

The Constitutionality of Defamation Provisions in Law No. 1 of 2023 Concerning the Criminal Code (KUHP) Following Constitutional Court Decision No. 78/PUU-XXI/2023

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ABSTRACT

Criminal defamation in Indonesia often sparks controversy, particularly regarding individual dignity and freedom of expression—both essential human rights. Law No. 1 of 2023 on the Indonesian Criminal Code (KUHP) includes provisions aimed at protecting dignity and public order, with penalties for defamation of individuals and officials. However, critics argue these measures risk suppressing legitimate criticism and restricting democratic freedoms, potentially conflicting with the 1945 Constitution. Following Constitutional Court Decision No. 78/PUU-XXI/2023, emphasis has been placed on clear, proportional limitations to prevent misuse. This research stresses the need for unambiguous criminal law norms to prevent overly broad interpretation, thereby protecting human rights and ensuring fair law enforcement.

INTRODUCTION

The crime of defamation is a highly sensitive topic and often becomes the center of controversy in the context of Indonesian criminal law. Defamation involves issues of personal honor and reputation, making it a highly emotional subject that frequently sparks various debates. Sensitivity toward this matter increases as defamation is directly linked to human rights, particularly the freedom of speech and expression, which are protected by laws and the constitution (Rohmah, 2023). Therefore, discussions on defamation always demand a careful balance between an individual's right to speak and express freely and the protection of personal dignity, which must not be compromised.

The constitutionality of defamation provisions in Law No. 1 of 2023 concerning the Criminal Code (KUHP) following the Constitutional Court Decision Number 78/PUU-XXI/2023 has become crucial in assessing the balance between freedom of expression and the protection of personal honor. In this decision, the Constitutional Court affirmed that the defamation articles in the Criminal Code remain constitutional, provided that their application considers the context of democracy and human rights, including freedom of expression. Defamation norms must be understood as part of the protection of one's dignity, but their application must be proportional and not excessively restrict freedom of speech (Siregar, Adrian, & Rambe, 2023). With this ruling, Indonesian criminal law is expected to better maintain a balance between public interest and individual rights within a democratic legal state.

In the academic manuscript of Law No. 1 of 2023 concerning the Criminal Code (KUHP), it is explained that defamation as a criminal offense includes defamation through libel or written defamation, minor insults, slander, and the dissemination of false prejudices. Moreover, defamation can be committed against a deceased person. The offense of dissemination also includes broadcasting, displaying, or posting writings or images that can be seen by the public, or playing recordings with defamatory content, with the intention that the content becomes known or increasingly known to the general public (Badan Pembinaan Hukum Nasional et al., 2015). This provision includes criminal sanctions for those who defame individuals, state officials, or state institutions (Badan Pembinaan Hukum Nasional et al., 2015). However, although the intention is to create a harmonious social order, these provisions have faced sharp criticism from various parties, including academics, legal practitioners, and human rights activists.

The Constitutional Court's Decision Number 78/PUU-XXI/2023 is related to the judicial review of Article 27(3) in conjunction with Article 45(3) of the Information and Electronic Transactions Law (ITE Law) on defamation in cyberspace. The Constitutional Court refused to further consider the judicial review of these articles on the grounds of changes to the norms in the new ITE Law (Law No. 1/2024). This indicates that the Court considers the judicial review of the same articles in the old ITE Law to be no longer relevant or necessary due to the norm change.

However, the Constitutional Court accepted part of the petition for a judicial review of Article 310 of the Criminal Code on defamation and declared

Articles 14 and 15 of Law No. 1 of 1946 on false news to be unconstitutional. This decision reinforces the Court's role as the guardian of the constitution, ensuring compliance with legal principles and constitutional rights.

The provisions in Law No. 1 of 2023 regarding the new Criminal Code regulate defamation against the government or state institutions as well as defamation against population groups. Articles 240 and 241 of the law regulate defamation against the government or state institutions, which include prohibitions on verbal, written, or information technology media-based defamation against the government or state institutions. Meanwhile, Articles 242 and 243 regulate defamation against population groups, prohibiting statements or dissemination that incites hostility, hatred, or defamation against groups or segments of the Indonesian population based on race, nationality, ethnicity, skin color, and others.

