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Freedom of Expression in Regulating Criminal Acts of Defamation Against the Government and State Institutions

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Abstract. This research aims to analyse the regulation of criminal defamation against the government or state institutions, focusing on freedom of speech. The research method used is the normative research method with a legislative approach and legal concept analysis. This research employs primary legal materials such as laws and judicial decisions and secondary legal materials such as law books, theses, dissertations, journals, and related literature. Data is collected through a literature study, and legal materials are analysed systematically. The research results show that the government has passed Law No 1 of 2023 concerning the Criminal Code, and one of the articles that has sparked public debate is Article 240-241 of the Criminal Code, which deals with insults against the government or state institutions. This article has generated many opinions within the community regarding the criminalisation of individuals who insult or excessively criticise the performance of the government or state institutions. This suggests that society faces limitations in expressing its aspirations and concerns when the state fails to fulfil its duties. However, freedom of expression, including criticism of the government or state institutions, is often treated as a criminal offence of insult under the prevailing law.

Keywords: Freedom of Expression; Defamation Crime; Government and State Institutions

INTRODUCTION

The State of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution. Every citizen is guaranteed in law and their position in government, and upholds the human rights of every human being, especially Indonesian citizens. The state, the government, is vital in determining the laws that apply to its citizens. However, keep in mind that the freedoms possessed by each individual must still be maintained because it is our human rights as humans. Commencing with the entitlement to life, extending to the freedom to practice religion, the equal treatment under the law, and culminating in the privilege of free speech.

In a democratic country, freedom of speech is a fundamental right that safeguards other human rights. These rights are inherent to every individual, universal, and cannot be taken away by others. This fundamental right serves as a shield for individuals, preserving their self-preservation and human dignity while also serving as a moral bedrock in the interactions among fellow humans [1].

However, people often criticise the government if they see the frequent demonstrations or actions aimed at state institutions. For example, regular protests are aimed at the government or state institutions regarding people's unrest about specific problems or dissatisfaction with government performance. The existence of demonstrations or actions proves that citizens often criticise the government for the sake of justice that can be achieved by all parties. It is not intended to insult the government or state institutions but to voice the aspirations of the people for a much better change in the future so that the state has the right to determine the rule of law for its citizens but must be fair to all parties, whether it is for the government or state institutions or the community.

Recently, the government passed Law No 1 of 2023 on the Criminal Code, abbreviated as the 'KUHP' with the latest version, which is predicted to be a new step for Indonesia and replace the old Criminal Code inherited from the Dutch Colonial era. The ratification of Law No 1 of 2023 has sparked considerable debate within the community. This debate revolves around criminal offences related to insulting or criticising the government or state institutions excessively, revealing that society faces limitations in expressing its aspirations and concerns when the state fails to fulfil its duties. However, freedom of expression, including criticism of the government or state institutions, is often deemed a criminal offence under the applicable law.

Therefore, the public strongly rejects several controversial articles because they are considered rubber. One of the articles that has become a public debate is Articles 240 and 241 of the Criminal Code regarding insults against the government or state institutions, which are regulated in a particular cluster of the Criminal Code (KUHP) which contains regulations regarding insult crimes outside chapter XVI of the Criminal Code on insults, as for the objects of insults regulated in the special insult section in Law No 1 of 2023 concerning the Criminal Code Article 240 § 1 of the Criminal Code explains that "Every person who publicly, orally or in writing, insults the government or state institutions shall be subject to a maximum imprisonment of one year and six months or a maximum fine of category II". Meanwhile, Article 241 § 1 of the Criminal Code explains that:

"Every person who broadcasts, shows, or attaches writings or pictures, or disseminates through means of information technology containing insults against the government or state institutions, with the intention that the public will know the contents of the insult, shall be subject to imprisonment of up to 3 (three) years or a maximum fine of category IV".

In this case, expressing opinions in public is one of the human rights and the right to freedom of thought that has been protected and guaranteed by the Constitution for every citizen. In general, the formulation is contained in Article 28 of the 1945 Constitution, which states: "freedom of association and assembly, expression of thoughts orally and in writing, and so forth shall be determined by law," and Article 28E § 3, which states: "every person shall have the right to freedom of association, assembly, and expression."

