



## The Regulation of Articles on State Institutional Insults to The Right to Freedom of Expression in Indonesia: A Critical Review

Wiwin<sup>1</sup>, Syafa'at Anugrah Pradana<sup>2</sup>, Muhammad Imam Dhiya'ul Haq<sup>3</sup>

<sup>1</sup> Faculty of Law, Andi Sapada Institute of Social Science and Business, Indonesia. E-mail: wwn07121997@gmail.com

<sup>2</sup> Faculty of Sharia Law, State Islamic Institute of Parepare, Indonesia. E-mail: syafaatanugrah@iainpare.ac.id

<sup>3</sup> Public Policy, Yarmouk University, Jordanian. E-mail: dhiyaulhaq@yu.edu.jo

### ABSTRACT

This study examines the problematic regulation of articles of contempt of state institutions in Law No. 1 of 2023 concerning the Criminal Code on the right to freedom of opinion in Indonesia. This type of research is normative legal research that uses *a statute, analytical, and conceptual approach*. The results of this study show that juridically formal insults to state institutions (President, MPR, DPR, DPD, MA, and MK) are regulated in Article 240 and Article 241 of Law No. 1 of 2023 concerning the Criminal Code as complaint offenses. The existence of articles of contempt of state institutions has negative implications for the right to freedom of opinion if reviewed using the legal system theory with the concept of *three elements of the legal system*. In *legal substance*, the article of insult to state institutions is multi-interpretive because there is no clear and concrete distinction between insult and criticism. In *legal structure*, the article of contempt of state institutions has the potential to be misused because there are power relations both structurally and functionally between law enforcement and state institutions; and (3) *legal culture*, standardization of articles of insult to state institutions has the potential to degrade the pluralism of habits in society in opinion and expression.

**Keywords:** Contempt, State Institutions, Right to Free Speech

**Citation:** Wiwin, H. Syafa'at Anugrah Pradana, and Muhammad Imam Dhiya'ul Haq. 2023. "The Regulation of Articles on State Institutional Insults to The Right to Freedom of Expression in Indonesia: A Critical Review". *Mulawarman Law Review* 8 (1) :21-31. <https://doi.org/10.30872/mulrev.v8i1.1122>.

### INTRODUCTION

Indonesia is one of the countries that implements a democratic system<sup>1</sup> as mandated in Article 1 Paragraph (2) of the 1945 NRI Constitution. On the other hand, Indonesia also has the status of a state of the law as regulated *expressis verbis* in Article 1 Paragraph (3) of the 1945 NRI Constitution.<sup>2</sup> The normative consequence of the application of the democratic system and legal system is giving the responsibility to the state to implement the principles of both systems *a quo* consistently.<sup>3</sup> If concluded, the two systems have the same principle: protecting and guaranteeing human rights. Therefore,

<sup>1</sup> Bobi Aswandi and Kholis Roisah, "The State of Law and Pancasila Democracy in Relation to Human Rights (HAM)," *Indonesian Journal of Legal Development* 1, no. 1 (2019): 129.

<sup>2</sup> Sulaiman Tripa, *Reconceptualizing Indonesian Law* (Bandar Publishing, 2019), 13-14.

<sup>3</sup> A Widiada Gunakaya SA and M H SH, *Human Rights Law* (Andi Publishers, 2019), 185-187.

the constitution through Article 28I paragraphs (4) and (5) gives responsibility to the state to protect, promote, enforce, and fulfill human rights<sup>4</sup> by the principle of a democratic rule of law through regulations in laws and regulations.

The right to freedom of expression is one of the fundamental rights<sup>5</sup> that must be protected and guaranteed in the democratic and the Indonesian legal systems.<sup>6</sup> Constitutionally, the right to freedom of expression is guaranteed in Article 28 and Article 28E paragraph (3) of the 1945 NRI Constitution.<sup>7</sup> Thus, the right to freedom of expression is also qualified as a constitutional *right* that gives direct responsibility to the state to guarantee and fulfill this right through laws and regulations. So legal politics forming laws and regulations is always oriented to implement the principles of the rule of law and democracy,<sup>8</sup> including guaranteeing and fulfilling human rights in which there is the right to freedom of opinion.