In the context of Constitutional Court Decision Number 78/PUU-XXI/2023, the Court did not further consider the judicial review of Article 27(3) in conjunction with Article 45(3) of the ITE Law on defamation in cyberspace due to changes in the norms of the new ITE Law. However, the Court accepted part of the judicial review request against Article 310 of the Criminal Code on defamation and declared Articles 14 and 15 of Law No. 1 of 1946 on false news to be unconstitutional. This shows that the Court plays an important role in assessing the conformity of legal norms with constitutional principles.

From this analysis, there is a correlation between the Constitutional Court's decision and the provisions in Law No. 1 of 2023 concerning the new Criminal Code related to defamation. Although the new Criminal Code regulates defamation against the government or state institutions and population groups, the Constitutional Court's decision continues to influence the legal framework related to these issues, particularly regarding the interpretation and constitutionality of existing legal norms.

THEORETICAL REVIEW

Legal Certainty

Legal certainty is one of the primary objectives of law, as in the view of normative positive or dogmatic normative legal science, the focus lies on the aspect of legal certainty. Legal certainty requires that laws be implemented and enforced firmly. Furthermore, legal certainty aims to protect the public from arbitrary actions by others, including the government, which relates to maintaining order in society (Muhamad Sadi, 2020). The theory of legal certainty is crucial in this study to assess the extent to which the norm meets the standards of clarity, consistency, and predictability in law.

Legal Politics

According to Moh. Mahfud MD, legal politics refers to the legal policy or official policy established regarding the laws to be enacted, either through the creation of new laws or the replacement of existing ones, with the aim of supporting the achievement of state goals (Sihombing, Eka NAM, 2020: 1). The theory of legal politics functions to analyze the constitutionality of defamation

provisions in Law No. 1 of 2023 concerning the Criminal Code (KUHP), particularly after the Constitutional Court (MK) Decision Number 78/PUU-XXI/2023.

METHODOLOGY

This research employs normative legal research methods with a descriptive-analytical nature (Ariawan, 2013). This method allows the researcher to describe the existing conditions or circumstances by providing the most accurate data possible about the research object and then analyzing it based on applicable legal theory or legislation. In the study of the constitutionality of defamation provisions in Law No. 1 of 2023 concerning the Criminal Code (KUHP) following Constitutional Court Decision Number 78/PUU-XXI/2023, the legislative approach serves as the main foundation for understanding the substance of the existing legal norms. By carefully analyzing the content of the Criminal Code that regulates defamation offenses and the Constitutional Court's decision, this research can reveal how these norms are regulated and interpreted in the context of the national constitution. Furthermore, a conceptual approach is essential in evaluating the relevance of legal concepts such as freedom of expression, justice, and the protection of human rights concerning defamation provisions. By combining these two approaches, this research aims to provide a comprehensive understanding of the constitutionality of defamation provisions and their implications for the legal system as a whole.

RESULTS AND DISCUSSION

Legal Politics of Defamation in Indonesia

The legal politics surrounding defamation in Indonesia reflect efforts to balance the protection of individual honor with freedom of expression. Various laws, including the Criminal Code (KUHP) and the Information and Electronic Transactions Law (ITE Law), as well as Constitutional Court (MK) rulings, illustrate how the state attempts to respond to evolving social and technological dynamics.

Law No. 1 of 1946 concerning the Criminal Code serves as the initial foundation regulating defamation, including slander and libel. Articles 310 to 321 of the Criminal Code stipulate penalties for defamation, whether verbal, written, or through other media. Perpetrators of defamation or slander through social media may be prosecuted under Article 27(3) in conjunction with Article 45(1) of the ITE Law, as the ITE Law governs offenses committed through electronic media. According to Constitutional Court Decision No. 50/PPU-VI/2008 and Decision No. 2/PUU-VII/2009, the application of Article 27(3) is not in conflict with the 1945 Constitution as the highest law. Moreover, the ITE Law does not explicitly define the elements of defamation, thus referring to Articles 310 to 321 of the Criminal Code (Zhafira, Ismansyah, & Yoserwan, 2023).

