The Criminal Liability of The Defamation Perpetrators Against The President or Vice President After Having The Court Decision Number Constitutional 013-022 / Puu-Iv / 2006

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ABSTRACT
Base on the interest to Realize the goals of the state, Indonesia Gives the power to the president as the representative of the state to run the government rate and its existence is highly protected. One of the Efforts to protect the president and vice president is by setting the criminal sanctions Relating to crimes against the dignity of the president or vice president of which stipulated in Article 134, 136 bis and 137 of the Criminal Code. However, there must be a deeper study with the application of Reviews These provisions. It is Because there are some shifts have happended towards the provisions after having the Constitutional Court Decision Number 013-022 / PUU-IV / 2006. Formulation of the problem in this research is about the rule and the criminal liability of the perpetrators defamation against the president or vice president after having the Constitutional Court Decision Number 013-022 / PUU-IV / 2006. The method used is the which is legal research with statute approach, conceptual approach and comparative approach, through a comparison of the Criminal Code in the Netherlands, Germany and Thailand. The result in this reasearch shows that after the Constitutional Court Decision Number 013-022 / PUU-IV / 2006, the rule defamation against the president or vice president of the personal qualities addresed to be subject to the rules of Chapter XVI Criminal Code. In the case of defamation addressed to the president or vice president as an official of the State, be subject to the rules of Article 207 Criminal Code. In addition to the Criminal Code, the rules can be applied Also regulated under the Broadcasting Act and the Information and Electronic Transactions Act. Moreover, the subject of the which can be burdened with the criminal liability is an individual (base on the rules in the Criminal Code and the Broadcasting Act); individual and corporation (base on the rules in Information and Electronic Transactions Act);

Keywords: criminal liability, defamation, president of

1. INTRODUCING

In principle, the state can be regarded as an association of people who live and work together to pursue some common goals. So it can be said that the final destination of each country is to create happiness for its people(bonumPublicum, common good, the commonwealth). On the basis of the interest of realizing the ideals and objectives, the Indonesian people give power to the President and Vice President as a representation of the state in order to lead the government rate. Given the President and Vice President-elect is a representation of the Republic of Indonesia and all the people of Indonesia, the position and existence is very protected.

As a safeguard against the President and / or Vice President, the draft Criminal Law (hereinafter referred to as the Penal Code) has set up the substance of crimes against
state security in Chapter I of the Second Book which is formulated using the word 'President and / or Vice President' as a protected subjects in the provision. Other provisions that provide protection against the President and / or Vice President is setting a crime against the dignity of the President or Vice-President (insult against the President or Vice President) stipulated in Article 134, Article 136 and Article 137 bis of the Criminal Code.

In connection with the criminal act of defamation against the President or the Vice President, as we know that in the state of life sometimes leads to conflicts between the country to another country. Likewise Indonesia to Australia whose relationship had heated up due to the execution of death row convicts in the case of the Bali Nine. As a form of disappointment for the Australian to the policies of President Joko Widodo, on 29 April 2015 Australian print media that is The Courier-Mail in the print edition featuring a picture of President Joko Widodo with his right hand covered in blood. In the title of newspaper front were the words"BloodyHands"with big letters that means Hand Bloody. In an editorial, the newspaper The Courier Mail wrote, executions last night it was cruel and inhumane. According to the newspaper, the election of Jokowi as president in July and provide hope for democracy. But now what is seen as a force Jokowi instead become a weakness.

measures Australian print media can be considered as a form of insult against the President Joko Widodo. But if you look at the provisions in the Criminal Code that applies now, the face can be considered less provide protection the President or Vice President. it is given that after the Constitutional Court Decision No. 013-022 / PUU-IV / 2006, the provisions of Article 134, Article 136 and Article 137 bis of the Penal Code concerning defamation against the President or Vice President has decided not to have legally binding.

