

The Limits of Criticism of the Government Under Articles 240 and 241 of Law No. 1 of 2023: Balancing the Protection of State Authority and Civil Liberties

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ABSTRACT

This study examines the legal limits of criticism directed at the government under Articles 240 and 241 of Law No. 1 of 2023 concerning the Indonesian Criminal Code. The central issue concerns the balance between protecting the authority and institutional integrity of the state and safeguarding freedom of expression as a fundamental civil liberty. This research employs a normative legal method using statutory, conceptual, constitutional, case, comparative, and human-rights approaches. The analysis focuses on the formulation of the offences, the distinction between criticism and insult, the complaint-based nature of prosecution, criminal responsibility for digital dissemination, and the application of the principles of legality, necessity, proportionality, and public interest. The findings indicate that Articles 240 and 241 pursue a legitimate objective insofar as they protect the effective functioning of government and state institutions from serious, malicious, and unlawful attacks. However, the broad and evaluative meaning of terms such as insult, honour, and institutional image creates risks of legal uncertainty, selective enforcement, and a chilling effect on democratic participation. The study finds that criticism should not be criminalized merely because it is harsh, offensive, satirical, emotionally expressed, or damaging to the reputation of a public institution. Criminal liability should arise only where the prosecution proves an objectively unlawful attack, the required intent, the absence of a dominant public-interest purpose, serious and legally cognisable harm, and the inadequacy of less restrictive remedies. Article 241 requires additional safeguards because the dissemination of digital content may occur for purposes of journalism, education, criticism, documentation, or public discussion. The study concludes that Articles 240 and 241 must be interpreted restrictively, with a strong presumption in favour of political expression, to ensure that the protection of state authority does not undermine constitutional democracy and civil liberties.

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1. INTRODUCTION

Freedom of expression is one of the principal foundations of a democratic constitutional state because it enables citizens to participate in public affairs, evaluate government policies, communicate dissatisfaction, expose abuses of power, and demand accountability from public authorities. Criticism of government is therefore not merely an individual exercise of liberty but also an essential mechanism of democratic control through which public institutions are continuously evaluated against constitutional principles, legal obligations, public expectations, and the broader objectives of social justice. In Indonesia, this freedom is constitutionally protected under Article 28E paragraphs (2) and (3) and Article 28F of the 1945 Constitution, which guarantee the rights to express opinions, associate, communicate, and obtain and convey information. However, Article 28J permits lawful limitations to protect public order, morality, security, and the rights and reputation of others [1]. Consequently, the exercise of freedom of expression must be responsible and balanced with societal welfare, including ethical considerations recognised in Islamic jurisprudence [2].

The tension between constitutional guarantees and legal restrictions has become increasingly significant following the enactment of Law No. 1 of 2023 concerning the Indonesian Criminal Code, which was enacted on 2 January 2023 and entered into force on 2 January 2026. Although the law forms part of Indonesia's effort to replace the colonial criminal-law framework with a national system based on Pancasila and the 1945 Constitution, its provisions concerning defamation of the President and Vice President, reputation, public order, and state authority have generated constitutional and doctrinal debate. Critics argue that the revival of presidential defamation offences may criminalise legitimate criticism, create legal ambiguity, facilitate abuse of power, and weaken democratic accountability [3], [4]. Therefore, these restrictions must be

interpreted and implemented in accordance with the principles of legality, necessity, proportionality, and international human rights standards so that the protection of public officials and state institutions does not disproportionately infringe upon citizens' rights to express dissent [5].

Among the most contested provisions of Law No. 1 of 2023 are Articles 240 and 241, which criminalise public insults against the government or state institutions, whether expressed orally, in writing, or disseminated through digital platforms. Article 240 provides heavier penalties where the expression results in public disorder, while Article 241 extends liability to the broadcasting, display, circulation, or technological dissemination of writings, images, recordings, and other forms of expression intended for public knowledge. However, terms such as "degrading," "damaging honour," "damaging an image," and "public interest" are not clearly defined, creating uncertainty in distinguishing legitimate criticism from unlawful insult [6], [7]. Their subjective character may enable arbitrary enforcement and complicate the legal distinction between criminal insult, defamation, satire, academic assessment, investigative journalism, artistic expression, and political opposition [8]. Although the elucidation of Article 240 excludes criticism made in the public interest and the offences are complaint-based, these safeguards do not entirely remove the risk of a chilling effect, as citizens may engage in self-censorship to avoid investigation or prosecution [7].