A research report from the Institute for Criminal Justice Reform (ICJR) indicates that the ITE Law has caused uncertainty in law enforcement. Many of the criminal provisions in the law are either duplications or overlaps with the Criminal Code, broadly formulated but open to multiple interpretations, which

creates confusion contrary to the principles of criminal law that require clarity (*lex certa*) and precision (*lex stricta*). For example, Article 27(3) on defamation overlaps with Articles 310-321 of the Criminal Code, covering slander, libel, and minor defamation. As a result, many defendants are tried for the same offense under both the ITE Law and the Criminal Code (Budiman et al., 2021: 11).

The problems of law enforcement concerning defamation, whether through the ITE Law or the Criminal Code, prompted the Constitutional Court (MK) to provide clarification in several of its rulings, such as Decision No. 50/PUU-VI/2008; Decision No. 2/PUU-VII/2009; Decision No. 31/PUU-XIII/2015; and Decision No. 78/PUU-XXI/2023.

In Decision No. 50/PUU-VI/2008, the Court, in its legal considerations, emphasized that Article 27(3) of the ITE Law should be treated as a complaint offense, consistent with the *genus delicti* in Articles 310 and 311 of the Criminal Code (Decision No. 50/PUU-VI/2008: 110). This ensures that online defamation is treated the same as defamation committed through traditional media, maintaining consistency in law enforcement. This clarification is crucial to protect freedom of expression and to ensure that the law is not misused to stifle legitimate criticism.

The conclusion of the Constitutional Court's Decision No. 50/PUU-VI/2008 affirmed that Article 27(3) and Article 45(1) of Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law) are constitutional and do not conflict with democratic values, human rights, or the principles of the rule of law, thus the Petitioner's claims were deemed unfounded and legally baseless (Kharisma, 2022).

Moreover, Decision No. 2/PUU-VII/2009 also reviewed Article 27(3) of the ITE Law and concluded that the provision is essential to provide legal protection for society from cybercrimes involving defamation. The Court affirmed that one of the characteristics of a rule-of-law state is the protection of human rights, so Article 27(3) was formulated to balance the protection of individual honor and dignity with freedom of expression. The ruling also stated that the advancement of information technology is merely a tool to achieve welfare in the real world, and the ITE Law aims to maintain legal order in cyberspace. The ITE Law is not intended to limit freedom of expression but to prevent the misuse of such freedom. Based on Article 60 of the Constitutional Court Law, since the material reviewed in Decision No. 50/PUU-VI/2008 cannot be re-examined, the petition in Decision No. 2/PUU-VII/2009 was deemed inadmissible (Kharisma, 2022).

Furthermore, Decision No. 31/PUU-XIII/2015 declared that the phrase in Article 319 of the Criminal Code, which reads “except under Article 316,” is unconstitutional and has no binding legal force (Hastarini & Andini, 2019). As a consequence, any government official or state official who feels defamed or slandered must personally file the complaint or appoint a representative to do so. This is because Article 316 of the Criminal Code is now treated as a complaint offense rather than a pure offense (Akbar, Mannan, & Saputra, 2023).

The next judicial review concerning defamation norms is Constitutional Court Decision No. 78/PUU-XXI/2023, in which the Court found that the provisions related to defamation, particularly Articles 14 and 15 of Law No. 1 of

1946 and Article 310(1) of the Criminal Code, have the potential to create legal uncertainty. Therefore, the Constitutional Court ruled that Articles 14 and 15 of Law No. 1 of 1946 are unconstitutional and no longer have binding legal force. Additionally, Article 310(1) of the Criminal Code was also deemed unconstitutional insofar as it is not interpreted to mean that defamation is committed orally, with the intent for it to be known by the public.