2. RESEARCH METHODS

Type of this research is the study of law(legalresearch).Things to be achieved is to find the truth of coherence, is there any rule of law appropriate legal norms and are there any norms that form the command or prohibition is in line with the principle of law, and whether the action(act)a person in accordance with the law (not only according to the rule of law) or principle law. The problem approach used in this study is the approach to rule of law(statuteapproach),the conceptual approach(conceptualapproach)and the comparative approach(comparativeapproach)through a comparison of the Criminal Code in the Netherlands, Germany and Thailand.
3. ANALYSIS

3.1. Setting insult against the President or Vice President in the Code of Penal

number of provisions in the Penal Code concerning defamation against the President or Vice-President is the provision in Article 134, Article 136 and Article 137 bis of the Criminal Code. The type of offense in the rule is a regular offense, so that the President or Vice President who felt his dignity was insulted not obliged to perform a report to be able to process the case. However, in applying these provisions need to be studied more in depth considering there have been several changes to the indenture after the Constitutional Court Decision Number 013-022 / PUU-IV / 2006. The sound of the injunction in the decision:

1. To declare the petition is granted in its entirety;
2. Declare Article 134, Article 136bis, and Article 137 of the Criminal Justice Act contrary to the Constitution of the Republic of Indonesia Year 1945;
3. Declare Article 134, Article 136bis, and Article 137 of the Criminal Justice Act does not have binding legal force;
4. To order the publication of this decision in the Official Gazette as it should be.

Of the ruling of the Constitutional Court Decision Number 013-022 / PUU-IV / 2006 can be seen that Article 134, Article 136bis, and Article 137 of the Criminal Code has been decided not legally binding and automatically place transition arrangements. The transfer of such settings as the consideration of the Constitutional Court considers that the defamation offense against the President and / or Vice President according to the law should be applied Article 310 sd Article 321 of the Criminal Code[Chapter XVI of Book II of the Criminal Code]defamations(beleediging)addressed in his personal qualities, and Article 207 of the Criminal Code in the case of insults addressed to the President and / or Vice President as officials(alsambtsdrager). The provisions in Chapter XVI of the Criminal Code that can be applied as the basis for the prosecution of perpetrators of defamation against the President or Vice President, namely:

Article 310 of the Criminal Code

1. Whoever intentionally attacking the honor or reputation of a person, alleging something means light so that it is generally known, threatened, because pollution, with a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs.
2. If it is done with writings or portraits disseminated, displayed or pasted in public, then the guilty of libel, punishable by a maximum imprisonment of one year and four months or a maximum fine of three hundred rupiahs.

3. Did not constitute slander or libel, if the bright deeds done in the public interest or the necessity for self-defense.

In order to be punished according to article 310 paragraph (1) of this (rail), then the insult that must be done by "accusing someone has done certain acts" with intent charges will be spread (known to many). Allegations above should be done orally, if done in writing (letter) or image, then the crime is called "despised by the letter" and subject to Article 310 paragraph (2). In this case, the crime of insult against the President or Vice President is performed using print media such as newspapers, magazines, newsletters and other print media can be applied rule of law in Article 310 paragraph (2) of the Criminal Code.

The offenses referred to in Article 310 paragraph (1) and (2) of the Criminal Code can not be categorized as criminal offenses, when such actions are carried out "in the public interest" or "forced to defend themselves", so that the actions can not be sentenced. It is stipulated in Article 310 paragraph (3) of the Criminal Code.

Article 311 paragraph (1) of the Criminal Code:

If the crimes of slander or libel, the case is allowed to prove that what is alleged is true, does not prove it and accusations were made contrary to what is known, then threatened for libel, with imprisonment four years old.

This provision relates to Article 310 of the Criminal Code. If in the process of examination is known that what is alleged by the perpetrator is not correct or impute anything else than what he knew, then the criminal provisions that may be subject to the perpetrator is a criminal penalty for libel.

Article 315 of the Criminal Code:

Each insult intentionally that is not slander or libel, committed against a person, whether in public, orally or in writing, and in advance of itself by oral or deed, or by letter and delivered or diterimakan him, threatened for a mild insult, with a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiahs.

If the insult was done by "accusing an act" against a person entered in Article 310 or 311. If any other way, for example by saying: "dog", "asu", "Sundel", "bastard", etc. Sign Article 315 and so-called "mild insult"(eenoudigebelediging).

Article 317 paragraph (1) of the Criminal Code:
Whoever deliberately filed a false complaint or notification to the authorities, either in writing or to be written, about a person that attacked his honor and reputation are threatened due to make a complaint of slander, with a maximum imprisonment of four years.

This provision regulates the prohibition to lodge a complaint or a false notification to the authorities (the authorities in the process of examination of a complaint or notice), namely the Police. Thus it can be seen that the norm of the prohibition set out in this provision is the prohibition to make a complaint or notice to the police on a complaint that is obviously not done by people who complained.