The law governing freedom of expression and association aims to establish provisions safeguarding the right to express opinions verbally and in writing. In freedom of expression, everyone can access necessary materials to protect their rights to seek, acquire, and communicate information. Nonetheless, the law also contains clauses that forbid any entity, including the government, from attempting to curtail, limit, or nullify this freedom [2].

This is further emphasised by regulations concerning freedom of expression found in Law No 9 of 1998 concerning Freedom of Expression in Public. Article 2 of this law states that "every citizen, individually or in groups, is free to express opinions as a manifestation of the rights and responsibilities of democracy in the life of society, nation, and state."

Additionally, Law No 39 of 1999 concerning Human Rights, Article 23, § 2 states that "everyone has the right to have, issue, and disseminate opinions according to their conscience, orally and/or in writing through print and electronic media, with due regard to religious values, decency, order, public interest, and the integrity of the nation."

Universally, freedom of opinion is regulated in Article 19 of the Universal Declaration of Human Rights (UDHR), which states: "Everyone has the right to freedom of opinion and expression, and this right includes freedom to hold opinions without interference, and to seek, receive, and convey information and opinions in any manner and regardless of frontiers."

Thus, the provision of guarantees for freedom of expression by the international community is also found in the International Covenant on Civil and Political Rights, an international legally binding instrument elaborating on the fundamental rights and freedoms previously stated in the Universal Declaration of Human Rights (UDHR). The International Covenant on Civil and Political Rights ensures that regulating freedom of expression is addressed in Article 19 § 1 of Law No 12 of 2005, which states that "everyone has the right to express opinions without interference from others." Additionally, § 2 of the same article affirms that "everyone has the right to freedom of expression; this right includes the freedom to seek, receive, and impart information and ideas

in any form, regardless of restrictions, whether orally, in writing, in print, through art, or via other media of their choice." With the guarantee of freedom of expression in the International Covenant on Civil and Political Rights, specific obligations and responsibilities are also outlined, including certain restrictions aimed at respecting the rights and reputation of others, as well as safeguarding national security and public order [3].

The essential significance to be gleaned from the intent and purpose of freedom of thought and expression is the individual's freedom to think independently about everything in their surroundings, contemplate various phenomena, and hold onto the outcomes of their studies, expressing them through multiple means [3]. The regulations above outline that the right to freedom of expression is legally protected.

Given the background described above, the author believes the two articles counter the principle of citizens' freedom of expression. This is due to an element of insult, which remains vague. The term "insult" used in the articles lacks a detailed explanation of the actions and words that can be categorised as insulting, making it challenging to distinguish between what constitutes insulting behaviour and what is considered constructive criticism of the government or state institutions. Consequently, there is a lack of clarity regarding the scope of speech or actions falling within the insult category and the specific forms that can be deemed insulting or constructive criticism. Importantly, citizens often utilise criticism to voice their aspirations to the government and state institutions, seeking justice and peace for all parties involved.

Furthermore, both articles state that the purpose of implementing Article 240 and Article 241 of the Criminal Code is to uphold the authority of the government or state institutions. The author contends that this stance contradicts Article 28 and Article 28E, § 3 of the 1945 Constitution of the Republic of Indonesia, Article 2 of Law No 9 of 1998 concerning Freedom of Expression in Public, Article 23 § 2 of Law No 39 of 1999 concerning Human Rights, Article 19 of the Universal Declaration of Human Rights (UDHR), and Article 19 §1 of Law No 12 of 2005 concerning the International Covenant on Civil and Political Rights. These provisions allow citizens to express their opinions openly, including criticising the government. The inclusion of such articles imposes limitations on the community's ability to express views or criticisms swiftly. Restricting insults is also acknowledged to prevent misinterpretations of community criticism as insults. Consequently, Article 240 and Article 241 of the Criminal Code can be viewed as rules that potentially infringe upon human rights when expressing opinions and offering critiques of government performance.