The discussion of various Constitutional Court decisions above demonstrates the development of legal politics regarding defamation in Indonesia, which strives to balance the protection of individual honor with freedom of expression. This is reflected in the “Legal Politics of Defamation Regulation in Indonesia” chart, which illustrates the direction of clearer and firmer legal policies.

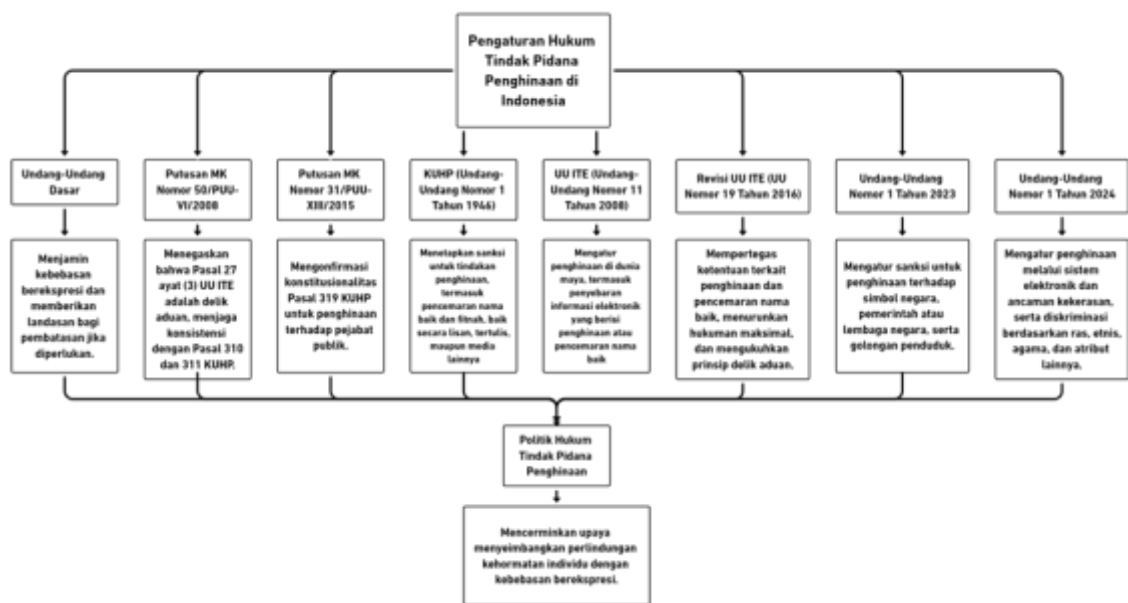


Chart: Legal Politics of Defamation Regulation in Indonesia

Source: Processed by the author

The constitutionality of defamation provisions in Law No. 1 of 2023 concerning the Criminal Code (KUHP), following Constitutional Court Decision No. 78/PUU-XXI/2023, reaffirms that defamation regulations are retained as an effort to protect the honor and dignity of individuals. However, the Constitutional Court also sets limits, stating that the application of this norm must be aligned with the principles of democracy and freedom of expression guaranteed by the constitution. In its decision, the Court emphasized the importance of a proportional approach in applying defamation norms to avoid excessive restrictions on freedom of speech.

As explained by Henry Aspan (2020), the historical development of law influences the formation of modern legal principles in Indonesia, stressing that constitutional decisions are shaped by past norms while adapting to the needs of present-day democracy. This is consistent with the preservation of criminal defamation laws, ensuring that these laws respect individual dignity while upholding freedom of expression.

The defamation provisions in Law No. 1 of 2023 concerning the Criminal Code, post-Constitutional Court Decision No. 78/PUU-XXI/2023, maintain the regulation of defamation as a legitimate criminal offense but with certain limitations. This is in line with the principle that the law can be implemented in societal practice as a reflection of the administrative government's will. The Constitutional Court asserted that defamation norms must be applied proportionally and in accordance with democratic principles and human rights, especially in the context of freedom of expression, ensuring that the law enforced by state authorities binds everyone while maintaining a balance between law enforcement and individual freedom. The validity of legal rules, including those related to defamation offenses, is upheld through their concrete application within the legal and justice framework (Aspan & Adnan, 2021).

