

## **ANALYSIS OF CRIMINAL CONVICTIONS OF PERPETRATORS OF UNPLEASANT ACTS**

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### **ABSTRACT**

This study aims to find out and analyze the criminal punishment of perpetrators of unpleasant acts. As well as knowing and analyzing the analysis of criminal convictions against perpetrators of unpleasant acts (decision study number: 386 / pid.b / 2013 / pn.rhl). This research is a type of normative research so it can be known that this article can become a rubber article if there is no measure of the extent to which the insult judgment can occur. So the measure is very subjective and based only on the assessment of victims, investigators, and public prosecutors alone.

**Keywords:** *Criminal, Unpleasant Acts, Court Verdict*

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### **INTRODUCTION**

The crimes that occur today show that they are increasingly inhumane. Crime as a problem of social phenomena remains influenced by various aspects of life in society, such as political, economic, social, and cultural as well as matters related to state defense and security efforts.

The development of crime corresponds to the development of science and technology. Indonesia is a state of law in accordance with Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (Constitution of the Republic of Indonesia Year 1945 Article 1 paragraph (3)) (Indonesia, 2020).

It means that one of the meanings and purposes of law is to have legal certainty in order to create order and comfort. Indonesia is a developing country that is carrying out development in all fields, one of which is the field of law. In carrying out the law enforcement order in Indonesia, there is a system known as the legal system. The system is one of the basic guidelines for the implementation of a government in the state.

According to the subject, definition of the legal system is an orderly arrangement or order, a whole consisting of parts related to each other (Djamali, 2013). Similarly, the Criminal Code (KUHP) in Indonesia applies the Criminal Code to perpetrators of violations and crimes as punishment or sanctions for those who are a form of responsible for actions.

In addition to the Criminal Code, there are still many criminal acts or offenses regulated outside the Criminal Code which are certainly related to each other (S. H. Moeljatno, 2021). With this rule, in addition to preventing and minimizing crime, it can also help law enforcers to process in accordance with the existing legal basis. Unpleasant acts referred to in Article 335 paragraph (1) of the Criminal Code in its implementation are considered rubber articles, because explaining the meaning of unpleasant acts is very subjective depending on each individual.

So that the Constitutional Court issued Decision Number: 1 / Puu-Xi / 2013 concerning the phrase unpleasant acts, so that in Article 335 paragraph (1) of the Criminal Code the phrase

unpleasant acts was removed and Article 335 paragraph (1) point 1 of the Criminal Code can be applied when fulfilling elements with threats or violence only (Natamenggala, 2018). Unpleasant deeds have been researched and discussed in several previous research results. Dimas Indra Swadana (Swadana, 2014) discusses the juridical implications of removing the phrase "something else or unpleasant treatment".

In article 355 of the Criminal Code paragraph (1) point 1 by the Constitutional Court Decision, because the formulation cannot be measured objectively and causes legal uncertainty and injustice. Muhammad Alriezki Natamenggala (Natamenggala, 2018) strengthens research from Swadana. Natamenggala stated that the removal of the phrase "unpleasant acts" is a very effective measure because it limits the use of Article 335 paragraph (1) of the Criminal Code so that it cannot be misused.

A similar study was also examined by Harry A Tuhumury (Tuhumury, 2015), but from a different side. Tuhumury found that the impact of removing the phrase "unpleasant deeds". From Article 335 paragraph (1) of the Criminal Code, a person who feels aggrieved by an unpleasant offense can no longer be processed because there is no legal basis (based on the principle of legality).

Based on the background of the problem that has been described, the formulation of the problem in this study is as follows:

1. How is the punishment of perpetrators of unpleasant acts?
2. What is the analysis of criminal convictions for perpetrators of unpleasant acts (verdict study number: 386/pid.b/2013/pn.rhl)?

