

The Constitutional Position of the President in Restorative Justice Mechanisms for Presidential Defamation Offenses

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Abstract

The criminalization of presidential defamation under Indonesian law raises constitutional concerns regarding the balance between protecting the dignity of the Head of State and safeguarding freedom of expression. The enactment of the new Indonesian Criminal Code reintroduces presidential defamation as a complaint-based offense, creating opportunities for restorative justice while simultaneously raising questions about the constitutional role of the President in such proceedings. This study examines the constitutional position of the President within restorative justice mechanisms for presidential defamation offenses and evaluates its implications for legal certainty, equality before the law, and the protection of constitutional rights. Employing a normative legal research method with statutory, conceptual, and constitutional approaches, the study analyses relevant constitutional provisions, criminal legislation, judicial decisions, and legal doctrines. The findings demonstrate that the President, although acting as the complainant, remains a constitutional office holder whose legal standing differs from that of an ordinary individual, thereby requiring restorative justice to be implemented in a manner consistent with constitutional principles, public accountability, and the public interest. The study concludes that restorative justice offers a balanced approach to resolving presidential defamation cases, provided that its application is guided by clear legal standards that preserve constitutional values, prevent political misuse, and ensure equal protection of the law.

Introduction

Infrastructure The protection of individual dignity and reputation has long been recognized as a legitimate objective of criminal law.¹ However, when defamation concerns a head of state, the legal regulation becomes more

¹ R A Duff, *The Realm of Criminal Law* (Oxford University Press, 2020).

complex because it involves not only the protection of personal honor but also constitutional principles such as freedom of expression, equality before the law, and democratic accountability. In constitutional democracies, the criminalization of presidential defamation remains a contested issue,² as excessive legal protection may restrict public criticism of government officials, whereas insufficient protection may undermine the authority and dignity of the state.

In Indonesia, the regulation of presidential defamation has undergone significant legal and constitutional development. The former provisions criminalizing insults against the President and Vice President were declared unconstitutional by the Constitutional Court through Decisions No. 013-022/PUU-IV/2006 and No. 6/PUU-V/2007, which held that granting special criminal protection to the President was inconsistent with the constitutional principles of equality before the law and freedom of expression. Nevertheless, the enactment of Law No. 1 of 2023 on the Indonesian Criminal Code reintroduced presidential defamation as a complaintbased offense allowing prosecution only upon a complaint submitted personally by the President or Vice President.³ This legislative reform reflects an attempt to balance the protection of state dignity with constitutional guarantees of civil liberties.

The transformation of presidential defamation into a complaintbased offense also creates opportunities for the application of restorative justice, a dispute resolution model that emphasizes dialogue, reconciliation, and the restoration of social harmony rather than punitive sanctions.⁴ In recent years, restorative justice has become an important component of Indonesia's criminal justice policy, particularly following the issuance of regulations by the Supreme Court, the Attorney General's Office, and the National Police encouraging non punitive settlement of eligible criminal cases.⁵ Nevertheless, the application of restorative justice to presidential defamation raises a fundamental constitutional question regarding the legal position of the

² Eric Barendt, *Freedom of Speech*, 3rd ed. (Oxford University Press, 2021).

³ Dibi Vation Manik et al., "Reform of Indonesian Criminal Law Reviewed From Law Number 1 of 2023 About the Criminal Code," *International Journal of Sociology and Law* 2, no. 1 (2025), <https://doi.org/10.62951/ijsl.v2i1.330>; Aris Hardinanto et al., "Critical Analysis of Living Law Formulation in Law No. 1 of 2023 Concerning the Criminal Code: Towards Law Reform to Realize Justice with the Spirit of Pancasila," *Journal of Law and Legal Reform* 5, no. 3 (2024), <https://doi.org/10.15294/jllr.v5i3.13923>.

⁴ Sukardi Sukardi and Hadi Rahmat Purnama, "Restorative Justice Principles In Law Enforcement And Democracy In Indonesia," *Journal of Indonesian Legal Studies* 7, no. 1 (2022), <https://doi.org/10.15294/jils.v7i1.53057>; Dian Ekawaty Ismail et al., "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024), <https://doi.org/10.22219/ljih.v32i2.35374>.

⁵ Supriansa et al., "THE ESSENCE OF RESTORATIVE JUSTICE IN THE DEVELOPMENT OF INDONESIAN LAW," *Revista de Gestao Social e Ambiental* 18, no. 8 (2024), <https://doi.org/10.24857/rgsa.v18n8-025>.