Law No. 1 of 2023 provides a comprehensive legal foundation for handling defamation offenses against national symbols, government or state institutions, and population groups. The first section of this law, consisting of several paragraphs, regulates various defamation actions deemed to demean the honor of national symbols, including the flag, state emblem, and national anthem. Articles 234 to 239 specifically regulate sanctions for actions such as damaging, tearing, or trampling the national flag, as well as actions that insult the state emblem or alter the national anthem with the intent to defame. The penalties include imprisonment for up to three years or fines of up to category IV, reflecting the state's firm stance on protecting national symbols from demeaning actions.

Paragraph 2, which covers Articles 240 and 241, focuses on defamation against the government or state institutions. Defamation committed in public, whether through speech, writing, or electronic media, can be punished with imprisonment of up to one year and six months or fines of up to category II. If the defamation causes public unrest, the sentence can be increased to three years in prison or fines of up to category IV. It is important to note that prosecution for this offense can only be carried out if there is a formal complaint from the insulted party, as stipulated in paragraphs (3) and (4), which require a written complaint from the head of the government or state institution concerned.

Paragraph 3 addresses defamation against population groups, which is regulated in Articles 242 and 243. These articles impose penalties on those who express hostility, hatred, or insult against groups based on race, ethnicity, religion, gender, disability, and other categories. The penalties may include imprisonment of up to three years or fines of up to category IV. If the action is disseminated through media or information technology with the intent of being widely known and leads to violence, the sentence may increase to four years in prison or fines of up to category IV.

Furthermore, Paragraph 4 includes offenses of racial and ethnic discrimination, regulated in Articles 244 and 245. Article 244 sets penalties for actions that result in the revocation or reduction of human rights based on racial and ethnic discrimination, with a maximum penalty of one year in prison or fines of up to category III. Additionally, Article 245 prescribes an increase of one-third of the principal sentence for serious crimes such as deprivation of life or assault

committed on the grounds of racial and ethnic discrimination. This demonstrates the legal commitment to protecting basic individual rights and ensuring equality in society.

Law No. 1 of 2024 introduces several new provisions regarding defamation offenses. Article 27A of this law regulates defamation through electronic systems and includes actions of coercion through threats of violence. This shows the legal adaptation to increasingly complex digital phenomena, where defamation occurs not only in traditional forms but also through online threats and manipulation.

Law No. 1 of 2024 also regulates defamation against population groups based on race, ethnicity, religion, and other attributes. Articles 242 and 243 prohibit expressions of hostility or insults that could trigger violence or discrimination. These provisions are crucial for maintaining social harmony and preventing criminal acts that could disrupt the order of society. This demonstrates the legal commitment to protecting diversity and preventing social conflicts.

The legal politics of defamation offenses in Indonesia reflect efforts to balance the protection of individual honor with freedom of expression in a democratic state (Widodo, 2020). This approach is evident in various laws such as the Criminal Code (KUHP) and the Information and Electronic Transactions Law (ITE Law), supported by Constitutional Court (MK) rulings. Law No. 1 of 1946 concerning the Criminal Code serves as the initial foundation for regulating defamation, including slander and libel, by prescribing penalties for defamation in various forms, whether verbal, written, or through other media. The severity of the penalties varies depending on the context and method of defamation, with heavier penalties imposed for published writings or images.

Law No. 1 of 2023 adds a new dimension to the regulation of defamation, addressing defamation against national symbols, government or state institutions, and population groups, as well as covering religious offenses in Articles 300-305 (Amali, n.d.). The first section of the law regulates actions considered to demean the honor of national symbols, such as the flag, state emblem, and national anthem, with strict penalties of imprisonment or fines. Additionally, Articles 240 and 241 of the previous RKUHP focus on defamation against the government or state institutions, with criminal penalties that also account for the social impact, such as public unrest (Khanza & Murti, 2022). This regulation reflects the state's firm stance on protecting national symbols and preserving the dignity of government institutions.