The purpose of this study is in accordance with the formulation of the problem that has been put forward. Therefore the research objectives are:

1. Knowing the criminal conviction of perpetrators of unpleasant acts.
2. Knowing the analysis of criminal convictions against perpetrators of unpleasant acts (decision study number: 386 / pid.b / 2013 / pn.rhl).

## **METHOD**

The research method used in this study is the normative legal research method. Normative legal research is legal research conducted by examining library materials or secondary data (Soekanto, 2007). According to Peter Mahmud Marzuki (Marzuki, 2010), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

In this type of legal research, often the law is conceptualized as what is written in laws and regulations or the law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate (Amiruddin, 2012).

## **RESULTS AND DISCUSSION**

### **A. Criminal Conviction of Perpetrators of Unpleasant Acts**

The definition of criminal acts in the Criminal Code (KUHP) is known as *strafbaar feit* and in literature on criminal law often uses the term *delict* which comes from Latin *delictum* (Hamzah, 2008).

Criminal acts or offenses are actions prohibited by the rule of law and anyone who violates the prohibition is subject to criminal sanctions (Suharto, 1991).

The elements of criminal acts according to ( K. Moeljatno & Criminology, 1987) consist of acts (human), which meet the formulation in the law (formal requirements), are unlawful (material requirements).

The types of offenses consist of Crimes and Offences, Dolus and Culpa offenses, Commissionis and Commissionist offenses, Formil and Material offenses, Ordinary and Qualified offenses, Pure and Complaint offenses and Completed offenses and Continuing offenses.

The formulation of Article 335 paragraph (1) of the Criminal Code requires the fulfillment of two elements, namely "using violence" or "threats of violence. See the formulation of the core part of the delik (delicts bestanddelen).

Then we can see that the criminal act is in the form of perpetrators (whose goods), the form of action is to force, tell people to do / not do something, so that the person does / or does not do something against his will, the object is the person, done unlawfully.

These unpleasant acts are regulated in Chapter XVIII on Crimes Against the Liberty of Persons, and Article 335 of the Criminal Code is more detailed about unpleasant acts.

In this event, usually this unpleasant offense can only be tried or processed when there is a complaint from someone who feels aggrieved.

Criminal law policy cannot be separated from the criminal law system. This is in accordance with what Marc Ancel said that every organized society has a criminal law system consisting of criminal law regulations and sanctions, a criminal law rule and a criminal implementation procedure (Budiman, 2006).

The juridical implication of the amendment to article 335 of the Criminal Code paragraph (1) point 1 concerning unpleasant acts by the Constitutional Court based on decision Number: 1 / PUUXI / 2013 concerning the Elimination of the Phrase Unpleasant Acts is motivated because in Article 335 of the Criminal Code there is an element of "unpleasant acts".

This element of unpleasant acts is what makes this article flexible so that it can be used to ensnare all criminal acts. The maker can be detained based on Article 21 paragraph (4) point b of the Code of Criminal Procedure (KUHAP).

Article 335 of the Criminal Code can be used to prosecute almost all acts, so that legal practitioners who call this rubber article the formula reads: Threatened with imprisonment for a maximum of one year or a maximum fine of three hundred rupiah:

"1st: whoever unlawfully compels another person to do or condone something, by the use of force, any other act or unpleasant treatment, or by the use of threats of violence,

something else or unpleasant treatment, either towards oneself or others. 2nd: whoever compels others to do, not do or condone anything under threat of desecration or defilement".

In the case of the 2nd explained, the crime is prosecuted only on the complaint of the affected person. (Penal Code, 1981) Article 335 paragraph (1) of the Criminal Code requires the fulfillment of two elements, namely "using violence" or "threats of violence".

As mentioned above, why the problem of unpleasant acts is included in the Criminal Code, which concerns the independence of people, can also be seen from the value of the legal philosophy contained in it can be interpreted as so that there are no retaliatory acts or vigilante acts 5 (eigenrechting).