This conception also applies to the formation of laws and regulations governing material criminal law. On December 6, 2022, the Government passed the latest Criminal Code (KUHP) in a plenary meeting of the House of Representatives of the Republic of Indonesia. The latest Criminal Code contains several controversial articles, one of which is the article on insulting state institutions which is considered to degrade the right to freedom of opinion. *The original intent of* establishing the article of insulting state institutions in the latest Criminal Code was to protect the dignity and dignity of state institutions as personifications of the state. However, *the existence of the regulation* raises various views, one of which is considered to have negative implications for the implementation of the democratic system and legal systems in Indonesia.

The implementation of the democratic system in Indonesia cannot be separated from criticism which is an essential element in the administration of the state.<sup>9</sup> Moreover, criticism is part of the right to freedom of opinion guaranteed by laws and regulations. However, in its implementation, the delivery of criticism is often directed at state institutions to evaluate their performance and policies in various delivery forms. This has implications for the formation of laws and regulations that are considered necessary to regulate offenses regarding the contempt clause of state institutions. But on the other hand, the regulation of articles of insult to state institutions is considered to degrade the values of the state system of law and democracy in guaranteeing the implementation of the right to freedom of expression in Indonesia.

---

<sup>4</sup> Dedy Irawan, Haris Retno Susmiyati, and Orin Gusta Andini, "Pertanggungjawaban Hukum Penyidik Terhadap Perbuatan Salah Tangkap Dalam Perspektif Hukum Pidana Dan Hak Asasi Manusia" 19 (2023): 1–10.

<sup>5</sup> Latipah Nasution, "The Right to Freedom of Opinion and Expression in Public Space in the Digital Age," *is* 4, no. 3 (2020): 38-29.

<sup>6</sup> Arvita Hastarini and Orin Gusta Andini, "Tindak Pidana Pencemaran Nama Baik Pasca Putusan Mahkamah Konstitusi Nomor 31/PUU-XIII/2015," *Jatiswara* 34, no. 2 (2019): 143, <https://doi.org/10.29303/jatiswara.v34i2.199>.

<sup>7</sup> Majda El-Muhtaj, *Human Rights in the Indonesian Constitution* (Prenada Media, 2017), 7.

<sup>8</sup> Sopiani, Sopiani and Zainal Mubaraq, "Legal Politics of the Formation of Laws and Regulations After the Amendment of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations," *Indonesian Journal of Legislation* 17, no. 2 (2020): 150-151.

<sup>9</sup> Athallah Zahran Ellandra, Muhammad Faqih, and Kemal Azizi, "Status Quo Regulation of the Presidential Contempt Article as a Limitation of Constitutional Rights Related to Freedom of Expression in Indonesia and Its Potential Future Regulation: A Case Study of Presidential Contempt on Social Media (Ruslan Buton Case)," *Journal of Studia Legalia* 3, no. 01 (2022): 1.

Based on the *status quo*, the right to freedom of opinion is a crucial issue discussed before and after the promulgation of Law No. 1 of 2023 concerning the Criminal Code. This is because the *regulation* has various potential injuries to the right to freedom of opinion that will be carried out by state institutions in the process of state administration. It is not an exaggeration, considering that various laws and regulations containing similar norms have taken many victims, starting from implementing freedom of opinion and leading to criminalization. Referring to the human rights performance index report from the SETARA Institute and the International NGO Forum on Indonesian Development (INFID), the Government of Indonesia's performance index in guaranteeing and protecting the right to freedom of expression and opinion only recorded an average score of 1.5.<sup>10</sup> One of the causes of the low score of the performance index of rights and freedom of opinion lies in the *legal substance* of various laws and regulations that contain controversial articles. Therefore, an assessment of Article 240 and Article 241 of Law No. 1 of 2023 concerning the Criminal Code needs to be carried out to see the potential problems that will occur with the right to freedom of expression in Indonesia.

## METHOD

This research uses the library research method in the form of normative legal research.<sup>11</sup> Normative legal research focuses on secondary data processing including laws and regulations, doctrines, legal principles, court decisions, legal theories, books, and research reports.<sup>12</sup> The approaches used in this study are the statute approach, analytical approach, and conceptual approach.<sup>13</sup>

## DISCUSSION

### New Criminal Code Article Regulating Contempt of State Institutions

Juridically and formally, the article of insult to state institutions is regulated in Law No. 1 of 2023 concerning the Criminal Code. The regulation *a quo* replaced *Wetboek van Strafrecht*, which was stipulated in Law No. 1 of 1946 concerning the Regulation of Criminal Law. The latest Criminal Code was passed by the Government on December 6, 2022, and promulgated it on January 2, 2023. However, the latest Criminal Code will come into effect three years after its promulgation.<sup>14</sup> According to legal politics, the establishment of Law No. 1 of 2023 concerning the Criminal Code is oriented to present and enforce material criminal law by the values of the Indonesian legal system. This is because the Criminal Code in force in Indonesia is a product of Dutch law applied according to the principle of concordance.