Article 318 of the Criminal Code:

Whoever deed intentionally causing a false allegation against an individual basis that he was doing a criminal act, punishable, because it creates a false allegation, with a maximum imprisonment of four years.

This provision regulates the prohibition to do false or defamatory allegation is on a suspicion that a person has committed a criminal act. For example: P pilfer money / wallet belonging to R. After P take the money in the wallet is then placed in a bag wallet Y. When R represents wallet was missing, P stated that Y are taking, being there in the bag wallet Y.

Drealm defamations addressed to the President or the Vice President as official, then rules that can be applied is Article 207 of the criminal Code: "Whoever willfully in public, orally or in writing insulting an authority or public body in Indonesia, punishable by imprisonment of one years and six months, or at most three hundred rupiahs. "insulted places it is something of power (the power of government bodies) such as: the Governor, the Resident, Police, Regent, Head, etc. Following the Ruling of the Constitutional Court Number 013-022 / PUU-IV / 2006, the President or Vice President is included in the object of Article 207 of the Criminal Code so that it can be understood that the object protected under Article 207 of the Criminal Code has expanded meaning.

Given the criminal act of defamation against the President or Vice President can do cross-country, then you need to know clearly about locus delicti. Because as a sovereign state, Indonesia is required to recognize and respect the sovereignty of other countries based on key aspects of sovereignty under international law.

3.2. Setting out the draft Criminal Code that could be applied in case of insult to the President or Vice-President

3.2.1. Under Law No. 32 of 2002 on
Radio and television are some media that could be abused as a means of committing a criminal act defamation against the President or Vice President. There are several things that must be considered in relation to broadcast content broadcast on radio and television. Some laranganan are set out in Article 36 (5) of the Broadcasting Act. In addition, under the provisions of Article 36 (6) of the Broadcasting Act also stipulates that: "The contents of the broadcast is prohibited deride, humiliate, harass and / or ignore religious values, human dignity Indonesia, or damage international relations."

To every person who violates these provisions, may be subject to punishment as provided for in Article 57 of the Broadcasting Act. To be able to apply the rule in a case, the elements that must be met is to be proven to be a real violation of the provisions, one of which is the relevant provisions of the prohibition of broadcast content set out in Article 36 (5) or Article 36 (6) of the Broadcasting Act. Furthermore, if the broadcast content containing such humiliation is a matter of making it up or do not prove to be real, then the content of the broadcast is reasonably suspected of violating the provisions of Article 36 paragraph (5) letter a Broadcasting Law, which regulates the prohibition of broadcast content that is prohibited defamatory, inflammatory, misleading and / or false.

Indeed, one of the purposes of the provisions of Article 36 paragraph (5) letter a and paragraph (6) of the Broadcasting Act is to protect human dignity Indonesia (people in general). However, since there is no provision which specifically puts the President or Vice President as a subject that is protected in relation to the insult against the President or Vice-President through the broadcast media, the rules in Article 57 jo. Article 36 (5) of the Broadcasting Act and Article 57 jo. Article 36 paragraph (6) of the Broadcasting Act can be applied. It is given that one of the juridical consequences of the Constitutional Court Decision Number 013-022 / PUU-IV / 2006 is affirmative position of President or Vice President to the position of people in general.

3.3. Based on Law No. 11 of 2008 on Information and Electronic Transactions

Presence of the Internet has opened new horizons in human life. The Internet is a space of information and communication that promise through the boundaries between countries and accelerate the dissemination and exchange of knowledge and ideas among scientists and scholars around the world. Nevertheless, the Internet can be abused by Internet users who are not responsible as a means to commit the crimes, one of which is the crime of insult in this case, the President or Vice-President may be the victim of a criminal offense.

UU ITE has set an insult as one of the prohibited act. It is as stated in Article 27 paragraph (3) of the Act ITE: "Any person intentionally and without right to distribute
and / or transmitting and / or make the inaccessibility of Electronic Information and / or Electronic Documents which have a charge of insult and / or defamation. "Given there are no provisions on insult and / or defamation through the media that puts the President or Vice President as a subject is protected, then by law by the Constitutional Court Decision Number 013-022 / PUU-IV / 2006, setting in Article 27 paragraph (3) of the Act ITE can be applied to the crime of insult against the President or the Vice President through the internet. In other words, with regard to the crime of insult against the President or Vice President is done through internet facilities can apply the criminal provisions as they apply to the subject of people in general, as provided in Article 45 paragraph (1) of the EIT.