Therefore, this underscores the importance of safeguarding the right to freedom of speech to maintain the rule of law in a democratic society. The existence of Article 240 and Article 241 of the Criminal Code introduces uncertainty regarding the boundaries within which the public can express their opinions and offer input to the government in the form of criticism. Consequently, these articles possess a solid potential to be used as censorship tools. Freedom of opinion is a fundamental aspect of social life that the state protects and guarantees. Every citizen has the legal right to express their thoughts and ideas, whether directly or through social media platforms. These opinions can take the form of criticism or suggestions concerning government policies or decisions made by state institutions for the betterment of the community. This open exchange of ideas is a vital component of effective governance. The state guarantees and bestows the right to freedom of speech upon its citizens to allow for the broadest possible expression of aspirations and to provide a platform for citizens to contribute constructive criticism and suggestions. This, in turn, assists in enhancing government policies and the functioning of state institutions.

Suppose citizens can potentially face criminal charges for insulting the government or state institutions. In that case, it raises the question of whether a state institution can similarly be subject to criminal charges if it insults its citizens. This is the underlying motivation for the author's examination of the recently enacted Criminal Code. The author perceives that several articles within the code warrant further study. Consequently, based on the above description, the author aims to conduct a comprehensive analysis, focusing on Articles 240 and 241 of the Criminal Code. This analysis will be undertaken in the context of regulations governing freedom of speech, and the study will be titled "Freedom of Expression in Regulating Criminal Acts of Defamation Against the Government and State Institutions."

The primary objective of this study is to explore and analyse the legal provisions concerning criminal defamation against the government or state institutions about the principle of freedom of speech. Furthermore, the study seeks to identify and analyse the limitations placed on acts of insult against the government or state institutions.

Theoretical basis

Legal Certainty Theory. The theory of legal certainty is an inherent characteristic of the law, particularly concerning written legal norms. Law devoid of certainty loses its significance as it can no longer serve as a behavioural guide for all individuals. When examined historically, the discourse on legal certainty dates back to the concept of the separation of powers articulated by Montesquieu. The stability of society is intricately linked to the certainty within the law, as this constitutes the essence of legal certainty. We will delve into various experts' definitions of legal certainty to understand the theory of legal certainty.

Political Theory of Law. The paragraphs below will explain various understandings or definitions of legal politics. Legal politics is the "legal policy or official line (policy) about the law that will be enforced either by making new laws or by replacing old laws to achieve state goals." Thus, the politics of law involves selecting laws to be enacted and deciding which rules should be revoked or not passed, all to achieve state goals, as stated in the Preamble of the 1945 Constitution. From an etymological perspective, 'legal politics' is the English rendition of the Dutch legal expression 'rechtspolitiek,' composed of the words 'recht' and 'politiek' [4].

Definitions put forward by several other experts share substantive similarities with the report presented by the author. In Soedarto's view, legal politics uses state power to create regulations that reflect society's needs and serve the state's goals [5].

Stages of Political Enforcement of Law. Using criminal law to regulate society through legislation is fundamentally a part of the policy-making process. The operationalisation of criminal law policy through punitive measures can be broken down into three stages, as outlined [6]:

1. Legislative Policy Phase (Formulation Stage). This initial stage, often called legislative policy, focuses on the abstract development of criminal law by lawmakers. Legislators work to identify values relevant to current and future circumstances, shaping them into criminal statutes and regulations aimed at achieving optimal outcomes, primarily centred on justice and effectiveness.

2. Judicial Policy Phase (Application Stage). Referred to as the judicial stage, this phase involves the practical implementation of criminal law by law enforcement authorities, including the police, prosecutors, and courts. During this stage, all law enforcement personnel are responsible for upholding principles of justice and effectiveness.

3. Executive/Administrative Policy Phase (Execution Stage). Also known as the enforcement or implementation stage, this stage centres on the concrete enforcement of criminal law by the agencies responsible for implementation. At this point, the criminal implementing agencies are tasked with enforcing the illegal regulations established by the legislative body, including applying court-determined penalties.

