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## Legal interpretation will degrade president's martabate and/vice president in achieving legal satisfaction

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**Abstract.** In the life of a state, legal certainty plays an important role because it's interpreted as the strength of the real law. The existence of the principle of legal certainty is a form of protection for justice seekers against arbitrary actions, which means that a person will and can obtain something that is expected under certain circumstances. Based on the introduction, the formulation of the problem is whether the obscurity of the phrase "misconduct" contradicts Article 28D of the 1945 Constitution of the Republic of Indonesia concerning fair legal certainty and equal treatment before the law? This research uses legal research and uses a law approach and legal interpretation. In interpreting the phrase degrading the President and / or Vice President's dignity, what is needed is an understanding of morals and moral awareness itself. This understanding is important to create good definitions and strengthen legal certainty.

**Keywords.** interpretation, dignity, despicable

### Introduction

In the life of a state, legal certainty plays an important role because it's interpreted as the strength of the real law. The existence of the principle of legal certainty is a form of protection for justice seekers against arbitrary actions, which means that a person will and can obtain something that is expected under certain circumstances. <sup>1</sup> Van Apeldoorn said that legal certainty has two aspects, namely the determination of law in terms of concrete and legal security. <sup>2</sup> This means that the party seeking justice wants to know what is the law in a particular matter before he starts the case and protects justice seekers.

Such a definition makes legal certainty must be achieved in state life. Meanwhile, when legal certainty has not been realized, the existence of legal norms must be continuously improved. The same thing is found in Article 10 paragraph (3) letter d of the Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316) where the phrase "reprehensible acts" as acts that can

<sup>1</sup> Ronald Dworkin, Frank Henry Sommer, and Emeritus, 'Justice for Hedgehogs', in *Boston University Law Review*, 2010 <<https://doi.org/10.1215/00318108-2749760>>.

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demean the President and/or the Vice President. The phrase "demeaning the President and/or Vice President" makes the President and/or Vice President not get legal certainty when getting indicted.

The indictment of the President and/or Vice President so that the President and/or Vice President are subject must be dismissed from his term of office without any clear criteria in accordance with Article 7 of the 1945 Constitution of the Republic of Indonesia. Therefore anyone can interpret the meaning of disgraceful acts without see who did it but leads to meaning that suits his heart's desire.

Despicable acts in public understanding are very biased because they are very difficult to formulate their meanings. For this reason, this paper takes the theme of the interpretation of the law on misconduct.<sup>3</sup>

### **Formulation of The Problem**

Based on the introduction, the formulation of the problem is whether the obscurity of the phrase "misconduct" contradicts Article 28D of the 1945 Constitution of the Republic of Indonesia concerning fair legal certainty and equal treatment before the law?

### **Research Methods**

This research uses legal research and uses a law approach and legal interpretation.<sup>4</sup>

### **Discussion**

#### **Legal Certainty in the Process of Dismissing the President and / or Vice President**

The patterns of legal reasoning are very much influenced by the point of view of the subjects making the reasoning. This point of view then leads to juridical thinking orientation, which is in the form of models of reasoning in the discipline of law, especially as it's widely known as schools of legal philosophy. What is meant by point of view is the subjective background of a juridical thinking orientation framework. This paper will discuss one pattern of legal reasoning with the view point of legal positivism flow.<sup>5</sup>

Legal Positivism Reasoning comes from the flow of positivism. Postivism itself was born and matured by major changes that occurred in European society, especially after the outbreak of the Industrial Revolution in England and the bourgeois revolution in France in the mid-18th century. The domination of royal and church power as an old regime of knowledge (epistemology) in Europe began to be sued, everywhere thought emerged which proved the mistaken thinking of monks and kings and sought essential truths. The positivist meaning said by Comte in this stage can be interpreted in 5 (five) possibilities, namely:

- a. As opposed to imaginary opposites, positive is defined as the realification of something real.
- b. As opposed to the opposite of something that is not useful, then a positive understanding is defined as the nature of something useful.
- c. As opposed to the opposite of something that is doubtful, then a positive understanding is defined as the circumcision of something that is certain.
- d. As opposed to something that is vague, a positive understanding is a defined as a clear or precise nature.

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<sup>3</sup> Tomy Michael, 'ESENSI ETIKA DALAM NORMA PEMBERHENTIAN PRESIDEN DAN/ATAU WAKIL PRESIDEN', *DiH: Jurnal Ilmu Hukum*, 2015 <<https://doi.org/10.30996/dih.v11i22.2233>>.

