



THE VALIDITY OF ARTICLES 240 AND 241 OF LAW NO. 1 OF 2023 CONCERNING THE CRIMINAL CODE REFERS TO THE CONSTITUTIONAL COURT DECISION NUMBER 013-022/PUU-IV/200

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Abstract: Since 1918 Indonesia has used the Criminal Code as the basis for determining criminal law. As time goes by, quite a few legal experts are of the opinion that Indonesia needs a new Criminal Code that is more in line with current societal developments. With the enactment of Law no. 1 of 2023 concerning the Criminal Code, Indonesia has a new Criminal Code which is considered appropriate to the current development of Indonesian society. However, there are articles whose elements are the same as the articles that have been declared contrary to the 1945 Constitution by the decision of the Constitutional Court, namely Articles 240 and 241 of Law no. 1 of 2023 with Articles 134, 136 bis, and 137 of the Criminal Code. Based on this description, the problem arises as to the validity of this article in the Indonesian legal system. This research uses a type of normative juridical research with a library approach. By paying attention to the theory of legal certainty and legal validity, Articles 240 and 241 of Law No. 1 of 2023 have the same elements as articles 134, 136 bis and 137 of the Criminal Code which have been declared to have no binding legal force, so that Articles 240 and 241 of Law No. 1 of 2023 can also be declared to have no binding legal force.

Keywords: *Constitutional Court Decision; Legal Validity; The Power of Binding Law*

I. INTRODUCTION

In the criminal law system, Indonesia uses the Criminal Code as the basis for determining criminal law. However, the Criminal Code used in Indonesia is the Criminal Code which has been in effect since 1918 by the Dutch Colonial

Government. As time goes by, many legal experts believe that the Criminal Code must be adapted to the progress of society. According to the Deputy Minister of Law and Human Rights, Prof. Dr. Edward Omar Sharif Hiariej, S.H., M.Hum. There are three factors in the urgency of reforming the Criminal Code in Indonesia. First, the Criminal Code is a criminal law inherited from the Netherlands which has been in effect since 1918 and has been revised several times. Second, as a legal product, the Criminal Code must be adapted to changes in society, progress over time and contemporary legal needs. Third, the current Criminal Code only punishes and does not contain criminal objectives and guidelines. With this urgency, Indonesia finally has its own Criminal Code, namely with the ratification of Law no. 1 of 2023 concerning the Criminal Code. UU no. 1 of 2023 contains updates and adjustments to previous regulations to the current situation in Indonesia. However, in this regulation, there are articles that have been declared without legal force by the Constitutional Court but are still promulgated, namely Articles 240 and 241 of Law no. 1 of 2023 which regulates insults against the government or state institutions. Constitutional Court Decision No. 013-022/PUU-IV/2006 has stated that Articles 134, 136 bis and 137 of the Criminal Code which regulate insults against the government or state institutions have no legal force because they conflict with the '45 Constitution. Based on this background, in this monologue, the author will discuss the validity of Articles 240 and 241 of Law No. 1 of 2023 in the Indonesian legal system.

II. RESEARCH METHODS

In order to obtain the data needed to answer the problems in this monologue, the author uses normative juridical research and a statutory approach. Normative juridical research is legal research which primarily examines library materials as secondary documents. A legislative approach is carried out by reviewing regulations and laws that are relevant to the problems studied.

III. DISCUSSION

Articles 240 and 241 of Law No. 1 of 2023 Concerning the Criminal Code

The enactment of Law Number 1 of 2023 aims to change a number of provisions of the previous Criminal Code but has caused a lot of controversy in people's lives. Some of these articles are considered problematic and detrimental to society in their implementation, for example articles 240 and article 241.

Article 240 states that any individual who verbally or in writing insults the government or state institutions in public will be punished with imprisonment for a maximum of one year and six months or a fine of up to category II. If this triggers chaos in society, he will be punished with a maximum prison sentence of 3 years or a maximum fine of category IV. Only complaints from the insulted party can be prosecuted for this action, and the complaint must be made in writing by a government leader or state institution.

According to Article 241, anyone who broadcasts, shows, or posts writing or images so that they are visible to the public, listens to recordings in public, or provides information using information technology means, which contains content that is insulting to the government or state institutions will be threatened with a maximum prison sentence. 3 years or a maximum fine of class IV. If the act causes social unrest, it can be punished with a maximum imprisonment of 4 years or a maximum fine of category IV. This violation can only be prosecuted on the basis of a complaint by the injured party. Complaints can be submitted in writing by government officials or state institutions.

Articles 240 and 214 of Law no. 1 of 2023 is actually an article adapted from Articles 134, 136 bis and 137 of the Criminal Code, namely articles that regulate insults against the government or state institutions. However, based on Constitutional Court Decision no. 13-022/PUU-IV/2006 Articles 134, 136 bis and 137 of the Criminal Code were declared to have no legal force because they were deemed to be in conflict with the 1945 Constitution (UUD'45).

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Based on the provisions of Article 24C of the UUD'45 Constitution, the Constitutional Court has the power to adjudicate at the first and final level, whose decision is final in the case of changes to laws that conflict with the UUD'45, decide disputes over the authority of state institutions whose authority is granted by the UUD'45, decide dissolution of political parties and resolving problems related to election results.