Lastly, Law No. 1 of 2024 introduces additional provisions regarding defamation, especially those committed through electronic systems and including coercion through threats of violence. This shows the legal adaptation to increasingly complex digital phenomena, where defamation occurs not only in traditional forms but also through online threats and manipulation. This law also regulates defamation against population groups based on race, ethnicity, religion, and other attributes, prohibiting expressions of hostility or insults that could trigger violence or discrimination. Thus, Indonesia's legal framework strives to maintain social harmony and prevent conflicts that may arise from identity differences.

Implications of Constitutional Court Decision No. 78/PUU-XXI/2023 on Defamation Provisions in Law No. 1 of 2023 concerning the Criminal Code (KUHP)

In Constitutional Court Decision No. 78/PUU-XXI/2023, the Court examined various arguments presented by the Petitioners regarding the constitutionality of provisions governing defamation offenses, specifically Articles 14 and 15 of Law No. 1 of 1946, Article 310(1) of the Criminal Code (KUHP), and Article 27(3) in conjunction with Article 45(3) of Law No. 19 of 2016 (Vallentian, 2024).

The Court held that the elements of “false news or notification” and “uncertain or exaggerated reports” contained in Articles 14 and 15 of Law No. 1 of 1946 have the potential to turn these provisions into “rubber articles” that may cause legal uncertainty. These articles were deemed incapable of providing legal certainty, thereby eliminating the legal benefits of the rules and diminishing their value of justice. The existence of Articles 14 and 15 was seen as providing protection for parties opposed to criticism, who exploit the ambiguity of these provisions to shield themselves behind rules that should be annulled by the Constitutional Court (Vallentian, 2024:45).

The Court emphasized that the right to express opinions and freedom of expression are fundamental rights recognized by the 1945 Constitution, including in Articles 28, 28E(3), and 28F (Constitutional Court Decision No. 78/PUU-XXI/2023:339,356). However, this right is not absolute and may be limited to protect the rights of others and maintain public order. The Court also referenced various international instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the Siracusa Principles, which stipulate that restrictions on the right to freedom of expression must be interpreted strictly and clearly, with the goal of protecting rights, and no arbitrary actions should be permitted (Constitutional Court Decision No. 78/PUU-XXI/2023:344).

In the case of Articles 14 and 15 of Law No. 1 of 1946, the Court found that the elements of “false news or notification” and “uncertain or exaggerated reports” in these provisions were too broad and unclear, leading to varied interpretations and potential misuse to suppress freedom of expression. The Court also noted that the term “uproar” in Article 14 of Law No. 1 of 1946, which includes meanings such as commotion, disturbance, and unrest, is ambiguous and has the potential to create legal uncertainty. Therefore, the Court ruled that Articles 14 and 15 of Law No. 1 of 1946 are unconstitutional and no longer have binding legal force.

With regard to Article 310(1) of the Criminal Code (KUHP), the Court considered that the norm is still necessary to protect the right to honor and good name of individuals. However, the Court found that the wording needs clarification, particularly concerning the meaning of “an attack on honor or reputation by alleging something.” Therefore, the Court declared that Article 310(1) of the Criminal Code is unconstitutional to the extent that it is not interpreted to mean that the attack must be conducted orally.

Regarding Articles 27(3) and 45(3) of Law No. 19 of 2016, the Court held that the Petitioners' claims lost their object as these articles had been amended by Law

No. 1 of 2024. The Court stressed the importance of ensuring that laws restricting freedom of expression must be clear, precise, and not misused to limit citizens' fundamental rights. This decision reflects the Court's commitment to protecting the basic rights of citizens while maintaining public order and respecting the rights of others.

Constitutional Court Decision No. 78/PUU-XXI/2023 underscores the importance of legal certainty and clarity in the formulation of legal norms, particularly concerning defamation offenses. The Court stated that ambiguous or overly broad criminal legal norms could become "rubber articles" that potentially lead to legal uncertainty and misuse in their application. This ruling highlights the need for clarity in formulating legal norms to prevent varied and arbitrary interpretations that could threaten the constitutional rights of citizens, including freedom of expression as stated in Article 21(3) of the Universal Declaration of Human Rights (UDHR).