<sup>4</sup> Tomy Michael, 'RIGHT TO HAVE RIGHTS', *Mimbar Keadilan*, 2017, 106 <<https://doi.org/10.30996/mk.v0i0.2203>>.

<sup>5</sup> Fithriatus Shalihah and Oksep Adhayanto, 'HUKUM, MORAL, DAN KEKUASAAN DALAM TELAHAH (Hukum Adalah Alat Teknis Sosial)', *FIAT JUSTISIA*, 2017 <<https://doi.org/10.25041/fiatjustisia.v10no4.735>>.

e. As opposed to the opposite of something negative, then positive understanding is used to show the characteristics of philosophy, which always leads to the arrangement or order.<sup>6</sup>

This legal certainty becomes important because when the indictment is made to the President and / or Vice President, it will adjust to Article 28 of the 1945 Constitution of the Republic of Indonesia that the legal certainty is fair and equal treatment before the law. Fair treatment in the future will make the indictment more appropriate so that it doesn't display it's own interpretation.

### **Interpretation of the Law Will Demean**

In interpreting, there needs to be a good understanding of the intended text. Based on this, it will make interpretation more objective, the interpretation of the law in this paper uses the thought of Hans Georg Gadamer where the problem is meant is how to explain something with a scientific concept. That every revision can project before a new meaning. Fundamental needs must be seen as radicalization of a procedure that is in reality. Each text explains the task, not only does it use untested use of linguistics but must understand the meaning of the author himself.<sup>7</sup>

Of course, understanding the phrase degrading the dignity gives rise to many meanings beginning with a bad attitude according to a place, a good attitude but influenced by bad circumstances or the mixing of third parties.<sup>8</sup> The task of interpretation is automatically to question something and part of it is always determined by things that cannot be interpreted correctly. Prejudice does not mean a false consideration but part of an idea where it has positive and negative values.

Paying attention to the concept of society and nature is a romantic concept because when interpreting it, the related community can understand it.<sup>9</sup> For example, the definition of a despicable act as a condition for candidates for President and/or Vice President is never to have committed acts that are contrary to religious norms, moral norms and customary norms such as gambling, drinking, drug addicts and adultery. Such a detailed definition is very contrary to the definition when a person has become the President and/or Vice President who is only interpreted as degrading his dignity.

The problem of interpretation method is determined by the object which refers to the opinion of Aristotle must refer to moral and moral awareness.<sup>10</sup> When definitions are made firmly the President and/or Vice President must understand the moral meaning. Does someone have moral awareness or just know the moral meaning without implementing it.

Researchers take an example in the community related to the phrase "demeaning", a child (12 years old/Alfi) in Bondowoso did not lend his bicycle to his friend, resulting in a fight. From the fight, the child who failed to borrow Alfi's bicycle finally complained to his parents by crying. In the end his parents who worked as police kicked his shins and tweaked Alif's nose so that it was hard to breathe. The incident according to AKBP Sabilul Alif (Bonwodoso Police Chief) that the Police were considered to have taken actions that lowered the status and dignity

<sup>6</sup> Wely Dozan and Rohimi Rohimi, 'LOGIKA PENEMUAN ILMIAH TEORI (POSSITIVISME LOGIS) AUGUST COMTE', *Kontemplasi: Jurnal Ilmu-Ilmu Ushuluddin*, 2019 <<https://doi.org/10.21274/kontem.2019.7.2.190-211>>.

<sup>7</sup> Paul Regan, 'Hans-Georg Gadamer's Philosophical Hermeneutics: Concepts of Reading, Understanding and Interpretation', *Meta*, 2012.

<sup>8</sup> Jurgen Reeder and Jurgen Reeder, 'A Theory of Reflection: The Hermenutic Circle', in *Reflecting Psychoanalysis*, 2018 <<https://doi.org/10.4324/9780429479458-4>>.

<sup>9</sup> Liky Faizal, 'Sosiologi Hukum Dalam Paradigma Sosial', *Tapis*, 2009.

<sup>10</sup> Rhett Diessner and others, 'Who Engages with Moral Beauty?', *Journal of Moral Education*, 2013 <<https://doi.org/10.1080/03057240.2013.785941>>.

of the police.<sup>11</sup> It will unilaterally lead to various interpretations of the phrase "reprehensible acts", which also contradicts the principle of *nullum delictum nulla poena sine praevia lege poenali* (an act cannot be convicted before a rule governs it).