---

<sup>10</sup> Silvia Ng, "Setara Institute-INFID: Indonesia's Human Rights Performance Index in 2022 Rises Slightly," *detikNews*, 2022, <https://news.detik.com/berita/d-6454200/setara-institute-infid-indeks-kinerja-ham-indonesia-tahun-2022-naik-tipis>.

<sup>11</sup> Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus, 1st ed., vol. 1 (Yogyakarta: Mitra Buana Media, 2020).

<sup>12</sup> Jonaedi Efendi, Jhonny Ibrahim, and Prasetijo Rijadi, "Legal Research Methods: Normative and Empirical," 2016, 123-126.

<sup>13</sup> Peter Mahmud Marzuki, "Legal Research," *Jakarta: Kencana Prenada Media* 55 (2005): 102-105.

<sup>14</sup> Criminal Code, "Law Number 1 of 2023 concerning the Criminal Code" (2023), Article 624.

One of the contents of Law No. 1 of 2023 concerning the Criminal Code is the offense clause against state institutions in Article 240 and Article 241. In *legal substance*, 3 (three) points need to be understood in regulating insults to state institutions in Article 240 and Article 241, namely: first, the maximum imprisonment is one year, six months, three years, and four years while the longest fine is category II (IDR 10,000,000) and category IV (IDR 200,000,000) which is adjusted to the form of insult committed by the subject of law. Second, the form of insult to state institutions consists of: (1) oral and written in public (aggravated if it causes unrest in society); and (2) broadcasting, performing, pasting, listening to, and disseminating insults so that they are known to the public (aggravated if they cause riots in society). Third, the article of insult to state institutions is a complaint offense submitted in writing by the Head of Government or State Institution.

In addition, referring to the explanatory part of Article 240 of Law No. 1 of 2023 concerning the Criminal Code, the phrase "insulting" is connoted for "acts that degrade or damage the honor or image of the Government or state institutions, including blasphemy or slander". Furthermore, the explanation of Law No. 1 of 2023 concerning the Criminal Code provides a distinction between "insult" and "criticism", where "criticism" is connoted in "forms of supervision, correction, and advice on matters related to the interests of the community". The regulation regarding the limitation and differentiation between "insult" and "criticism" in the explanation of the Criminal Code is oriented to answer public concerns about the standardization of insults that are considered to intersect with criticism. So that the explanation of the phrases "insult" and "criticism" is also oriented to minimize the potential for articles of insult to state institutions to be used as a tool to degrade freedom of opinion.

Furthermore, according to the explanation of Article 240 paragraph (1) of Law No. 1 of 2023 concerning the Criminal Code, the phrase "Government" is limited to the President of the Republic of Indonesia. While the phrase "state institution" is limited to the People's Consultative Assembly (MPR), House of Representatives (DPR), Regional Representative Council (DPD), Supreme Court (MA), and Constitutional Court (MK). However, the qualifications of state institutions in the regulation of such offenses are limited. The regulation of the article on insult to state institutions in Law No. 1 of 2023 concerning the Criminal Code is oriented towards 3 (three), namely: (1) to maintain the dignity and dignity of state institutions as personifications and representations of the state; (2) to create a healthy democratic climate based on ethics and morals; and (3) to impose restrictions on the exercise of freedom of expression in Indonesia.

Historically, articles of insult to state institutions have been regulated in Article 134, Article 136, and Article 137 of the Criminal Code (insult to the President and Vice President). However, on December 6, 2006, the Constitutional Court stated through its decision number 013-022/PUU-IV/2006 that these articles were contrary to the constitution (unconstitutional) because they were irrelevant to be applied in Indonesia and were not by the spirit of democracy.<sup>15</sup> Previously the article of contempt of state institutions was provided for in *Article 111 of the Nederlands Wetboek van Strafrecht*

---

<sup>15</sup> Zico Junius Fernando, "Study on the Article Concerning Contempt Against President Ans Vice President in Indonesia," *Journal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 137.