The debate therefore concerns the need to balance the protection of institutional authority with freedom of expression and democratic participation. The state may legitimately regulate deliberately false accusations, malicious defamation, incitement to violence, or expression that directly causes serious public disorder, provided that criminal sanctions are based on clear harm, intention, necessity, and proportionality [9]. Nevertheless, government institutions exercise public authority, manage public resources, and make decisions affecting citizens' rights; consequently, they must

tolerate a wider degree of scrutiny than private individuals. The criminalisation of expression that merely embarrasses an institution, challenges its legitimacy, damages its image, or communicates dissatisfaction may suppress dissent, weaken public discourse, and erode public trust in state institutions [9]. Criminal law should therefore operate only as a last resort and should not be transformed into an instrument for protecting official prestige from legitimate, critical, sarcastic, or politically hostile expression.

The potential chilling effect of Articles 240 and 241 arises from their ambiguous formulation, which may discourage citizens from engaging in lawful criticism, satire, investigative reporting, demonstrations, and digital content sharing. The unclear distinction between criticism and insult may expose social media users, students, academics, activists, and other citizens to investigation or prosecution, even when their expression forms part of ordinary democratic participation [8]. This uncertainty is intensified by the overlap with defamation provisions and by the broad coverage of Article 241, which may extend liability to individuals who merely repost, quote, document, or discuss political content [6]. In digital environments, memes, edited videos, hashtags, caricatures, and satirical expressions are especially vulnerable to misinterpretation because their intent and context may be overlooked, including by automated content-moderation systems that cannot adequately recognise nuance [10].

Accordingly, Articles 240 and 241 must be interpreted narrowly in accordance with the principles of legality, proportionality, and public interest, with careful consideration of the *actus reus*, *mens rea*, context, method of dissemination, factual basis, dominant purpose, and actual or foreseeable harm. Criminal prosecution should operate only as an *ultimum remedium*, while civil remedies, rights of reply, institutional clarification, administrative measures, and non-penal dispute resolution should be prioritised where they can adequately address the alleged harm [11]. Greater legal clarity is

therefore necessary to protect public order without suppressing democratic discourse, particularly where harsh or confrontational expression still contributes to debate on corruption, maladministration, elections, human rights, public expenditure, and other matters of public concern [12].

This study examines how the substantive limits of criticism under Articles 240 and 241 of Law No. 1 of 2023 should be interpreted in accordance with the principle of legality, constitutional freedom of expression, and the need to protect state authority. It seeks to establish a normative boundary between legitimate criticism and punishable insult by analysing the provisions' legal interests, ambiguous elements, procedural safeguards, and relevant constitutional, criminal-law, and human-rights principles. The study proposes restrictive interpretive parameters based on legitimate purpose, necessity, proportionality, public interest, intent, falsity, context, and demonstrable harm. Its novelty lies in treating the protection of criticism not as a threat to state authority but as an essential component of democratic institutional strength. Accordingly, criminal liability should be limited to clearly defined, malicious, and unlawful attacks that cause legally recognisable harm, while criticism of governmental policies, decisions, institutional performance, and official conduct must remain protected even when expressed sharply or controversially.

2. METHODS

This study employs normative legal research, also known as doctrinal legal research, to examine the legal boundaries between legitimate criticism and punishable insult under Articles 240 and 241 of Law No. 1 of 2023 concerning the Indonesian Criminal Code. The research is analytical and prescriptive because it not only identifies the legal elements of insult, public dissemination, state institutions, public interest, and public disorder, but also formulates appropriate standards for protecting freedom of expression while maintaining legitimate state

authority. The normative method is appropriate because the research focuses on the interpretation and harmonisation of legal norms rather than on empirical behaviour or statistical data.

The study applies statutory, conceptual, constitutional, case, comparative, and human-rights approaches. The statutory approach examines Articles 240 and 241, the 1945 Constitution, Law No. 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights, and other relevant regulations. The conceptual and constitutional approaches are used to analyse freedom of expression, criticism, insult, institutional honour, legality, legal certainty, public interest, and proportionality. The case approach examines relevant Constitutional Court decisions, while the comparative and human-rights approaches assess Indonesian law against foreign legal developments and international standards on restrictions of expression.

The legal materials consist of primary, secondary, and tertiary sources collected through systematic literature and document studies. Primary materials include legislation, judicial decisions, international legal instruments, and official legislative documents, while secondary and tertiary materials include legal textbooks, journal articles, research reports, commentaries, dictionaries, and legal databases. These materials are analysed qualitatively through grammatical, systematic, historical, teleological, constitutional, comparative, and proportionality interpretations. The analysis considers the target, content, purpose, factual basis, context, public-interest value, seriousness of harm, causal relationship, availability of less restrictive measures, and severity of sanctions in determining whether an expression constitutes protected criticism or a punishable insult.