The Universal Declaration of Human Rights (UDHR) Article 21(3) essentially states that the primary goal of a democratic state is to create protection and enforcement of human rights (HR). This is reflected in Article 21(3) of the UDHR, which declares that the will of the people must be the basis of governmental authority. Such will must be expressed through regular, honest elections with universal and equal suffrage, conducted by secret ballot or equivalent free voting procedures (Hartono, 2021).

Legal certainty refers to the clear, stable, and consistent application of laws, where implementation should not be influenced by subjective factors (Julyano & Sulistyawan, 2019), including in Law No. 1 of 2023 concerning defamation offenses. If the norms in this law possess characteristics similar to those already annulled or amended by the Constitutional Court, particularly regarding ambiguity and potential to become "rubber articles," those norms need to be reviewed. The Court stressed that every criminal legal provision must be clearly and precisely formulated to prevent legal uncertainty for the public. Therefore, the provisions in Law No. 1 of 2023, such as those regulating defamation, including defamation of the president, require strict oversight and control in their application to ensure that the articles are not misused or misinterpreted. Strict oversight will help prevent the use of these provisions as tools to suppress legitimate criticism or hinder freedom of expression (Rohmah, 2023). With proper oversight, the application of these provisions can be carried out fairly and in accordance with democratic principles and human rights, ensuring that individuals' rights to express their opinions freely and openly are not violated.

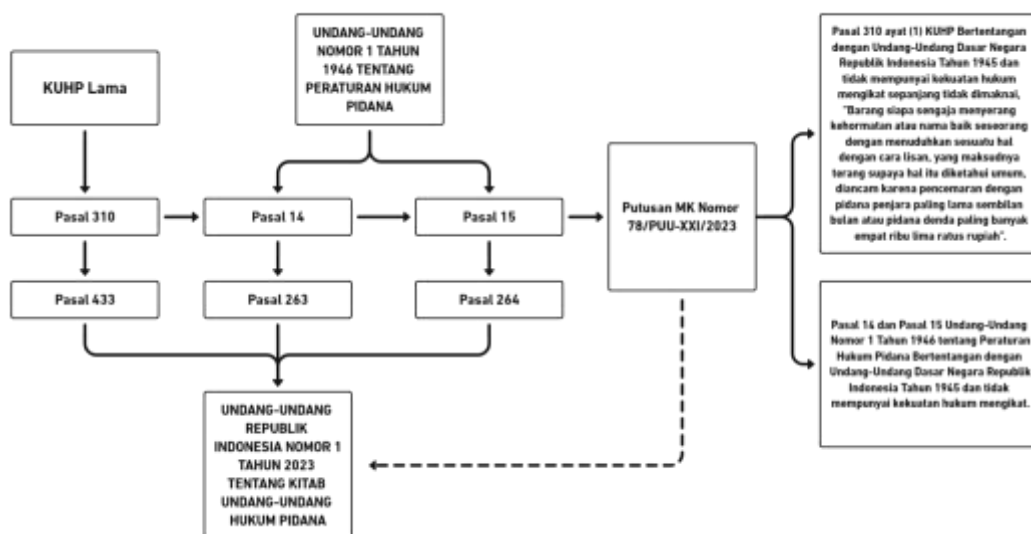


Diagram: The Relationship Between Constitutional Court Decision No. 78/2023 and Law No. 1 of 2023

Source: Processed

The old Criminal Code (KUHP), through Article 310(1), regulates defamation offenses, both oral and written, with the threat of imprisonment for up to nine months or a maximum fine. Written defamation carries a heavier penalty, up to one year and four months. However, exceptions are provided if the act is done in the public interest or for self-defense. Additionally, Law No. 1 of 1946, in Articles 14 and 15, stipulates penalties for spreading false news that could cause public disorder, with imprisonment of up to ten years or three years, depending on the level of intent.