Theory of Legal Protection. Legal protection protects violated human rights, benefiting the community and ensuring full access to legal rights. It involves a set of measures enforced by law enforcement to provide mental and physical security, shielding individuals from interference and threats. It also extends to safeguarding government interests through established regulations. In essence, legal protection embodies the law's role in ensuring security.

Freedom of Opinion. In addition to overseeing freedom of thought, human rights also encompass the right to freedom of expression, enabling the pursuit of truth through information sharing. According to the KBBI, freedom of expression, formed from 'free' and 'expression,' allows individuals to convey their ideas on various topics. As inherent creations of God, humans possess the right to think.

Freedom of expression is a fundamental aspect of human rights, especially in civil and political rights, and part of the first generation of human rights. It is a negative right, requiring the state not to interfere with the freedom of opinion. Essentially, human rights inherently provide individuals with something that should remain untouched by any entity, and freedom of speech is an inborn right guaranteed to every individual from birth, protected by the Constitution.

Defamation. According to the common understanding, defamation attacks someone's honour and reputation, typically making the victim feel ashamed. It's important to note that here, "honour" does not refer to sexual integrity but rather the honour within the scope of a person's reputation. Defamation is one form of criminal act and unlawful behaviour. The term "defamation" comes from the Dutch language, which is "Belediging," and in English, it is "Offence." This term is a deliberate act or action that damages a person's dignity and reputation.

Government. Government, in a broad sense, encompasses all activities carried out by state administrators through state organs that possess the authority to exercise power to achieve specific goals. Meanwhile, in a narrower sense, government refers to activities conducted by the president, ministers, and the lowest bureaucracy [7].

According to [8], the state can also be interpreted as a human organisation or a collective of people under the same government. This government serves as a tool to act in the people's interests, aiming to achieve various objectives of the state organisation, such as welfare, defence, security, order, justice, health, and others. To effectively work towards these goals, the government is endowed with authority, which is subsequently distributed to the instruments of state power, allowing each sector of the state's objectives to be pursued simultaneously. In line with this division of authority, there is a corresponding allocation of state duties to these instruments of state power.

METHODS

The research employed the normative research method, which entailed legal research by examining library materials or secondary legal sources. The focus was on written regulations and legal documents, conducted mainly through library studies and document analysis.

Two approaches were used in this research: the Statute approach and the Legal Concept Analysis Approach (Conceptual Approach). Primary legal materials encompassed laws and regulations, official records or minutes about their formation, and judicial decisions. These legal materials were categorised based on Indonesia's hierarchy of rules and regulations.

The primary legal sources used in this research included:

1. "Constitution of the Republic of Indonesia 1945, " published in the State Gazette of the Republic of Indonesia No 75, of 1959.

2. Law of the Republic of Indonesia No 1 of 2023 concerning the Criminal Code (KUHP).

3. Universal Declaration of Human Rights 1948.

4. Law of the Republic of Indonesia No 9 of 1998 on Freedom of Expression in Public.

5. Law of the Republic of Indonesia No 39 of 1999 Concerning Human Rights."

Secondary legal sources used in this research encompassed:

1. Explanations of "the Regulation of the Law of the Republic of Indonesia No 1 of 2023 concerning the Criminal Code."

2. Legal books, including legal theses and dissertations, legal journals, and legal dictionaries.

3. Relevant literature was obtained from the Central Library of Universitas Brawijaya and the Legal Documentation and Information Center of the Faculty of Law, Universitas Brawijaya.

4. Internet articles.

Tertiary legal materials referenced in this research included legal dictionaries written [9] the diverse sources of legal materials, both primary, secondary, and tertiary, employed in this study, the method for collecting legal materials was primarily through library research. The legal material analysis technique used in this research was systematic interpretation, which involved interpreting the law as part of the legislative system by connecting it with other laws.