3. RESULTS AND DISCUSSION

3.1 Normative Structure of Articles 240 and 241 of Law No. 1 of 2023

The normative analysis demonstrates that Articles 240 and 241 of Law No. 1 of 2023

establish two closely related criminal offences concerning insults directed at the government or state institutions. Article 240 regulates direct public insults committed orally or in writing, while Article 241 regulates the publication, display, transmission, or dissemination of material containing such insults. Article 240 paragraph (1) imposes a maximum imprisonment of one year and six months or a Category II fine, whereas paragraph (2) provides a maximum imprisonment of three years or a Category IV fine when the conduct results in public unrest. This statutory structure distinguishes between a formal offence centred on the insulting act and an aggravated material offence requiring socially disruptive consequences. However, terms such as “insult,” “degrade,” and “institutional image” remain inadequately defined and may invite subjective interpretation and arbitrary enforcement [7]. Such ambiguity may undermine democratic principles and restrict citizens’ ability to criticise governmental conduct [1].

Article 241 extends criminal responsibility to persons who broadcast, display, attach, play, or disseminate through information technology writings, images, or recordings containing insults against the government or state institutions with the intention that they become publicly known. Liability may therefore apply not only to the original author or speaker but also to individuals who republish or distribute the content through social media and other digital platforms. This broad scope may criminalise legitimate public discourse and discourage citizens from expressing dissent or evaluating government performance [9]. Although these offences are complaint-based, the possibility of complaints and subsequent legal proceedings may still create a chilling effect and encourage self-censorship [7]. Constitutional concerns also arise because the reintroduction of provisions resembling previously annulled offences may conflict with earlier Constitutional Court rulings and indicate a regression in the protection of freedom of expression [6], [8].

Articles 240 and 241 protect only a limited category of institutions, including the President and Vice President, the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, and the Constitutional Court, rather than every public agency or individual official. Nevertheless, this limitation does not eliminate the risk of overcriminalisation because the central concept of "insult" remains evaluative and does not necessarily require concrete or demonstrable harm. From the perspective of the principle of legality, criminal provisions must be sufficiently clear and predictable to enable citizens to understand prohibited conduct and to prevent excessive discretion by law-enforcement authorities. Therefore, Articles 240 and 241 should be interpreted narrowly, and criminal liability should not be based merely on an institution's subjective perception of embarrassment, offence, or reputational damage. Punishable conduct must instead be established through objective legal criteria that clearly distinguish unlawful attacks from criticism, satire, academic assessment, political expression, and other constitutionally protected forms of public discourse.

3.2 The Legal Interest Protected by Articles 240 and 241

The second finding concerns the legal interest underlying Articles 240 and 241, which are intended to protect the legitimacy and effective functioning of state institutions from serious and unlawful interference. Deliberately fabricated allegations, malicious disinformation, threats, and incitement to violence may disrupt institutional operations and public order, thereby providing a legitimate basis for proportionate legal measures [9]. However, such protection should be limited to concrete threats against institutional functioning and should not be extended to shield public institutions from embarrassment, criticism, ridicule, or declining popularity, because democratic institutions must remain accountable and open to public scrutiny [13].

The protected legal interest must therefore be distinguished from governmental prestige. Expressions that expose corruption, abuse of authority, maladministration, judicial inconsistency, or policy failure may reduce public confidence, but such reputational consequences do not automatically render the expression unlawful. These forms of disclosure and criticism contribute to democratic debate and should receive constitutional protection [14]. Similarly, statements questioning the competence, integrity, legitimacy, or effectiveness of a legislature, court, or executive institution cannot be criminalised merely because they are strongly worded or damaging to institutional reputation.

Criminal liability should consequently require a clear and demonstrable connection between the expression and tangible harm to institutional operations, public safety, or constitutional order, rather than relying solely on institutional displeasure [15]. Articles 240 and 241 must be interpreted restrictively and consistently with democratic principles so that legitimate criticism does not result in unjust criminalisation [16]. This approach is also consistent with the Constitutional Court's emphasis that public institutions must remain open to scrutiny [14]. Legitimate state authority is strengthened through transparency, public explanation, correction, and accountable decision-making, whereas the prosecution of legitimate critics may create perceptions of intolerance and abuse of power.

3.3 Distinguishing Criticism from Criminal Insult

The principal result of the normative analysis is that criticism and insult cannot be distinguished solely by the harshness or politeness of the language used. The assessment must consider the target and nature of the expression, including whether it concerns public policy, institutional performance, governmental decisions, or the exercise of official authority. Criticism directed at public officials in their institutional capacity should receive strong protection

because it contributes to transparency, accountability, and democratic oversight [17]. A distinction must nevertheless be made between political criticism and purely personal attacks unrelated to public duties. Legal analysis must also differentiate factual allegations from opinions, value judgments, satire, parody, memes, threats, and incitement. Factual claims may be tested for truth or falsity, but criminal liability requires proof of material falsity and culpable intent rather than merely an institutional denial of the allegation [18].

