be said to have made a forced defense as contained in the explanation of Article 34 of RI Law No. 1 of 2023 concerning the Criminal Code reads:

This provision regulates forced defense which requires 4 (four) circumstances, namely:

- a. there must be an unlawful attack or attack of an instantaneous nature.



- b. Defense is carried out because there is no other way (subsidiarity) to repel attacks.
- c. Defense can only be made against interests that are determined in a limited way, namely the legal interests of oneself or others, honor in the sense of decency, or property; and
- d. balance between defense made an attack received (proportionality)(Explanatory Section of Article 34 of Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code (Supplement to the State Gazette of the Republic of Indonesia Number 6842), 2023)

According to **Jan Rummelink**, the attack should be real and continue both against the body, dignity or decency, and property. Meanwhile, (Rummelink, 2003) **Moeljatno** said the instantaneous understanding between when seeing an attack and when holding a defense must not be a long interval of time. Strictly speaking, once there is an attack, there is an immediate defense. Meanwhile, (Hiariej, 2014) **Hezewinkel Suringa** said the definition of unlawful is an attack that contradicts or violates the law. (Hiariej, 2014)

Eddy O.S. Hiariej stated that defense in forced defense is a must. This means that there is no other way to avoid the attack. This is known as the principle of subsidiarity, meaning that there is no better possibility or recourse so the defense must be made. Strictly speaking, defense is not a necessity as long as it can still evade. In addition, there is also the principle of professionalism, meaning that there must be a balance between interests that are protected and interests that are violated. In the context of forced defense, the offense committed for self-defense must be balanced with the attack faced. (Hiariej, 2014)

However, the issue is whether it can be said to be the same between forced defense as in Article 34 of RI Law No. 1 of 2023 concerning the Criminal Code and self-defense in Article 218 paragraph (2) of RI Law No. 1 of 2023 concerning the Criminal Code. In the case of distinguishing the two Articles, it can be seen from the object of forced defense in the explanation of Article 34 of Law of the Republic of Indonesia No. 1 of 2023 concerning the Code of Law can only be carried out against interests that are determined in a limited manner, namely the legal interests of oneself or others, **honor in the sense of decency**, or possessions. The forced defense is only limited to honor in the sense of decency, so contrary to the honor of one's dignity cannot refer to the conditions contained in Article 34 of the Republic of Indonesia Law No. 1 of 2023 concerning the Code of Law and its explanation.

Article 310 paragraph (3) of the current Criminal Code which is still in force also regulates the reasons for special criminal removal which reads:

It does not constitute defamation or libel, if the act is clearly done in the public interest or because it is compelled to **defend itself**. (Article 310 paragraph (3) of Law of the Republic of Indonesia Number 1 of 1946 concerning the Regulation of Criminal Law, 1946)

In blasphemous acts either orally or in writing, the perpetrator is not punished if the act is done in the public interest or in self-defense. What these two words mean is not explained by normative juridical means, so it is left to the judge's judgment based on the case he examines (Ali, 2016)

When referring to his opinion, **J. Satrio** stated that the insulting nature that must be put forward as self-defense is usually the statements made in a court hearing (Syamsuddin, 2008)

Examples of cases include:

In the case of Landraad Semarang, there was a man who climbed a wall and was later caught inside someone else's house and therefore charged with the crime of trying to steal. On the side a ng as a defense he has argued that he entered the house with the permission of A i.e., a maid of B and entered the room of C who was also B's maid and then slept with two women. With that statement, of course, he wants to prove that he is not trying to steal but dating. For his remarks in his defense in court, he was accused of defaming A and C and committing contempt of B (Syamsuddin, 2008).

Landraad Semarang in its decision dated May 24, 1924, reads "If a person before the court defends himself, such a statement is with the intention that he can be free and at least so that he can be punished as lightly as possible. Remarks that form part of a defense cannot be considered defamation or slander". (Syamsuddin, 2008)

As for another example, lawyer Yap Thiam Hiem who acted as a defense attorney for defendant T.H.L (abbreviation) in his defense has stated that some officials handling the case have committed



extortion or extortion assistance or attempted extortion. On the basis of this defense by the Is time, Jakarta District Court Decision dated October 14, 1986, was declared to have committed a criminal act or slander crime (Syamsuddin, 2008). The decision of the Jakarta District Court was upheld by the Jakarta High Court. Thus, the Jakarta High Court recognizes the rights of the accused as mentioned in Article 310 paragraph (3) of the Criminal Code and can justify if in defense before the court is forced to attack the good name and honor of others. But according to the High Court that right was given only to the accused and not to his defence. It turns out that the Supreme Court of the Republic of Indonesia has another position by stating that the Supreme Court cannot justify the above judgment of the High Court which essentially postulates that a defendant has the right to self-defense. But his defense had no right to do so. Because Article 310 paragraph (3) of the Criminal Code only uses the term "*noodzakelijke verdediging*" which means that the legislator does not intend to limit it to the defendant alone to carry out the "forced defense", but that in the context of this self-defense, the right of the defense is the same as the right of the defendant he defends because of a The defendant who takes a defense must be deemed to delegate his rights to his defender. (Syamsuddin, 2008)