What happens between perpetrators and victims, positive law creates a way to create a balance, namely to neutralize these unpleasant feelings, it is necessary to intervene in the intermediary institution, namely the judiciary, so that the weak party is protected, and the strong party is awakened (Kantjai, 2016).

When referring to the Big Dictionary, the closest Indonesian defines persecution is Article 335 paragraph (1) point 1 of the Criminal Code (KUHP) which states that:

"Whoever unlawfully compels another person to do, not do or condone anything by the use of force or by the use of threats of violence either against himself or others".

Based on the statement above, Article 335 of the Criminal Code is closely related to the definition of persecution contained in the Big Indonesian Dictionary (KBBI) that persecution is an arbitrary / persecutory act and the act is against the law.

Article 335 of the Criminal Code contains elements unlawfully, coercing, to do, not to do or allowing something, and by using violence (Aulia, 2018).

Article 335 paragraph (1) to 1 of the Penal Code, as far as the element of "other acts" and the element of "unpleasant acts" are elements that do not provide legal certainty.

The element of "other acts" is uncertain because it only indicates that the act is not violent, but does not specify what acts are actually forbidden.

Moreover, the element of "unpleasant treatment" which the so-called "ill-treatment" has a rather vague and very broad scope, thus providing a holding provision for many acts that cannot be prosecuted under other articles of use of violence.

Such a rather vague and very broad formulation is clearly incompatible with the *lex certa* aspect of the principle of legality, in other words the element of "unpleasant treatment" is contrary to the *lex certa* aspect of the principle of legality.

The article of the Dutch Penal Code which guides the preparation of Article 335 of the Penal Code, as stated by Wirjono Prodjodikoro (Prodjodikoro, 1981) does not have the element of "unpleasant treatment".

This element only exists in the Indonesian Civil Code (formerly *Wetboek van Strafrecht voor Nederlands Indie*).

Thus, both the element of "other acts" and the element of "unpleasant treatment" are elements that do not correspond or contradict the *lex certa* aspect of the principle of legality.

These two elements should be removed from Article 335 paragraph (1) to 1 of the Penal Code, or from similar articles in the preparation of the upcoming National Criminal Code (Kantjai, 2016).

The Constitutional Court in Law Number 24 of 2003 concerning the Constitutional Court has the authority as the executor of judicial power (judiciary), namely adjudicating at the first and last instance whose decision is final.

The Constitutional Court (MK) has eliminated a controversial element in the rubber article that causes legal uncertainty in criminal law enforcement in Indonesia.

Article 335 (1) of the Criminal Code, through Decision No. 1/PUU-XI/2013, removes phrases that are grounds for prosecuting someone.

In its consideration, the Constitutional Court stated that the phrase "Any other act or unpleasant treatment" in Article 335 paragraph (1) has no binding legal force and is contrary to the 1945 Constitution of the Republic of Indonesia.

The judge's basis for consideration that article 335 Paragraph (1) number 1 of the Criminal Code is an alternative article is not appropriate, because after the issuance of the Constitutional Court decision there has been a shift in meaning in the article.

So that against judges' decisions that still use the phrase "other actions or unpleasant treatment" legal remedies can be made (Anggraeni, 2019).

Article 335 paragraph (1) point 1 of Law Number 1 of 1946 concerning the Regulation of the Criminal Law or the Criminal Code reads:

"Whoever unlawfully compels another person to do, not to do or condone something, by the use of force, or by the use of threats of violence, either against himself or others".

The phrase in Article 335 paragraph (1) point 1 of the Criminal Code has caused legal uncertainty and injustice because it provides opportunities for arbitrariness of investigators and public prosecutors.

The phrase "any other act or unpleasant treatment" in 2013 was tested by the Constitutional Court (MK). The Constitutional Court stated that the phrase unpleasant act has a vague meaning so that it does not provide legal certainty to the community.

As a result, the article can give birth to arbitrariness from law enforcement or someone can easily prosecute someone on the basis of article 335.