3.4. Settings insult to the Head of State in Some Countries

1. Netherlands

According to Andi Hamzah in his book entitled "Comparative Criminal Law Some Countries", one of the benefits of studying comparative criminal law is that if a country wanted to revise or develop the new Criminal Code, the easiest way to obtain data on principle, the formulation of the offense and the modern penal system, is to read and compare some of the new Code revised or newly prepared. Indonesia as a country that is in the stage of formation of the Draft Penal Code is deemed necessary to conduct comparative criminal law with several other countries either the country with civil law or commonlaw.

Talking about the rule of law in Indonesia, probably not be removed with the rule of law in the Netherlands. It is considering the principle of concordance which led to the extension of the Dutch law in Indonesia. Examined from the Constitution in the Netherlands, it is known that the Netherlands recognizes their equality before the law. As we know, in Indonesia the rules relating to equality before the law is also regulated in Article 28D (1) Constitution NRI 1945. Although Indonesia and the Netherlands have a common set of equality before the law, these two countries have different perceptions of understanding of the provision.

In connection with the relevant provisions of equality before the law is seen as a "booster" enforceability of the rules of insult against the president or vice president in Indonesia. Because, as has been decided by the Constitutional Court in Constitutional Court Decision No. 013-022 / PUU-IV / 2006, one of the considerations was decided invalidity of setting insult against the President or Vice President in Indonesia is the relevance of Article 28D (1) Constitution NRI 1945 with notch The President or Vice President.
2. Germany

Seen from the provisions in the Constitution of Germany (Grundgesetz für die Bundesrepublik German), it is known that Germany is a country that recognizes the equality law degree before the law (equality before the law). In addition to acknowledging the equality before the law degree, the German state also recognizes and upholds human rights. It is as stated in the German Constitution. One rights (Die Grundrechte) are protected in the Constitution of Germany is the protection of the dignity of human dignity.

In addition to providing protection to citizens, Germany provide protection also against the head of the German state. Such provisions as contained in the Criminal Code of Germany (Deutsches Strafgesetzbuch / German Criminal Code). An insult to the president qualified as crimes that endanger the democratic constitutional state (democratisherechtsstaat). It is stipulated in Section 90 of Title Three of Endangering The Democratic Rule of Law (Gefährdung des demokratischen Rechtsstaates). Section 90 Disparagement of the Federal President.

1. Whoever publicly disparages the Federal President in a meeting or through the dissemination of Writings (Section 11 subsection (3)) shall be punished with Imprisonment from three months to five years.

2. In less serious cases the court in its discretion may mitigate the punishment (Section 49 subsection (2)) if the requirements of Section 188 have not been fulfilled.

3. The punishment shall be Imprisonment from six months to five years if the act constitutes a defamation (Section 187) or if the perpetrator by the act intentionally gives his Support to Efforts against the continued existence of the Federal Republic of Germany of against its constitutional principles.

4. The act shall be prosecuted only with the authorization of the Federal.

From the wording of these provisions can be seen that for every person who degrading president of the federation in a meeting via through the deployment of posts sentenced. In addition to setting a criminal offense relating to malign federal president through a variety of media, from the provisions of Section 90 of the Deutsches Strafgesetzbuch can be seen that Deutsches Strafgesetzbuch also governs related legal rules when degrading acts committed federation president is a slander. It is as set out in subsection (3) of these rules, which is associated also with the rules in Section 187 Defamation Intentional in German Criminal Code. From these provisions, it can be seen that although the German admits degree of equality before the law (equality before the law), the
rule of law in Germany continue to provide special protection for the dignity of the head of the German state, which in this case is the federal president of Germany.

3. Thailand

Against purpose in maintaining the security of the country, Thailand give special arrangements in the Criminal Code of Thailand (the Thai Penal Code). Such term is defined in Book II, Title I Offenses Relating to the Security of the Kingdom. One such title is part of the relevant provisions of offenses against the King, the Queen, the Heir-Apparent and the Regent set out in Chapter I. The relevant provisions of defamation against the head of state of Thailand (insult to the king) stipulated in Section 112 of Thailand Penal Code, which reads: "Whoever, defames, insults or Threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with Imprisonment of three to fifteen years" provisions are intended to protect the dignity of the king, queen, heir and regent of all forms of humiliation, defamation and threats. In addition to the settings in the Thai Penal Code, any government in Thailand has set up a website special that functioned to protect the dignity of the king. This is as reported by the BBC in an article entitled "Thai website to protect the king". Furthermore, in the article explained that on the front page of the site shows that the site is a means for the people of Thailand to show their loyalty to the king by protecting the king of misconceptions about it. So it can be seen in the people's role in protecting the king of Thailand.