RESULTS AND DISCUSSION

Legal Regulation of Criminal Offense on Defamation Against the Government. The crime of defamation as delineated in the Penal Code can broadly be demarcated into two distinct categories: public aspersion, stipulated in Chapter XVI of Volume II of the Penal Code, and specialised calumny, codified beyond the confines of Chapter XVI in the same compendium. Public slander primarily revolves around invective targeting an individual's dignity, whereas specialised calumny accentuates the Dignitas of collectivities [6]. This section will scrutinise how criminal jurispru-

dence addresses the malefic act of disparaging authorities and state or governmental establishments.

In a comprehensive context, a criminal misdemeanour can be elucidated as an act or comportment that sullies or diminishes a person's eminence and reputation [10]. Consequently, a criminal misdemeanour can also be expounded as an undertaking that infringes upon an individual's prerogative to safeguard their untarnished nomenclature and eminence. It can be postulated that the intention to vilify either the sovereign or state/government institutions constitutes an act of besmirching the unsullied terminology and eminence of both the sovereign and these institutions, construing them as individual subjects and institutional entities [9].

Discussing criminal law regulation cannot avoid examining legal and illegal policies. Legal policy involves formulating legal rules to create and update legal materials to align with societal needs and enforce existing legal provisions [11]. In contrast, criminal law policy represents an endeavour to craft legislation in criminal law that is appropriate and relevant to current and future circumstances. Within criminal law policy, careful attention to grammar is essential in drafting applicable laws and regulations to prevent the creation of legal norms that may lead to double meanings and ambiguity, ensuring legal certainty.

This section will analyse the criminal law regulation concerning defamation of authorities and state/government institutions based on the Criminal Code, regulations governing freedom of expression, and pertinent Constitutional Court decisions.

Under the current legal framework, insults against the government or state institutions are addressed in Article 240 of the Criminal Code, which states: "Any person who insults the government or a state institution in public, verbally or in writing, shall be subject to a maximum imprisonment of one year and six months or a maximum fine of category II".

Article 241 of the Criminal Code reads: "Every person who broadcasts, shows, or attaches writings or pictures, or disseminates through means of information technology containing insults against the government or state institutions, with the intention that the public will know the contents of the insult, shall be subject to imprisonment of up to 3 years or a maximum fine of category IV".

The regulation of freedom of speech, as outlined in Articles 240-241 of the Criminal Code, has sparked significant debate regarding the principle of freedom of speech in Indonesia. These articles specifically pertain to cases of insulting the government or state institutions. While their intended purpose is to uphold the authority of the government and state institutions, many argue that these articles may be deemed contradictory to the principle of freedom of expression guaranteed by Article 28 and Article 28 E § 3 of the 1945 Constitution of the Unitary Republic of Indonesia, Article 2 of Law No 9 of 1998 on Freedom of Expression in Public, Law No 39 of 1999 on Human Rights Article 23 § 2, and Article 19 § 1 of Law No 12 of 2005 on the International Covenant on Civil and Political Rights.

Article 28 of the 1945 Constitution guarantees freedom of expression as a fundamental right of every citizen, encompassing the right to express opinions, views, and aspirations without unwarranted intervention. Consequently, when Articles 240 and 241 of the Criminal Code are employed to penalise individuals who criticise or scrutinise the government or state institutions, this is viewed as a restriction inconsistent with the constitutional guarantee of freedom of expression.

The author's argument that these articles contradict the principle of freedom of speech and its regulations is significant in igniting further discussions on the necessity for criminal law reform in Indonesia. This reform may encompass revising or repealing Articles 240-241 of the Criminal Code or providing more precise definitions of the boundaries that can be placed on freedom of speech. The goal is to ensure that the protection of state institutions does not clash with the fundamental rights of citizens to express themselves and voice their opinions. Thus, this debate underscores the importance of maintaining a balance between safeguarding state institutions and upholding the fundamental principles of freedom of speech within the Indonesian legal system.

In the following section, the author will present a comparative statement detailing the elements of defamation regulation against authorities and state/government institutions in the Criminal Code.