This is contrary to the constitutional principle that guarantees the protection of the right to obtain fair legal certainty in the process of law enforcement (Article 28D paragraph (1) of the 1945 Constitution).

The Constitutional Court's decision has had permanent legal force since it was read by the Constitutional Judge in the trial. While court decisions that have permanent legal force, have binding legal force to be implemented.

There is no reason for law officers to argue if the Constitutional Court Decision Number 1/PUU-XI/2013 concerning Article 335 paragraph (1) is contrary to the 1945 Constitution and has no binding force.

Because the authority and rights of the Constitutional Court in addition to being regulated in the Laws and Regulations concerning the Constitutional Court have also been regulated in Article 24c paragraph (1) of the 1945 Constitution.

In the Constitutional Court Decision Number: 1 / PUU-XI / 2013 concerning the Elimination of the Phrase Unpleasant Acts in Article 335 of the Criminal Code.

So the main basis for the Constitutional Court's decision to amend article 335 of the Criminal Code through the Constitutional Court Decision Number: 1 / PUU-XI / 2013 is because the formulation of delicacies, qualifications, and treatment is not measured objectively.

If it can be measured, then the measure is very subjective and based only on the assessment of victims, investigators, and public prosecutors alone.

In addition, the formulation of offenses in article 335 of the Criminal Code along with phrases and treatments, can be a loophole and opportunity for investigators and public prosecutors to act arbitrarily against others based on a report (Swadana, 2014).

## **B. Analysis of Criminal Convictions of Perpetrators of Unpleasant Acts (Study of Verdict Number: 386/Pid.B/2013/Pn.Rhl)**

### **1. Case Position**

First, that he is the defendant Adolf Marti Muntaz Hutabarat, on Wednesday April 10, 2013 at approximately 10:00 WIB or at least at some time around that in April 2013. Located on the

palm oil land of the Karya Makmur Farmer Group in Bukit Selamat Village, Simpang Kanan District, Rokan Hilir Regency or at least somewhere within the jurisdiction of the Rokan Hilir District Court.

Unlawfully forcing others to do, not to do or condone something, by using violence or unpleasant treatment, either against themselves or others. Starting victim witness Togi Pardomuan Panggabean als. Opung Alek together with witness Sondang Dahlia Br. Hutabarat (wife of victim witness), sdr. Ronald Pangabean and sdr. Feri Pangabean (son of victim witness).

As well as sdr. Simagunsong, sdr. Hutabarat, witness Robert Simamora and witness Sandro Tobing departed from the house of sdr. Ronald Pangabean in Pinang Awan area by using 1 (one) unit of car and 2 (two) units of motorcycle. With the aim of harvesting palm fruit on land that is the inheritance of the parents of witness Sondang Dahlia Br. Hutabarat covering an area of + 25 (twenty five) hectares.

Upon arrival, victim witness Togi Pardomuan Panggabean als. Opung Alek saw that he was waiting for the defendant Adolf Marti Muntaz Hutabarat along with 10 (ten) other people armed with Tonjok and machetes. But the victim witness and his entourage did not care about it and still wanted to harvest palm fruit that was the right of the wife of the victim witness (Sondang Dahlia Br. Hutabarat);

That the defendant Adolf Marti Muntaz Hutabarat then on a Yamaha Vision motorcycle came to the victim witness Togi Pardomuan Panggabean als. Opung Alek and after stopping in front of the victim witness, the accused got off his motorcycle. Then the accused yelled at the victim witness, saying the words: "where are you going... you bodat.." indeed bodat you" bodat, bodat you..."

While the index finger of the defendant's right hand was held up towards the face of the victim witness then the victim witness said "Loh, that's not me. tu".