3.5. Perpetrators of Criminal Liability insult to the President or Vice President in the Code of Penal

thing to note in the prosecution of criminal responsibility is no / or absence of an error element in the action taken by the perpetrator. For the principle of the liability in criminal law is: Do not be convicted if there are no errors (Geenstraf zonder Schuld; actus non facit reum sist nisi mensrea).

A further element is "above a certain age is able to charge". In determining whether or not an offender can be held criminal liability, the law enforcement agencies need to pay attention to this element. As these elements associated with the age of the perpetrator of a crime that has been specifically regulated in Law Number 11 Year 2012 on Child Criminal Justice System.

The third element is "to have a form of intentional fault or negligence". When linked with the relevant provisions of defamation against the president or vice-president post Constitutional Court Decision No. 013-022 / PUU-IV / 2006, it is known that the
shape of the error in the rule of law is deliberate. It is as stated in Article 310 paragraph (1) of the Criminal Code, which reads: "Whoever intentionally attack the honor or reputation of a ..." Whether or not the element of intent, based on their intention in the mind of the culprit who concretized through action.

The fourth element is "no excuses" in the criminal act. Excuses are the reason that remove errors from the perpetrator of a crime, while the actions remains against the law. So, in terms of the excuses people / perpetrator (subjective). For example, because the culprit was sane or insane that he could not account for his actions (Article 44 of the Criminal Code). The sound of the provisions of Article 44 of the Criminal Code is:

1. Whoever commits acts that are not accountable to him, due to a defect in his soul umbuhnya (gebrekkigeontwikkeling) or impaired due to illness (zikelijkestoring), not convicted.
2. If it turns out that her actions can not be justified due to defects in the growth of his soul or interrupted because of illness, the judge may order that person was added to a mental hospital, a maximum of one year as a time trial.
3. The provisions in paragraph 2 shall apply only to the Supreme Court, High Court and District Court.

Four of these elements apply cumulatively. Thus it can be interpreted that the perpetrator be held criminal liability when all these elements are met. Thus, against the perpetrators of defamation against the president or vice president are addressed to the personal qualities of president or vice-president could be dropped offenses referred to in Chapter XVI of the Criminal Code. The maximum punishment that can be imposed include:

a. Against the evil that threatened because of contamination honor or reputation of a person as stipulated in Article 310 paragraph (1) of the Criminal Code, the length of the criminal that can be imposed is imprisonment for a period of nine months or a maximum fine of three hundred rupiahs ,

b. Against crime punishable as libel under Article 310 paragraph (2) of the Criminal Code, the length of the criminal can be imposed is imprisonment of one year and four months or a maximum fine of three hundred rupiahs.

c. Against crime punishable as libel under Article 311 paragraph (1) of the Criminal Code, the length of which can be imposed punishment is imprisonment for a period of four years.
d. Against crime punishable as a mild insult under Article 315 of the Criminal Code, the length of which can be imposed punishment is imprisonment for a period of four months and two weeks or a maximum fine of three hundred rupiahs.

e. Against crime punishable for committing libel complaint as stipulated in Article 317 paragraph (1) of the Criminal Code, the length of which can be imposed punishment is imprisonment for a period of four years.

f. Against crime punishable because it creates a false allegation under Article 318 paragraph (1) of the Criminal Code, the length of which can be imposed punishment is imprisonment for a period of four years.

Especially for the offenses referred to in Article 311 paragraph (1), Article 317 paragraph (1) and Article 318 paragraph (1) of the Criminal Code may be subject to additional penalty of revocation of certain rights as stipulated in Article 35 paragraph (1) 1st sd 3rd Criminal Code. The rights may be revoked, among others: the right to hold positions in general or a particular position, the right to enter the armed forces and the right to elect and chosen in elections held by general rules.

While against the perpetrators of defamation against the president or vice president who insults addressed to the president or vice president as officials, can be dropped offenses referred to in Article 207 of the Criminal Code. The criminal can be charged to the perpetrator is a maximum of one year and six months, or at most three hundred rupiahs.