The purpose, public-interest value, factual foundation, good faith, and context of the expression are equally important. Criticism concerning corruption, abuse of authority, judicial conduct, public expenditure, elections, law enforcement, human rights, environmental protection, public services, or government policy should be regarded as expression of substantial public interest. Such protection should not depend on whether the criticism is formally written, academically structured, polite, or considered constructive by state institutions. Satire, caricatures, memes, slogans, and rhetorical exaggeration must be interpreted in their communicative context because a literal reading may misrepresent the speaker's intention and the audience's understanding [19]. Similarly, good-faith errors based on reasonably reliable information must be distinguished from reckless dissemination or deliberate fabrication, with the burden of proving falsity and culpability remaining on the prosecution [20].

The final parameter concerns the seriousness and causation of harm. Criminal liability should not arise merely because an expression reduces institutional popularity, embarrasses public officials, provokes disagreement, or damages governmental prestige. It should be confined to conduct causing concrete and legally recognisable harm, such as direct interference with institutional functions, intentional incitement to violence, or a real and substantial threat to public order [11]. Where public unrest is alleged, authorities must demonstrate that the expression created a direct, foreseeable, and

substantial risk of that consequence, rather than merely showing that unrest occurred afterward. This contextual and harm-based assessment is necessary to prevent Articles 240 and 241 from criminalising legitimate democratic criticism.

3.4 Constitutional Balance Between State Authority and Civil Liberties

The constitutional legitimacy of Articles 240 and 241 depends on their compliance with the proportionality principle, which comprises legitimate aim, suitability, necessity, and proportionality in the strict sense. Protecting public order and the effective functioning of government institutions from deliberately false accusations, threats, incitement to violence, and serious disruption may constitute a legitimate objective, whereas shielding institutions from criticism, ridicule, embarrassment, or declining public confidence does not [21]. Criminal sanctions must also be suitable for achieving the identified objective without unnecessarily suppressing lawful political expression. Therefore, enforcement authorities must demonstrate a direct relationship between the prosecuted expression and a specific threat to the protected legal interest, rather than relying on a general assumption that criticism weakens governmental authority [21].

The necessity requirement obliges authorities to consider less restrictive measures, including official clarification, correction, rights of reply, public debate, administrative mechanisms, and civil remedies, before resorting to criminal prosecution [22], [23]. Consistent with the principle of *ultimum remedium*, imprisonment should be reserved for exceptional cases involving grave, intentional, and demonstrable harm. Proportionality in the strict sense further requires the public benefit of punishment to outweigh its impact on freedom of expression, including the broader risk of self-censorship. Judicial assessment must therefore consider the context and social consequences of the restriction, particularly where the expression

concerns public affairs and contributes to democratic debate [24].

3.5 The Complaint-Based Nature of the Offence

The constitutional legitimacy of Articles 240 and 241 depends on their compliance with the principle of proportionality, which includes legitimate aim, suitability, necessity, and proportionality in the strict sense. Protecting public order and the effective functioning of government institutions from deliberately false accusations, threats, incitement to violence, and serious disruption may constitute a legitimate objective, whereas protecting institutions from criticism, ridicule, embarrassment, or declining public confidence does not (Urbina, 2012). Criminal sanctions must also be suitable for achieving the identified objective without unnecessarily suppressing lawful political expression. Therefore, enforcement authorities must demonstrate a direct relationship between the expression and a specific threat to the protected legal interest, rather than relying on the general assumption that criticism weakens governmental authority (Urbina, 2012).

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expression concerns governmental conduct and contributes to democratic debate (Itxaso, 2020).

4. CONCLUSION

Articles 240 and 241 of Law No. 1 of 2023 may legitimately protect designated state institutions from serious unlawful attacks, threats, incitement, malicious fabrication, and conduct that substantially disrupts institutional functions or public order; however, they must not be used to shield the government from criticism, satire, embarrassment, hostility, or declining public confidence. Because concepts such as insult, degradation of honour, and damage to institutional image remain open to subjective interpretation, these provisions must be construed narrowly in accordance with legality, legal certainty, proportionality, popular sovereignty, and constitutional freedom of expression. The distinction between criticism and criminal insult should be assessed through the expression's target, content, factual basis, context, purpose, public-interest value, intent, method of dissemination, and demonstrable harm, rather than merely its harsh or offensive language. Complaint-based enforcement does not itself prevent misuse, and Article 241 requires particular caution because reposting or reproducing digital content may serve journalism, education, documentation, criticism, or public discussion rather than malicious dissemination. Criminal sanctions must therefore function as an *ultimum remedium*, applied only when less restrictive remedies are inadequate and the prosecution proves an objectively unlawful attack, culpable intent, absence of a dominant public-interest purpose, serious legally recognisable harm, and the necessity of criminal intervention; any remaining ambiguity should be resolved in favour of political expression and democratic criticism.

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