The evolution of criminal law regulations concerning insults directed at authorities and

state/government institutions is also influenced by decisions made by the Constitutional Court. As a state institution and a branch of judicial power, the Constitutional Court plays a crucial role in shaping laws and public policies. Since its establishment, the Constitutional Court has reviewed the provisions related to insults in the Criminal Code on multiple occasions, resulting in several noteworthy decisions regarding the constitutionality of these provisions. Examples include Constitutional Court Decision No 013-022/PUU-IV/2006 concerning Insults against the President/Vice President and Constitutional Court Decision No 6/PUU-V/2007 regarding Insults against the Government of Indonesia.

Constitutional Court Decision No 013-022/PUU-IV/2006 declared that Articles 134, 136 bis, and 137 of the Criminal Code conflict with the 1945 Constitution of the Republic of Indonesia and are devoid of legal binding force. In this ruling, the petitioner did not seek a review of Articles 207 and 208 of the Criminal Code. Nevertheless, in the legal reasoning section, the Constitutional Judge interpreted those insults against authorities and state/government institutions (gestelde macht of openbaar lichaam) must be predicated on a complaint (bij klacht).

While this interpretation transforms Articles 207 and 208 of the Criminal Code into complaint-based offences, it is essential to clarify that this is solely a legal consideration. In practice, several legal scholars argue that the legal concerns within the Constitutional Court Decision carry binding legal weight as an integral part of the decision. This interpretation is based on a rationalisation foundation that addresses the issue of the constitutionality of the scrutinised legal norms. Legal considerations align with the constitutional guidelines per the interpretation of Constitutional Judges.

Constitutional Court Decision No 6/PUU-V/2007 asserts that Articles 154 155 of the Criminal Code oppose the 1945 Constitution. A noteworthy aspect of this decision is that the applicant requested a review of Articles 207 and 208 of the Criminal Code. However, the Constitutional Court determined that these articles were irrelevant to the argument concerning violating the applicant's constitutional rights. Consequently, the applicant was deemed to lack legal standing to challenge these two articles. As a result, the Constitutional Court has not yet examined the constitutionality of Article 207 and Article 208 of the Criminal Code.

Limitation of Criminal Offense of Defamation against the Government or State Institutions. The regulation of criminal offences in Indonesia is governed by the Criminal Code (KUHP), which has remained unchanged since the Dutch colonial era. Many experts argue that the rules in the old Criminal Code are no longer relevant to the dynamic development of Indonesian society today. Furthermore, the current Criminal Code still heavily reflects Western classics and does not incorporate the cultural values of Indonesian culture [12].

For these reasons, the Indonesian government initiated the formulation of the Draft Criminal Code (RKUHP) and planned to enact the regulation in July 2022. Nevertheless, numerous stakeholders consider the ratification of the RKUHP to be rushed, as many articles are still deemed problematic. The ratification of the RKUHP must be carefully formulated, as it entails legal reform that must align with the values ingrained in Indonesian society. Among the articles seen as problematic are those related to insulting the government, as stipulated in Criminal Code Articles 240 and 241.

The formulation of the offence in the article on criminal defamation must be crafted with precision to prevent misinterpretation. This is crucial given its nature, which pertains to the honour of an individual's morality – an abstract concept that can only be assessed subjectively by the victim. Social media has emerged as a prominent platform for Indonesians to communicate, interact, and express themselves. It is not uncommon for criticism conveyed in writing on social media to be interpreted differently by other users, particularly when criticising official Indonesian government institutions. Therefore, a clear distinction between insults and criticism must be drawn, as the boundary between these concepts is relatively thin.

From a linguistic perspective, the theory of dysphemism can be employed to analyse the distinction between insults and criticism. In the theory of dysphemism, an insult is defined as an utterance that imparts a coarse or impolite tone, often taking the form of diatribes, harsh words, and expressions of hatred aimed at causing unpleasant feelings. In contrast, criticism seeks to assess something to facilitate improvement, enhance understanding, and broaden appreciation [13]. It

is essential to underscore that criticism is typically conveyed without harbouring feelings of hatred.