Judging by the length of imprisonment and amount of fine that can be imposed on the perpetrators, it is generally seen that the burden of criminal responsibility after the Constitutional Court Decision Number 013-022 / PUU-IV / 2006 is relatively mild. It is considering the criminal sanctions under Article 134 of the Criminal Code is a maximum punishment of six years or a maximum fine of three hundred rupiahs.

Related to criminal responsibility in the crime of defamation against the president or vice president, there is an element other than an error that must be met. The elements are the complaints of the president or vice president who are victims of such crime. It is given that one of the consequences on the shift arrangement juridical defamation against the president or vice-president set out in the Criminal Code is a type of criminal offense under the provisions of the original is now turning into a regular offense to a complaint (Roesli, Heri, & Rahayu, 2017). The shift of the type of offense to the arrangements insult against the president or vice-president set out in the Criminal Code raises juridical consequences, namely the absence of a report from the president or the vice president who are victims of criminal acts of insult against the president or vice-president, then the
offense can not be processed even though the perpetrator has significantly commit such crime.

Another rule that should be considered in the application of laws to prosecute the perpetrators of criminal responsibility insult against the president or vice president is related to the presence or absence of foreign elements in the criminal act. It is given that the rule of law in Indonesia can only be applied to the case that locus delicti this is in Indonesia. So that in applying the rule of law and prosecution of criminal responsibility related to allegations of defamation against the president or vice president conducted by the Australian press (The Courier Mail) that displays a picture of President Joko Widodo with his right hand covered in blood can not be immediately requested criminal liability with the rule of law in Indonesia.

The case of defamation against the president or vice president involving a foreign element in it not only happens once. The Courier-Mail has ever displaying edits Jokowi photo wearing an apron. Photos Jokowi it became part of world leaders edits photos displayed on the front page of issue ahead of the G20 summit in Brisbane, Australia. Jokowi wearing a black cap and plaid shirt depicted as a cook barbecue complete with apron. Right next to the President Jokowi looked South African President Jacob Zuma, who was holding a bottle of beer. US President Barack Obama is pictured shirtless and wearing a swimsuit. Indeed, against the Australian press to do criminal liability prosecution action. However, the rule of law and the legal process used must be guided by the rule of law and the legal process in Australia. Law enforcement of the case would not be easy considering the offense occurred outside the jurisdiction of Indonesia cross-border and foreign elements contained therein.

3.6. Perpetrators of Criminal Liability insult to the President or Vice President outside the Code of Penal

3.6.1. Based on Law No. 32 of 2002 on Broadcasting

In conducting the broadcast, the broadcasting authority to organize owned by broadcasters. It is as stated in Article 1 point 9 of the Broadcasting Act, which reads: "Broadcasters are broadcasting operators, both public broadcasters, private broadcasters, broadcasters, community and broadcasters subscribe in carrying out the duties, functions and responsibilities based on the rules legislation and regulations.

"in relation to accountability in carrying out its duties, Chairman of the legal entity responsible broadcasters in general on broadcasting and shall designate in charge of each program implemented. It is stipulated in Article 54 of the Broadcasting Act. From these provisions can be interpreted that the burden of responsibility in the operation of
broadcast activities lies in the leadership of broadcasters and the legal entity in charge of each program implemented, with his position as a legal subject individual.

Further, when viewed from the criminal provisions in the Broadcasting Law, it can be seen that the legal subjects that may be charged is an individual criminal responsibility, which is in the formulation of the norm referred to as "everyone". In other words can be affirmed that in case of a criminal offense on broadcast activities, which in this case one of them is a criminal act of insult against the president or the vice president, the legal subjects that may be charged as a perpetrator of criminal responsibility is individual.

As for the length of imprisonment and the amount of penalty that may be imposed on perpetrators of criminal acts, which in this case is the crime of defamation against the President is imprisonment and / or criminal penalties in Article 57 of the Broadcasting Act, which reads:

Punishable by imprisonment for a period of 5 (five) years and / or a fine of 1,000,000,000.00 (one billion rupiah) for radio broadcasting and shall be punished with imprisonment of 5 (five) years and / or a fine of 10,000,000,000.00 (ten billion rupiah) for television broadcasting, any person who:

a. violating the provisions referred to in Article 17 paragraph (3);
b. violating the provisions referred to in Article 18 paragraph (2);
c. violating the provisions referred to in Article 30 paragraph (1);
d. violation of the provisions referred to in Article 36 (5);
e. violating the provisions referred to in Article 36 paragraph (6).