Following Constitutional Court Decision No. 78/2023, Articles 14 and 15 of Law No. 1 of 1946 were declared unconstitutional and no longer binding. The Court also ruled that Article 310(1) of the Criminal Code is unconstitutional unless interpreted as defamation conducted orally. This ruling clarifies that actions undermining another person's honor must be more specifically defined to prevent legal uncertainty and potential misuse.

Law No. 1 of 2023 updates the provisions on defamation and the dissemination of false news, adding more specific penalties. Article 433 stipulates penalties for oral and written defamation with imprisonment of up to one year and six months or a fine. Articles 263 and 264 regulate offenses related to the dissemination of false or uncertain information that can cause unrest, with heavier penalties depending on the impact, reaching up to six years in prison or fines of category V.

While Constitutional Court Decision No. 78/PUU-XXI/2023 sets a strong precedent and important guidance, it does not mean that every provision in Law No. 1 of 2023 is automatically annulled or amended. The process of annulling or amending legal norms requires specific constitutional review of the relevant articles by the Constitutional Court. The Court's decision applies only to the norms tested and decided upon in that particular case. Therefore, the application or revision of Law No. 1 of 2023 will depend on further legal processes, including the submission of judicial review requests by parties who feel aggrieved.

Moreover, consistent implementation of laws in line with constitutional principles requires strict oversight and ongoing evaluation. The legislative, judicial, and executive branches play a crucial role in ensuring that the laws implemented are in accordance with constitutional values, including the protection of human rights and freedom of expression. Any legal norm deemed ambiguous or potentially causing injustice must be promptly reviewed and adjusted to avoid conflict with the fundamental principles of the rule of law. Thus, the relationship between Constitutional Court Decision No. 78/PUU-XXI/2023 and Law No. 1 of 2023 reflects the need to align legal norms with strict constitutional standards. Defamation provisions must be formulated clearly and specifically to ensure that there is no room for excessive interpretation or misuse of the law. This is essential to maintain the integrity of the legal system and ensure that the law functions as a fair and effective tool to protect individual rights while preserving public order and security.

CONCLUSIONS AND RECOMMENDATIONS

The legal politics concerning defamation offenses in Indonesia aim to balance the protection of individual honor with freedom of expression. Regulations such as the Criminal Code (KUHP) and the Information and Electronic Transactions Law (ITE Law), as well as Constitutional Court (MK) decisions, reflect the state's efforts to respond to the evolving social and technological dynamics. Law No. 1 of 1946 concerning the Criminal Code provides the initial foundation for regulating defamation, while the ITE Law expands the scope of regulation into the digital realm. Revisions to these laws, including Law No. 19 of 2016, emphasize the importance of legal clarity and the principle of complaint offenses to prevent the misuse of the law in silencing legitimate criticism. Constitutional Court decisions, such as No. 50/PUU-VI/2008 and No. 31/PUU-XIII/2015, reaffirm the importance of freedom of expression and consistency in law enforcement, particularly when dealing with defamation conducted through both digital and traditional media.

Additionally, Law No. 1 of 2023 provides a legal framework for addressing various forms of defamation, including defamation against national symbols, the government, state institutions, and population groups. The provisions in this law are designed to protect the honor of national symbols and maintain social harmony. However, based on Constitutional Court Decision No. 78/PUU-XXI/2023, it is important to ensure that the provisions in this law are not ambiguous or overly broad, which could lead to legal uncertainty and misuse. Legal norms must be clearly and specifically formulated, respecting human rights and freedom of expression, and adhering to strict constitutional standards. This is crucial to maintain the integrity of the legal system and ensure that the law functions as a fair and effective tool to protect individual rights while preserving public order and security.

FURTHER STUDY

Study defamation laws and enforcement practices in other democratic nations to identify best practices that balance freedom of expression with individual honor.

Examine how international human rights standards, such as those outlined by the United Nations, can inform Indonesia's legal framework on defamation.

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