The Supreme Court is of the opinion that in order to properly perform its duties a defender has the right, obliged, if the fulfillment of such duty requires, with all its might, especially in words, to defend the interests of the person defended in the judicial forum by, inter alia, formulating the acts of witnesses according to law even though such formulation may be perceived as an insult by the person concerned, provided the allegations are true, At least it should be considered true and not overstated. The Supreme Court does not see anything excessive given that what the petitioner has argued is in order to "defend himself" (defend the person he is defending) necessary to avoid (the defendant he is defending) from being punished. (Syamsuddin, 2008) This ruling has until now been the basis for the Defense's immunity in conducting a defense before the court. The condition is that the defense must be carried out properly and in a non-excessive manner. Thus, it is not permissible for a Defense Attorney to use abusive words in conducting a defense before a court hearing (Rantung, 2022)

On the basis of the opinion of the Supreme Court, a common thread can be drawn if an allegation is made in order to defend itself on the condition that **the allegation must be true**. The accusation that requires the truth was also expressed by **Adami Chazawi** who gave conditions/parameters to be said to have defended himself, including:

- a. That an act must be done in the form of an attack first by another person before the act of attacking the honor or good name of the maker
- b. That the actions of others must be unlawful
- c. That the alleged act actually took place (Chazawi, 2016)

In general, the third condition must first be proven. With the proof of the third condition, the first and second conditions usually follow it or have been proven as well (Chazawi, 2016). If you look at this opinion, it can be concluded that what is meant to be abolished is unlawful because it has committed self-defense because it attacks the honor or dignity and dignity of the President and/or Vice President is **first**, another person whether it is the President / or Vice President or other parties have attacked themselves from the person attacked, so that the attacked person can carry out self-defense by attacking the honor, dignity, and dignity of the President and / Vice President. **Second**, the attack on the attacked person can be in the form of against his dignity and dignity, decency, property, body/life, so that the person attacked in order to save himself can express expressions/opinions that insult the President and/or Vice President. **Third**, Attacks on his dignity and dignity, decency, property, and body/life of the person attacked must be against the law, in the sense that such actions cannot be justified under applicable legislation. **Fourth**, the person who was attacked and then accused of something to the President and/or Vice President can be justified if the accusation really happened (facts).

In the above case, an illustrative example can be given as follows one of the Ministers has been accused of committing a criminal act of corruption amounting to 100 billion in the ministry he leads. However, the Minister actually did not commit the corruption crime and knew that the person who



committed the corruption crime was the President to finance campaign debts at the time of the last election. Since the Minister was accused of corruption when it was not the Minister who committed the criminal act of corruption, the Minister mentioned the name of the President who committed the criminal act of corruption which was carried out in the manner that he knew when he served as Minister at that time.

The Minister's actions can be justified because *first*, there has been an attack on the dignity and dignity of the Minister. *Second*, the accusation against the Minister has degraded his dignity and dignity because he has defamed him because he is considered to have committed a criminal act of corruption. *Third*, in order to clean up the Minister alleged something that actually happened and revealed that the person who committed the corruption was the President. *Fourth*, the Minister's accusation against the President who committed the crime of corruption must be true (fact).


4. CONCLUSION

a. The parameter of the reason for the abolition of a special crime "in the public interest" that eliminates its unlawful nature, the act of attacking the honor, dignity, and dignity of the President and/or Vice President is the *first parameter*, the act of expressing an expression/opinion or an accusation to the President and/or Vice President must be true in fact. *The second parameter* must meet the values of appropriateness and fairness in expressing the opinion or expression to the President and/or Vice President. *The third parameter is* that the intention to express an opinion/expression must be aimed at protecting the interests of the community and benefiting the wider community. That all three parameters are cumulative, if any of them are not met cannot satisfy the reason for special criminal removal "in the public interest".

b. The parameter of the reason for the abolition of a special crime "self-defense" that eliminates its unlawful nature, the act of attacking the honor, dignity, and dignity of the President and/or Vice President is the *first parameter*, there must be an attack first from another person, be it the President and/or Vice President or other parties so that the person attacked can carry out self-defense by attacking the honor, dignity, and dignity of the President and / Vice President. *The second parameter*, the attack on the attacked person can be in the form of on his dignity and dignity, decency, property, body/life, so that the person attacked in order to save himself can express expressions/opinions that insult the President and/or Vice President. Attacks on the dignity, decency, property, and body/life of the person attacked must be against the law, in the sense that such actions cannot be justified under applicable legislation. *The fourth parameter* is that the person who is attacked then accuses the President and/or Vice President of something to justify his actions if the accusation really occurs (facts). The four parameters are cumulative, so that if one of the conditions is not met then it cannot be said to have committed self-defense.

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