While the victim's witness hand pointed at the witness Sondang Dahlia Br. Hutabarat (his wife) but the accused did not want to speak to the witness Sondang Dahlia Br. Hutabarat and again the accused told the victim witness "udahlah, go you"

Report it to your police chief. report to that police station of yours." (while the defendant's hand pointing towards the face of the victim witness) then the victim witness replied "loh koq so" if not like this.. "Hit me on the head..." (while the victim witness bowed his head towards the defendant) but the defendant would not hit and the defendant retreated;

That after the defendant Adolf Marti Muntaz Hutabarat later resigned, the defendant said "udah... Gather.... gather here.... If we come in, we turn him off" for fear that the victim witness would eventually leave the location. Then because of the victim witness Togi Pardomuan Panggabean als. Opung Alek was unhappy with the defendant Adolf Marti Muntaz Hutabarat because he had been threatened by the defendant and then the victim witness reported the defendant's actions to the Rokan Hilir Police Station.

Second, That the defendant Adolf Marti Muntaz Hutabarat at the time and place mentioned in the first indictment, deliberately attacked the honor or good name of a person by alleging something, which was clearly intended to make it public.

The act was committed by the defendant in the following way:

Starting victim witness Togi Pardomuan Panggabean als. Opung Alek together with witness Sondang Dahlia Br. Hutabarat (wife of victim witness), sdr. Ronald Pangabean and sdr. Feri

Pangabeian (son of victim witness) and sdr. Simagunsong, sdr. Hutabarat, witness Robert Simamora and witness Sandro Tobing departed from the house of sdr. Ronald Pangabeian in Pinang Awan area by using 1 (one) unit of car and 2 (two) units of motorcycle with the aim of harvesting palm fruit on land which is the legacy of the parents of witness Sondang Dahlia Br. Hutabarat covering an area of + 25 (twenty five) hectares.

That upon arrival, the victim witness Togi Pardomuan Panggabean als. Opung Alek saw that he had been waiting for the defendant Adolf Marti Muntaz Hutabarat along with 10 (ten) other people armed with Tonjok and machete, but the victim witness and his entourage did not care about it and still wanted to harvest palm fruit which was the right of the wife of the victim witness (Sondang Dahlia Br. Hutabarat).

That the defendant Adolf Marti Muntaz Hutabarat then on a Yamaha Vision motorcycle came to the victim witness Togi Pardomuan Panggabean als. Opung Alek and after stopping in front of the victim witness then the defendant got off his motorbike then the defendant yelled at the victim witness, saying the words:

"Where are you going... you bodat.." indeed your bodat... bodat, bodat you..."

While the index finger of the defendant's right hand was held up towards the face of the victim witness then the victim witness said " Huh, why is that so? not me" while the victim's witness hand pointed at the witness Sondang Dahlia Br. Hutabarat (his wife) but the accused did not want to speak to the witness Sondang Dahlia Br. Hutabarat and again the accused told the victim witness " Alright then, go you" report to your police chief.

Report to that police station of yours." (while the defendant's hand pointing at the face of the victim witness) then answered by the victim witness "loh koq so" if not like this.. Hit me"Hit this head of mine... " (while the victim witness bowed his head towards the defendant) but the defendant would not hit and the defendant retreated;

That because of the victim witness Togi Pardomuan Panggabean als. Opung Alek was unhappy with the defendant Adolf Marti Muntaz Hutabarat because he had been said to be "Bodat" (dog) and then the victim witness reported the defendant's actions to the Rokan Hilir Police Station.

## 2. Public Prosecutor's Demands

- a. Declaring Defendant ADOLF MARTI MUNTANZ legally and conclusively guilty of committing the criminal act of unpleasant acts "Unlawfully forcing another person to do, not to do or condone something, by using force, something else or unpleasant treatment or by using threats of violence, something else or unpleasant treatment, both against the person himself and others", as stipulated and threatened with criminal violation of Article 335 Paragraph (1) 1 of the Criminal Code as in the First alternative indictment;
- b. Sentenced the defendant ADOLF MARTI MUNTANZ to 2 (two) months imprisonment, with an order that the defendant be immediately detained;
- c. Stipulate that the Defendant be burdened with paying the cost of the case in the amount of Rp. 1,000,- (one thousand rupiah);