Judging from its provisions, the Broadcasting Act does not provide regulations related to the jurisdiction of the applicability of the Broadcasting Act. Thus, to determine the jurisdiction of the provisions in the Broadcasting Law, the provisions referenced are the relevant provisions of the territorial principle as stipulated in the Criminal Code. This raises the juridical consequences in the form of any offense by the broadcasters, which in this case one of them is an insult to the president or vice president to use the broadcast media can only be imposed on any person who commits such offenses in the territory of Indonesia.

3.7. Based on Law No. 11 of 2008 on Information and Electronic Transactions

With regard to the parties may be charged of criminal liability, one of which is the crime of insult and / or defamation [in this case is associated with the president or vice president as a victim in the crime of insult ] by means of the internet, there are two (2) parties may burdened criminal liability. Assessed from the formulation of the criminal
provisions in the Act ITE, 2 (two) parties may be charged of criminal responsibility in insult and / or defamation are people and corporations. What is meant is an individual person, both Indonesian citizens, foreign citizens, as well as legal entities.

Under the provisions of Article 52 paragraph (4) of the Act ITE, a corporation can be burdened with criminal liability for criminal acts in the field of information and electronic transactions.

The offense may be imposed against those who committed criminal acts in the field of information and electronic transactions, one of which is the crime of insult and / or defamation (in this case is associated with an insult against the president or vice president) by means of the internet is:

a. If the legal subject who committed the crime in question is a person, then the offense can be imposed on the subject of the law is imprisonment for a period of 6 (six) years and / or a fine of 1,000,000,000.00 (one billion rupiah), It is stipulated in Article 45 paragraph (1) of the EIT.

b. If the legal subject who committed the crime in question is a corporation, then the punishment can be imposed on the legal subject is of sentences with two-thirds of principal plus criminal. Given the corporation is subject to the law that "lifeless", then the offense can be imposed on corporations who committed the crime in question is simply the imposition of criminal penalties with the addition of two-thirds of the criminal penalties that can be imposed on the legal subjects.

3.8. Perpetrators of Criminal Liability insult to the Head of State in Some Countries

3.8.1. Dutch

Criminal offenses related provisions insult to the head of state in the Netherlands is set in Title II Misdrijven tegen de Koninklijke waardigheid which means crimes against the royal dignity or can be interpreted as an insult to the kingdom, which is precisely regulated in Article 112 and Article 113 of the Wetboek van Strafrecht. The provisions in Article 112 of the Wetboek van Strafrecht expressly provides that an insult to the king spouse, heir to the king, his wife or regent is a crime that is punishable by imprisonment of four years or a fine of four categories. The sound of the provisions of Article 112 of the Wetboek van Strafrecht is: "Opzettelijke belediging van de echtgenoot van de Koning, van de vermoedelijke opvolger van de Koning, van Diens echtgenoot, of van de Regent, wordt gestraft met gevangenisstraf van ten hoogste vier jaren of geldboete van de Vierde categorie.

"Furthermore, in article 113 (1) of the Wetboek van Strafrecht set also an insult to the dignity of the kingdom carried out through distribution or show in public about the
documents or images that contain insults against the king, the pair king, it is likely heir to the king, his wife or the regent shall be punished with imprisonment of one year or a fine of the third category.

From the provisions of Article 112 and Article 113 of the Wetboek van Strafrecht can be seen that the criminal who applied for the insults against the Kingdom of the Netherlands subject to criminal sanctions in the form of imprisonment or fines in specific categories (alternative). The magnitude of the categories of criminal penalties can be imposed, it has been stipulated in Article 23 (4) of the Wetboek van Strafrecht, which reads:

Er zijn zes categorieën:

de eerste categorie, 335 [Red: As of 1 January 2008: 370];
de Tweede categorie, 3350 [Red: As of 1 January 2008: 3700];
de Derde categorie, 6700 [Red: As of 1 January 2008: 7400];
de Vierde categorie, 16 750 [Red: As of 1 January 2008: 18 500];
de Vijfde categorie, 67 000 [Red: As of 1 January 2008: 74 000];
de zesde categorie, 670 000 [Red: As of 1 January 2008: 740,000].