Based on the provisions of this article, the Constitutional Court's decision is final, that is, it has permanent legal force, so that if the Constitutional Court's decision has been pronounced in a trial that is open to the public and there are no legal remedies that can be taken against the decision and it is binding not only on the parties but on all Indonesian society. Because of its final and binding nature, the Constitutional

Court's decision is permanent or permanent (not temporary), lasts a long time, and cannot be changed.

In Constitutional Court Decision No. 013-022/PUU-IV/2006 decided that Articles 134, 136 bis and 137 of the Criminal Code do not have binding legal force because they are considered to be in conflict with the 1945 Constitution, which article regulates insulting the President and/or Vice President, in this case is the government. The elements contained in Articles 134, 136 bis and 137 of the Criminal Code are the same as the elements contained in articles 240 and 241 of Law no. 1 of 2023, namely the element of error, the element of object, the element of intent and the element of criminal act.

In considering its decision, the Constitutional Court stated that articles 134, 136 bis, and 137 of the Criminal Code have the opportunity to create legal uncertainty and hinder the right to freedom of expression, and this is contrary to Article 28 of the UUD'45. Apart from that, Indonesia adheres to the principle of equal standing before the law, whether the President or ordinary people have the same standing before the law, so that for the offense of insulting the President and/or Vice President, in this case, the government should apply Articles 310 - 321 of the Criminal Code. Namely the article contained in Chapter XVI of the Criminal Code which regulates insults.

a. Theory of Certainty and Legal Validity

The theory of legal certainty can be defined as legal certainty as an effort made to achieve justice in society. Maria S.W. Sumardjono defines that, normatively, legal certainty requires the existence of a legal system that is appropriate and can support its implementation. Empirically, human resources who support legal regulations must ensure that these regulations apply.

- 1) Law is a positive thing, which means that its position is the same as law (UU).
- 2) The law is based on facts, which means the law is made based on existing facts.
- 3) The facts contained in the law must be explained clearly, so that they are easy to understand and easy to implement.
- 4) Positive laws cannot be easily changed.

The theory of legal validity is defined as follows in the Oxford dictionary of legal validity which can be interpreted as for a regulation to be a valid regulation, the regulation must be legally valid. For a law to be effective, the law must have legal

value. Thus, a valid regulation will be a regulation and an invalid regulation will not be a regulation.

b. Analysis of the Validity of Article 240 and Article 241 of Law No. 1 of 2023

The Indonesian legal system adheres to a hierarchical system, which means that the applicable regulations must be in accordance with and not conflict with the regulations above them. Based on statutory provisions, the hierarchy of laws and regulations applicable in Indonesia are:

- 1) UUD'45;
- 2) Decree of the People's Consultative Assembly;
- 3) Law or Government Regulation in Lieu of Law (Perppu);
- 4) Government Regulation (PP);
- 5) Presidential Regulation (Perpres);
- 6) Provincial Regional Regulations;
- 7) Regency/City Regional Regulations.

Apart from paying attention to the hierarchy in this article, a regulation must also pay attention to the Constitutional Court's decision relating to the matter it wishes to regulate, because the 45 Constitution has mandated the Constitutional Court as a court whose decisions are final and binding. Therefore, the statutory regulations that wish to be drafted must take into account the existing Constitutional Court regulations.

In Articles 240 and 241 of Law no. 1 of 2023 has the same elements as Articles 314, 316 bis and 317 of the Criminal Code, namely the element of error, namely an error in the form of insulting, is contained in Articles 134 and 137 of the Criminal Code as well as in Article 241 of Law no. 1 of 2023; The object element, namely the President and/or Vice President, in this case the government, is contained in Article 134 of the Criminal Code and Article 240 of Law no. 1 of 2023; the element of intent, namely in the clause "with the intention of making it known to the public" is contained in Article 137 paragraph (1) of the Criminal Code and Article 241 paragraph (1) of Law no. 1 of 2023; as well as elements of criminal acts, namely Article 134 of the Criminal Code and Article 240 of Law no. 1 of 2023 is an article regarding a criminal act. So it can be said that Articles 240 and 241 of Law no. 1 of 2023 regulates the same thing as Articles 134, 136 bis, and 137 of the Criminal Code.

Based on Constitutional Court decision no. 013-022/PUU-IV/2006 Articles 314, 316 bis, and 317 of the Criminal Code contradict the UUD'45 and are declared to have no binding legal force, so that the laws and regulations currently in force and/or which will apply in Indonesia cannot be contrary to the Constitutional Court Decision. Because if an applicable regulation conflicts with the Constitutional Court's decision or the laws above it, it will create legal uncertainty. As a rule of law that aims to create justice for all Indonesian people, the laws and regulations in force in Indonesia must be definite and not give rise to legal uncertainty. When referring to the theory of legal validity, namely that a valid regulation will be a regulation and an invalid regulation is not a regulation, then a regulation must pay attention to the conditions for the validity of the regulation.

IV. CONCLUSION

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