1881 concerning the deliberate insult of the King and Queen. After Indonesia's independence, the *regulation* was adopted in Article 134 of the Criminal Code by simply changing the phrase "King and Queen" to "President and Vice President".<sup>16</sup>

### The Problem of the Article of State Institutions' Contempt for the Right to Freedom of Expression

The principle of legality is a fundamental principle in criminal law, on the other hand, changes in law and the formation of laws require a lot of time. The inability of the law to reach criminal acts committed by legal subjects often results in these actions not being punished.<sup>17</sup> The problem of the existence of articles of insult to state institutions in the Criminal Code against the right to freedom of opinion can be analyzed using the theory of the legal system proposed by Laurance M. Friedman with the concept of *three elements of a legal system* consisting of *legal substance*, *legal structure*, and *legal*. According to the legal system theory, the effectiveness of enforcing a legal norm is influenced by the three aspects above.<sup>18</sup> The following author describes the legal problems in the article of contempt of state institutions using the above conception:

Formally juridically, the material content of the article of insult to state institutions has the potential to be a tool to kill freedom of opinion because it is multi-interpretive.<sup>19</sup> Although the explanatory section of the latest Criminal Code regulates the differentiation between "insult" and "criticism", it does not eliminate the multi-interpretation nature of Article 240 and Article 241. This is because the article of insult to state institutions is not formulated clearly and concretely, causing legal uncertainty in *the law enforcement* of Article 240 and Article 241 of Law No. 1 of 2023 concerning the Criminal Code.

Article 5, letter f of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, states that in the formation of laws and regulations, attention must be paid to the clarity of formulation. The provision of *a quo* relates to the conception of *lex scripta and lex certa* in the principle of legality, which essentially states that criminal law arrangements must be formulated in writing and clearly / unambiguously. It is oriented to realize legal certainty regarding limitations and clarity of formulation. However, the regulation of the article of insult to state institutions in Article 240 and Article 241 of Law No. 1 of 2023 concerning the Criminal Code degrades this conception.<sup>20</sup>

---

<sup>16</sup> Press Release of the Indonesian Center for Law and Policy Studies (PSHK), "5 Reasons for Rejecting the Presidential Contempt Article Reinserted into the RKUHP," Press Release of the Indonesian Center for Law and Policy Studies (PSHK), 2021, <https://pshk.or.id/publikasi/siaran-pers/5-alasan-menolak-pasal-penghinaan-presiden-dimasukkan-kembali-ke-dalam-rkuhp/>.

<sup>17</sup> Orin Gusta Andini, "Progressive Legal Framework for the Regulation of Sexual Violence Crimes in Indonesia," *Jurisprudentie* 10, no. 1 (2023): 37–46, <https://doi.org/10.24252/jurisprudentie>.

<sup>18</sup> Lawrence M Friedman, "American Law an Introduction," *Translation from American Law an Introduction, 2nd Edition, translation: Wisnu Basuki, Jakarta: Tatanusa*, 2001, 6–8.

<sup>19</sup> Andini, Orin Gusta. 2019. "Tinjauan Hukum Pencemaran Nama Baik Terhadap Pejabat Negara: Kajian Atas Putusan Hakim Nomor 341/Pid.B/2014/PN.SGM". *Wacana Hukum* 25 (2):44-58. <https://doi.org/10.33061/1.jwh.2019.25.2.3002>.

<sup>20</sup> Syafa'at Anugrah Pradana, Rusdianto Sudirman, and Muh. Andri Alvian, "Law Enforcement Elitism on the Right to Freedom of Opinion," *DICTUM: Journal of Sharia and Law* 20, no. 1 (2022): 156–68.

There are at least three phrases in the explanatory formulation of Article 240 of the Criminal Code that contain legal ambiguities, namely the phrase "degrading or damaging honor or image", the phrase "menista", and the phrase "defamatory". The concrete form of the three phrases is not formulated and is limited. The exercise of the right to freedom of opinion is very vulnerable to misinterpretation, thus the actions of citizens in exercising their freedom of opinion have the potential to be criminalized as part of the three phrases above. This is because legal certainty is not accommodated in the regulation of articles of contempt of state institutions, therefore there is no *judiciary* (a form of protection for justice seekers) which is important in laws and regulations.<sup>21</sup> Instead of maintaining the dignity and dignity of state institutions, the existence of articles of insult to state institutions will become a tool to kill freedom of opinion in Indonesia. This is exacerbated by the formulation of Article 240, paragraphs (3) and (4) and Article 241, paragraphs (3) and (4) which qualify the article of contempt of state institutions as a complaint offense. This means that the legal hermeneutics of the 3 phrases, will be judged subjectively by state institutions. So that the complexity of the problem the perspective of *lex certa*, will degrade the right to freedom of opinion as a *legal right*, which in the end will be used as a tool to kill freedom of opinion because the interpretation of insults is based on subjective judgments from state institutions.