## 3. Judges' Verdict

- a. Declaring Defendant ADOLF MARTI MUNTANZ HUTABARAT legally and conclusively guilty of the crime of "Unpleasant Acts";

- b. Sentenced the Defendant ADOLF MARTI MUNTAZ HUTABARAT to imprisonment for 1 (one) month and 9 (nine) days;
- c. Stipulate that the period of arrest and detention already served by the Defendant be deducted entirely from the sentence imposed;
- d. Burden the Defendant to pay the cost of the case in the amount of Rp. 1,000,- (one thousand rupiah);

#### 4. Author Analysis

Analysis of Criminal Convictions of Perpetrators of Unpleasant Acts (Study of Verdict Number: 386/Pid.B/2013/Pn.Rhl) is correct. Because self-esteem in a person must be maintained because it is a human right.

However, this article can become a rubber article if there is no measure of the extent to which the insult judgment can occur. So the measure is very subjective and based only on the assessment of victims, investigators, and public prosecutors alone.

### CONCLUSION

Based on the explanation above, it can be concluded that the criminal law policy regarding unpleasant offenses is currently regulated in Article 335 of the Criminal Code.

However, the article by the Constitutional Court based on decision Number 1 / PUU-XI / 2013, the phrase "something else or unpleasant treatment" was omitted because it was considered multi-interpretation.

### REFERENCES

- Amiruddin, H. (2012). Zainal Asikin, Introduction to Legal Research Methods. *Jakarta: Rajawali Press.*
- Aulia, M. Z. (2018). Satjipto Rahardjo's Progressive Law: History, Urgency, and Relevance. *Law: Law Journal*, 1(1), 159–185.
- Budiman, A. (2006). *Freedom, state, development: A collection of writings 1965-2005*. Alvabet Library.
- Djamali, R. A. (2013). *Introduction to Indonesian Law*.
- Hamzah, A. (2008). *Criminal law terminology*.
- Indonesia, K. P. R. (2020). *Food Consumption Statistics 2020 (E. Susilawati & S. Wahyuningsih, Eds.)*.
- Kantjai, M. M. (2016). Article 335 paragraph (1) 1 of the Criminal Code from the aspect of lex certa on the principle of legality. *Lex Crimen*, 5(1).
- Marzuki, P. M. (2010). Legal Research, Kencana Prenada Group. *Jakarta. H, 35*.
- Moeljatno, K., & Criminology, P. T. (1987). *Build Literacy*. Jakarta.
- Moeljatno, S. H. (2021). *Criminal Code (Criminal Code)*. Earth Literacy.
- Natamenggala, M. A. (2018). Implementation of the *Constitutional Court Decision Number: 1/PUU-XI/2013 concerning the Phrase of Unpleasant Deeds*.
- Prodjodikoro, W. (1981). Principles of Criminal Law in Indonesia, cet. 3. *PT Eresco, Jakarta-Bandung*.
- Suharto, S. (1991). *Étude des mécanismes d'amorçage et de propagation des microfissures en traction-torsion à partir de deux nuances d'un alliage d'aluminium 7175-T7351*. Compiègne.
- Soekanto, S. (2007). *Normative legal research: A brief review*.
- Self-funding, D. I. (2014). *Juridical Implications of the Amendment to Article 335 of the Criminal Code Paragraph (1) point 1 concerning Unpleasant Acts by the Constitutional*

*Court Based on Decision Number: 1 / Puu-Xi / 2013 concerning the Removal of Unpleasant Acts Phrases. Brawijaya University.*

Tuhumury, H. A. (2015). Analysis of the removal of the phrase unpleasant acts in Article 335 of the Criminal Code (KUHP) by the Constitutional Court. *Legal Pluralism: Journal of Law Science*, 5(2).