Furthermore, related parties are subject to the criminal sanctions, Wetboek van Strafrecht has set the legal subjects that can be sentenced, one of which is people. Since 1976 is determined as well, that the corporation (legal entity) that is the subject of criminal law. Corporations can be sentenced, which was apparently not possible imprisonment but especially fined.

Related criminal sanctions against legal persons subject in Wetboek van Strafrecht, note also the person's age at the time of committing a crime. Although there are no specific laws against juvenile offenders, but the Dutch Penal Code contains a number of specific provisions in adolescents, especially concerning sanctions that may be imposed on juvenile offenders (section 77a through the Dutch Penal Code 77K). Thus it can be seen that the subject of the law Wetboek van Strafrecht which may be subject to criminal liability (in this case an insult to the monarchy) is the subject of legal persons and corporations.

3.8.2. Germany

Under the provisions of Section 90 of the German Criminal Code it is known that the German Penal Code set separately between insults against the head of the German state (German federal president) with an insult to the subject of legal persons in general. In the provisions of Section 90 (1) German Criminal Code of the prescribed criminal
which could be taken against the perpetrators, namely: "....shall be punished with Imprisonment from three months to five years."

From these provisions can be seen that the German Criminal Code does not provide alternative arrangements criminal types other than imprisonment that may be imposed against the crime of insult against the German federal president. Criminal liability can be imposed on a criminal defamation against the head of the German state (German federal president) is imprisonment of between three months to five years.

When compared with the rules in the Criminal Code, there are different types of crime that can be imposed on the perpetrators of defamation against the president or vice president. Before or after the Constitutional Court Decision Number 013-022 / PUU-IV / 2006, the type of crime that can be applied alternatively, between imprisonment or fined. So that, Judge examining and deciding cases in Indonesia is possible to choose one type of crime between imprisonment or penalty based on various considerations Hakim.

3.8.3. Thailand

In Thailand or Penal Code the Thai Penal Code has regulated the criminal provisions that may be imposed on the criminal contempt / or a crime against dignity, be it against the king, queen, heir and regent, as well as to people in general as a victim. When viewed from the length of imprisonment that may be imposed, a crime against the dignity of the king, queen, heir and regent longer than the dignity of crimes against people in general. In addition, the type of punishment that may be imposed on the crime against the dignity of the king, queen, heir and regent is limited to the imposition of imprisonment. This is different to the type of punishment that can be imposed on crimes against the dignity of people in general, which regulate alternative types of criminal cumulatively between imprisonment and / or fined. It is as stated in one of the provisions in Thailand'section 36 of the Penal Code which sets out terms for crimes against the dignity of people in general.

Whoever, imputes anything to the other person before a third person in a manner Likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation, and shall be punished with Imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both. [underscore author]

From these provisions can be seen that the length of the criminal can be charged to the offender insult to the people in general is a maximum imprisonment of one year and / or a maximum fine of 200,000 Baht.

Offenses referred to in Section 36 of the Penal Code of Thailand is relatively mild when compared with the maximum punishment that can be imposed on the perpetrators
of defamation against the head of state. This is because the provisions of Section 112 of the Penal Code of Thailand which stipulates that the criminal sanctions which can be imposed on the perpetrators insult the king, queen, heir or regent Thailand is imprisonment of between three and fifteen years.

4. CONCLUSION

Constitutional Court Decision No. 013-022 / PUU-IV / 2006, setting an insult against the President or the Vice President addressed the personal qualities become subject to the rules of Chapter XVI of the Criminal Code which regulates contempt towards people in general. In the case of insults addressed to the President or the Vice President as official, the rules used is Article 207 of the Criminal Code. In addition to the Criminal Code, the rules can be applied in the case of defamation against the President or the Vice President also regulated under the Broadcasting Law and the Law on ITE. This arrangement differs from the Criminal Code in the Netherlands, Germany and Thailand who set the rules of contempt of the head of state as its own distinct rules of law with contempt towards people in general.

Legal subjects that may be charged for a criminal offense of criminal responsibility insult against the President or Vice President is an individual (in the Criminal Code and the Law on Broadcasting) as well as individuals and corporations (in UU ITE). As for the types of crime that can be imposed is imprisonment or criminal penalties against individuals, while the offense can be imposed on the corporation is fined. The maximum punishment that can be imposed on the perpetrator, the same as the victim of a crime if the criminal offense is a person in general.

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