This creates a legal conflict where the President and/or Vice President do not get legal certainty in defending themselves if exposed to charges from the House of Representatives. The defense takes place when the President and/or Vice President are given the opportunity in the plenary meeting of the People's Consultative Assembly to submit an explanation. The indictment will create injustice for the President and/or Vice President. Another thing, the absence of a clear definition of the phrase "misconduct" raises various interpretations but not in the various interpretations which is the main problem because the interpretation can be limited when the norm can be well defined through in-depth study. There are several examples that there will be no clear definition of misconduct, including the President allegedly committing misconduct by raising BPJS Health fees in the midst of the Covid-19 pandemic. It is indeed ironic, because the Indonesian people are suffering and suffering from the corona virus outbreak, in fact the government (president) raised the BPJS Health fees,<sup>12</sup> and the Budi Gunawan Case which was approved by the Indonesian Parliament to become the National Police Chief. In this case, the next step is to leave the president immediately inaugurating BG. "If the BG is not inaugurated, it means the president is harassing the House of Representatives of the Republic of Indonesia institutionally," Margarito said in the constitutional legal process, after the approval from the House had been issued, the BG had the right to be appointed. Meanwhile, Jokowi has the obligation to install. "If it is not inaugurated it means that it is categorized as a legally despicable act."<sup>13</sup>

Until now, including the phrase "norms of decency and customary norms such as gambling, drunkenness, drug addicts and adultery" also creates injustice.

The norms of decency and customary norms must be removed as indicators of the phrase "despicable acts" for candidates for President and/or Vice President. The reason for refusing to include moral norms as an indicator is because measuring moral norms is not just based on one's religion or beliefs, but the environment and customs also influence it. One example in Chapter V: 28 Indjil Mattioes, the meaning of adultery is written:

*Tĕtapi acoe bĕrkata kapadamoe, bahwa barang-siapa jang mĕmandang sa'orang pĕrampoewan sĕrta dĕngan inginja akandia, ija-itoe soedah bĕrboewat zina' dĕngan dia dalam hatinja.*<sup>14</sup>

In Indonesian, it's written in Matthew 5:28:

*But I say to you: Everyone who looks at a woman and wants her has already committed adultery with her in his heart.*<sup>15</sup>

In this case, the purpose of adultery refers to the human relationship to God and the consequences are personally bound. Regarding adultery, Joseph Sudarminta divides basic moral principles into the principle of good attitude (where an obligation to want the good by trying to do good and avoid evil), the principle of not doing evil/damaging/harming (good attitude towards everything that exists, and especially those who we meet or face, at least

<sup>11</sup> Eko/esb/JPNN/c23/bh, *Aniaya Siswa SD, Kapolsek Dicot, Jawa Pos.*

<sup>12</sup> <https://serikatnews.com/isu-pemakzulan-presiden-di-tengah-pandemi-covid-19/> accessed Juli, 19, 2020.

<sup>13</sup> Bay Hermawan, Margarito: Ikuti Rekomendasi Tim 9, Jokowi Lecehkan DPR, Margarito: Ikuti Rekomendasi Tim 9, nasional.republika.co.id/berita/nasional/hukum/15/01/29/nixjkm-margarito-ikuti-rekomendasi-tim-9-jokowi-lecehkan-dpr, accessed Juli, 19, 2020.

<sup>14</sup> Wasiat Jang Bĕharoe Ija-Itoe Sĕgala Kitab Pĕrdjandjian Bĕharoe, (Amsterdam, 1902), p. 28 dan F Budi Hardiman, *Melampaui Positivisme dan Modernitas (Diskursus Filosofis Tentang Metode Ilmiah dan Problem Modernitas)*, (Yogyakarta: Kanisius, 2003).

<sup>15</sup> Lembaga Alkitab Indonesia, *Alkitab Deuterokanonika*, (Jakarta: 2006), p. 5.

require us not to do evil, harm or damage the good that exists, the principle of doing good (in choosing actions, we need to pay attention to the benefits for all parties involved and choose actions which will bring good consequences which are greater than the bad ones), the principle of justice (giving everyone what they are entitled to and containing demands for everyone in the same situation to be treated equally) and the principle of autonomy (the principle of respecting human freedom to choose, determine self and act without coercion from outside himself).<sup>16</sup>

### Conclusion

In interpreting the phrase degrading the President and/or Vice President's dignity, what is needed is an understanding of morals and moral awareness itself. This understanding is important to create good definitions and strengthen legal certainty.

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<sup>16</sup> J Sudarminta, *Etika Umum*, (Yogyakarta: Kanisius, 2013), p. 170-175.

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