President within the reconciliation process. Unlike ordinary complainants, the President simultaneously functions as an individual whose personal reputation is allegedly harmed and as the holder of a constitutional office representing the state.⁶ This dual capacity creates uncertainty regarding whether presidential participation in restorative justice should be treated as a private legal matter or as an exercise of constitutional authority.⁷

Previous studies have predominantly examined presidential defamation from the perspectives of constitutional law, criminal law, or freedom of expression. Other scholars have explored restorative justice as an alternative approach to resolving criminal cases. However, limited attention has been given to the constitutional implications of integrating restorative justice into presidential defamation cases, particularly regarding the President's constitutional standing, the scope of prosecutorial discretion, and the compatibility of restorative justice with democratic constitutional principles following the enactment of the new Criminal Code.

Accordingly, this study examines the constitutional position of the President within restorative justice mechanisms for presidential defamation offenses under Indonesian law. It analyses whether the President's status as both a constitutional office holder and a complainant affects the implementation of restorative justice and evaluates how such mechanisms can be applied without compromising constitutional values, equality before the law, freedom of expression, and legal certainty. By integrating constitutional theory, criminal law, and restorative justice principles, this study contributes to the ongoing discourse on balancing the protection of state institutions with the preservation of democratic rights in Indonesia.

Methods

This study employs a normative legal research method to examine the constitutional position of the President in the implementation of restorative justice mechanisms for presidential defamation offenses under Indonesian law. The research adopts statutory, conceptual, and constitutional approaches. The statutory approach analyses relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 2023 on the Indonesian Criminal Code, Law No. 11 of 2021 concerning amendments to the Public Prosecutor's Office Law, Supreme Court Regulation No. 1 of 2024 on Criminal Case Resolution Based on Restorative Justice, and other regulations governing restorative justice and criminal procedure. The conceptual approach examines legal doctrines relating to constitutionalism,

⁶ Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2022).

⁷ Jimly Asshiddiqie, *Constitutional Law of Indonesia* (Konstitusi Press, 2021).

restorative justice, equality before the law, and freedom of expression, while the constitutional approach evaluates the President's legal position as both the Head of State and a complainant in presidential defamation cases. The study relies on primary legal materials consisting of legislation, Constitutional Court decisions, and judicial precedents, supported by secondary legal materials including books, scholarly journals, and legal commentaries. All legal materials were collected through library research and analysed qualitatively using grammatical, systematic, historical, and teleological interpretation to assess the coherence of the legal framework and formulate normative recommendations for the implementation of restorative justice in presidential defamation cases.

Results and Discussion

Constitutional Position of the President in Presidential Defamation Offenses

Administrative The constitutional position of the President in Indonesia differs fundamentally from that of an ordinary citizen because the President simultaneously serves as the Head of State and the Head of Government under the 1945 Constitution. This dual constitutional status has significant implications for the regulation of presidential defamation.⁸ While every individual has the right to legal protection of dignity and reputation, the President also represents the constitutional authority of the state. Consequently, legal protection against presidential defamation must be interpreted within the broader framework of constitutional democracy, equality before the law, and the protection of fundamental rights.⁹

The Constitutional Court significantly reshaped this legal framework through Decisions No. 013-022/PUU-IV/2006 and No. 6/PUU-V/2007, which declared the previous provisions criminalizing insults against the President unconstitutional. The Court reasoned that granting extraordinary criminal protection exclusively to the President violated the constitutional principle of equality before the law and risked suppressing freedom of expression in a democratic society.¹⁰ Nevertheless, Law No. 1 of 2023 on the Indonesian Criminal Code reintroduced presidential defamation as a complaintbased offense, limiting prosecution to cases initiated personally by

⁸ Asshiddiqie.

⁹ Jimly Asshiddiqie, *Omnibus Law Dan Penerapannya Di Indonesia* (Jakarta: Konstitusi Press, 2021).

¹⁰ Muhammad Reza Winata et al., "Criminal Legal Policy And Unconstitutionality On Contempt Of Ruler Or Public Body," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020), <https://doi.org/10.25216/jhp.9.1.2020.71-98>; Tryan Zaki Aulia Yanis et al., "The Unconstitutionality of the Offence of Insulting the Government in the 2023 Criminal Code: A Critical Review of Freedom of Expression," *As-Siyasi: Journal of Constitutional Law* 5, no. 1 (2025), <https://doi.org/10.24042/as-siyasi.v5i1.24739>.

the President or Vice President. This reform reflects a constitutional compromise by recognizing the President's right to seek legal protection while preventing arbitrary criminal prosecution initiated by third parties.¹¹

Although the complaint mechanism strengthens procedural safeguards, it also confirms that presidential defamation remains a criminal offense involving public interests rather than a purely private dispute. Therefore, the President's constitutional position cannot be equated entirely with that of an ordinary complainant, requiring constitutional limitations on the exercise of criminal law to preserve democratic accountability and public trust.