To prevent misinterpretation and the creation of vague legal provisions, providing a more detailed explanation of the precise boundaries distinguishing insults from criticism is imperative. However, it is essential to recognise that establishing absolute limitations for classifying an act as insulting or not insulting within the realm of law is often challenging. Therefore, a practical approach is to organise such acts as complaint offences rather than general offences, as this offers a benchmark that can accommodate this complexity. In the revised Criminal Code dated July 4, 2022, the formulation of insults directed at the president and vice president is explicitly categorised as a complaint offence, as clearly articulated in Article 220. In contrast, the formulation of insults aimed at the government, as outlined in Criminal Code Articles 240 and 241, lacks an explanation of the complaint offence or additional articles providing detailed information about this concept. Including the complaint offence in Criminal Code Articles 240 and 241 is essential, as its omission could threaten the freedom of speech the Indonesian people enjoy if the regulation is enacted.

Public criticism directed at the legislative body can serve as a valuable tool for improving their performance. Such criticism, primarily when conveyed through social media platforms that enable rapid communication, can be instrumental in prompting the legislative body to assess the reasons behind public dissatisfaction with their performance. The constructive criticism offered by the community regarding the legislative body's actions and decisions is integral to sustaining a democratic Indonesian government. Introducing Articles 240 and 241 in the Criminal Code could hurt the nation, potentially eroding democratic principles and steering the country toward an authoritarian state with a centralised government. Without incorporating a complaint offence provision, a clear distinction between criticism and insult may impede public engagement and participation in the democratic process.

This situation raises concerns about potential human rights violations, as it is feared that without the provision of complaint offences, officials in the legislature may readily misuse their authority to report individuals they perceive as having insulted their dignity. It is crucial to note that Article 19 of the International Declaration of Human Rights states that everyone has the right to hold and express their opinions. Indonesia, too, safeguards the freedom of speech of its citizens, as evidenced by Article 28E § 3 of the 1945 Constitution and Article 23 § 2 of Law No 39 of 1999 concerning Human Rights. These legal provisions establish and protect the freedom of speech for Indonesian citizens. However, Articles 240 and 241 in the Criminal Code threaten this freedom. There is a genuine concern that the government, which should safeguard the rights of its citizens, may transform into a government that opposes criticism and the aspirations of its people.

Considering the insulting article in the Criminal Code, governed by Article 307 on Crimes Against Public Authorities and interpreted as potentially limiting freedom of speech, it transformed Constitutional Court Decision No 013-022/PUU-IV/2006. This decision converted the application of the article into a complaint offence, thereby preventing potential government arbitrariness in levying charges based on the paper. This demonstrates that the government can protect the community's right to express their opinions freely. It grants the community the freedom to voice their opinions without the looming fear of prosecution, as Article 307 of the Criminal Code is treated as a complaint offence. Additionally, it extends legal protection to individuals, ensuring they cannot be arbitrarily insulted by others. Therefore, converting Article 240 and Article 241 of the Criminal Code from general to complaint offences is vital to guarantee security and public order, particularly when expressing criticism and opinions, especially on social media platforms. Prevalent crimes are considered inappropriate for Articles 240 and 241 of the Criminal Code, as these provisions do not pertain to acts that can be reported by anyone who perceives insults against the Legitimate Government.

Articles 240 and 241 of the Criminal Code should be transformed into complaint offences, wherein the aggrieved party will report the alleged insult case to the authorities. A government that actively listens to and welcomes criticism and opinions from its citizens, recognising them as the driving force behind a country's governance, is the type of government desired by the people. It is also a manifestation of democracy. This aligns with the principle of "ubi societas ibi ius," which signifies that where there is society, there is law. The gov-

ernment cannot function without the support of the people. Articles 240 and 241 of the Criminal Code have garnered significant opposition from the public, who will ultimately be subject to this regulation. These two articles will curtail the freedom of individuals to express their aspirations, particularly when criticising the government.

The issue lies in the absence of a clear definition of "insult" and the fact that the offences in both articles are still categorised as general offences. This situation could foster a government that is averse to criticism and lead to an authoritarian or centralised government system. A rigid government system exercises extensive control over its populace, significantly limiting their freedoms. Indonesia, which previously adhered to a democratic system that prioritised its people, could transition into an authoritarian government reminiscent of past eras with the emergence of Articles 240 and 241 of the Criminal Code. Such an authoritarian government would be a nightmare for the people of Indonesia, where individual freedoms are curtailed, and authorities dictate nearly every aspect of life.