Restorative Justice in Presidential Defamation Cases

Restorative justice has become an important component of Indonesia's criminal justice policy, emphasizing reconciliation, dialogue, and the restoration of social harmony instead of punitive sanctions. The complaint-based nature of presidential defamation creates legal opportunities for resolving disputes through restorative justice before criminal proceedings progress to trial. This approach is consistent with the broader objectives of criminal law reform, which increasingly prioritize proportionality, social reconciliation, and efficient dispute resolution.¹²

However, applying restorative justice to presidential defamation presents distinctive constitutional challenges¹³. Unlike ordinary victims, the President performs constitutional functions that transcend personal interests. Consequently, any reconciliation process must consider not only the restoration of the President's personal dignity but also the preservation of public confidence in constitutional institutions. Restorative justice should therefore be implemented transparently, voluntarily, and without political influence, ensuring that the process serves constitutional values rather than personal or governmental interests.

From a constitutional perspective, restorative justice should not function as a mechanism for restricting legitimate criticism of public officials. Democratic societies recognize that public office holders are subject to broader public scrutiny than private individuals. Accordingly, restorative justice in presidential defamation cases should distinguish between malicious

¹¹ Rommy Patra, "PERAN MAHKAMAH KONSTITUSI SEBAGAI PENGAWAL DEMOKRASI DI INDONESIA," *Jurnal Komunikasi Hukum (JKH)* 8, no. 2 (2022), <https://doi.org/10.23887/jkh.v8i2.51180>.

¹² Gerry Johnstone and Daniel W Van Ness, *Handbook of Restorative Justice* (Routledge, 2021).

¹³ Lode Walgrave, *Restorative Justice, Self-Interest and Responsible Citizenship* (Routledge, 2022).

attacks on personal dignity and constitutionally protected criticism directed at governmental policies or political performance.

Constitutional Implications and the Ideal Restorative Justice Model

The BOT The implementation of restorative justice in presidential defamation cases requires a constitutional framework that balances the protection of state dignity with the preservation of democratic freedoms. Although Law No. 1 of 2023 establishes presidential defamation as a complaint-based offense, it provides limited guidance regarding the President's constitutional role within restorative justice proceedings.¹⁴ This normative gap creates uncertainty concerning prosecutorial discretion, mediation procedures, and the legal consequences of reconciliation.

The study finds that restorative justice should be applied only where the alleged conduct primarily affects the President's personal reputation and where reconciliation can genuinely restore the relationship between the parties without compromising constitutional governance. Cases involving public criticism expressed in good faith, political debate, academic discussion, or journalistic reporting should continue to receive constitutional protection under the principles of freedom of expression and democratic participation.¹⁵

Accordingly, an ideal restorative justice model should incorporate several constitutional safeguards. First, participation must remain entirely voluntary and initiated through the President's personal complaint. Second, prosecutors and law enforcement authorities should conduct constitutional assessments to distinguish protected public expression from unlawful personal defamation. Third, mediation procedures should be transparent, impartial, and free from political intervention. Finally, implementing regulations should clearly define the legal position of the President within restorative justice mechanisms to ensure consistency, legal certainty, and equal protection of the law. Such a framework would enable restorative justice to function as a constitutional instrument that simultaneously protects individual dignity, strengthens democratic accountability, and upholds the rule of law.

Conclusions

This study concludes that the constitutional position of the President in restorative justice mechanisms for presidential defamation offenses is unique because the President simultaneously acts as an individual complainant and

¹⁴ Mattias Kumm, "Constitutionalism and the Rule of Law," in *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, 2021).

¹⁵ Venice Commission, "Rule of Law Checklist" (Council of Europe, 2021).

as a constitutional office holder representing the state. The reclassification of presidential defamation as a complaint-based offense under Law No. 1 of 2023 reflects an effort to reconcile the protection of the President's dignity with the constitutional principles of equality before the law and freedom of expression. Nevertheless, the implementation of restorative justice in such cases requires a constitutional approach that distinguishes personal defamation from legitimate public criticism and ensures that criminal law is not used to suppress democratic participation. The study finds that restorative justice can serve as an appropriate mechanism for resolving presidential defamation cases, provided that it is implemented voluntarily, transparently, and consistently with constitutional values, judicial independence, and the rule of law. Accordingly, clearer implementing regulations are required to define the President's constitutional role within restorative justice proceedings, establish objective criteria for determining eligible cases, and provide procedural safeguards that guarantee legal certainty, protect fundamental rights, and prevent the misuse of criminal law for political purposes.

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