Hence, it is essential to amend the provisions on insulting the legitimate government to prevent detrimental consequences, especially for the community. The right to express opinions and voices through criticism is stifled because Articles 240 and 241 of the Criminal Code have broad definitions. There is a lack of legal protection for individuals who convey criticism if that criticism is considered an insult to the legitimate government. Both articles favour the government while harming the public's ability to voice criticism, particularly on social media. Furthermore, the fact that Article 240 and Article 241 of the Criminal Code are categorised as general offences poses a risk to the public when expressing criticism, especially on social media.

CONCLUSIONS

The regulatory framework concerning defamation against authorities and state/government institutions is comprehensively embedded within Indonesian criminal law, predominantly enshrined in the Criminal Code. This offence is regarded as an insult to the reputation and honour of the government or state institutions, implying a significant implication on the socio-legal landscape. The legal provisions addressing insults aimed at the government and state institutions have undergone a series of reforms, an endeavour undertaken to replace the archaic Criminal Code inherited from the Dutch Colonial era with contemporary legislation. Notably, Law No 1 of 2023, which pertains to the Criminal Code, has engendered considerable debate, focusing on the contentious aspects of Articles 240 and 241.

The core contention revolves around these provisions potentially conflicting with the cherished principle of freedom of speech, even though citizens are ostensibly protected under the venerable 1945 Constitution of Indonesia, bolstered by supplementary regulations on freedom of speech. The amendments to the Criminal Code, specifically within the context of Articles 240 and 241, ushered in a more severe punitive regime for such transgressions, serving as a central pivot in discussions concerning the evolving landscape of defamation law in Indonesia.

Despite these legal developments, decisions from the Constitutional Court (MK) have emerged as pivotal in shaping criminal law concerning defamation, elevating their significance to the forefront of legal discourse. Although some articles within the Criminal Code have faced constitutional challenges and have been deemed unconstitutional, Articles 207 and 208, governing insults against authorities and state/government institutions, have remained untested on the crucible of constitutionality, further fueling debates regarding their compatibility with the cherished principle of freedom of expression enshrined within the Indonesian Constitution.

These articles, replete with legal and sociopolitical implications, have prompted profound dialogues regarding the delicate equilibrium between safeguarding the honour and integrity of state institutions and upholding citizens' inalienable rights to articulate their opinions on the other freely. Indeed, a compelling argument emerges for Indonesia's imperative need for comprehensive criminal law reform. Such an endeavour could encompass a reassessment of the relevance and necessity of Articles 240 and 241 within the Criminal Code, potentially advocating for their revision, repeal, or, at the very least, the introduction of enhanced clarity in delineating the parameters of freedom of expression.

In conclusion, the introduction of Articles 240 and 241 within the Criminal Code, addressing the criminal offence of insulting the government or state institutions, has incited widespread contro-

versy and warrants meticulous reconsideration. Although aimed at protecting the honour and reputation of state entities, these provisions harbour the potential to infringe upon the hallowed ground of freedom of speech, raising concerns about the possible perpetuation of authoritarian tendencies.

It is essential to underscore that public criticism directed at the government and legislative bodies plays an integral role in preserving the tenets of democracy. Therefore, there exists an imperative to demarcate a clear and discernible boundary between malicious insults and constructive criticism. Such a differentiation is indispensable to uphold the cherished principles of freedom of speech.

One viable solution is transforming Articles 240 and 241 into complaint-based offences, a nuanced approach ensuring genuine defamation is reported by the aggrieved parties while safeguarding citizens' unfettered rights to express their criticism securely and protected. By adopting this approach, the protection of freedom of speech can be robustly maintained in alignment with the principles of human rights as embodied in international legal frameworks and the Indonesian Constitution, thereby reconciling the paramount need to preserve the honour and integrity of state institutions with the imperative of safeguarding citizens' essential rights.

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