This subjective interpretation is exacerbated by the absence of concrete and clear legal certainty regarding the form of insult in the explanatory section of the Criminal Code.<sup>22</sup> Moeljatno, in his book, states that "The absence of legal certainty will have an impact on the occurrence of *criminal extraordinary* which gives broad freedom for the ruler to interpret what is *criminal stellionatus* which will have negative implications on the ruler who can criminalize and impose sanctions on anyone he does not like under the pretext that he has committed evil acts".<sup>23</sup> Therefore, the existence of articles of insult to state institutions has the potential to become a deadly tool for freedom of opinion that will injure democratic values, the rule of law, and human rights.

Another problem in the *legal substance aspect* lies in the existence of the article of contempt of state institutions (in this case the article of insult to the President and Vice President), which has been declared unconstitutional. Previously, it was explained that the article of insult of the President and Vice President was regulated in Article 134, Article 136, and Article 137 of Law No. 1 of 1946 concerning the Regulation of Criminal Law but was canceled by the Constitutional Court through Constitutional Court Decision No. 013-022/PUU-IV/2006 because it contradicted the 1945 NRI Constitution. There are at least 3 (two) reasons for the Constitutional Court to cancel the article of insult of the President and Vice President, namely: (1) it is multi-interpretive and does not provide legal certainty, so it is vulnerable to manipulation; (2) is irrelevant to be applied in the Indonesian legal system; and (3) violates democratic principles and human rights. The article of insult to state institutions in the constitutional law perspective is a tradition of

---

<sup>21</sup> Mario Julyano and Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning," *Crepido* 1, no. 1 (2019): 14–15.

<sup>22</sup> Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia," *Legality Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72–90, <https://ejournal.umm.ac.id/index.php/legality/article/view/24247/12233>.

<sup>23</sup> S H Moeljatno, "Principles of Criminal Law," *Rineka Cipta, Jakarta*, 2002, 68.

the monarchical state system that places the King and/or Queen as symbols of the state. Meanwhile, in the democratic republic system adopted in Indonesia, the Head of State and/or Head of Government and other state institutions, are qualified as positions and not state symbols. Based on this conception, the existence of the article of insult to state institutions in the Indonesian legal system is no longer relevant because it will degrade the state of law, democracy, and human rights system.<sup>24</sup> Therefore, legal politics in regulating the contempt clause against state institutions in No. 1 of 2023 concerning the Criminal Code is a form of defiance of the Constitution.

Another problem that can degrade the right to freedom of expression is the structural relationship between legal subjects (state institutions) and law enforcement officials. Problems in the legal structure have the potential to threaten the independence and integrity of law enforcement in the application of articles of contempt of state institutions. For example, the President is structurally in charge of the National Police and the Prosecutor's Office. As it is known that the National Police and the Prosecutor's Office have a strategic role in the application of material and formal criminal law.<sup>25</sup> This will certainly have negative consequences in the application of the law and the fulfillment of the right to freedom of opinion. The existence of the article of insult to state institutions will only increase the case for the criminalization of citizens who exercise their right to freedom of opinion. So far, cases of criminalization and selective logging have become unresolved problems when citizens who face the law fight parties who have power relations with state officials. These power relations result in law enforcement biasing in mapping the boundaries between criticism and insult. The technical problem that will occur if the complaining party is the President, MPR, DPR, DPD, MA, and MK is the status and power relations between the National Police and these state institutions so that it will affect the professionalism and integrity of law enforcement in applying articles of contempt of state institutions.

In addition, subjectivity problems also have the potential to occur in the institutional structure of the Supreme Court, which oversees the State Court, and the High Court which will examine, adjudicate, and decide cases of contempt of state institutions. This is exacerbated if cases of contempt of state institutions are handled directly by the Supreme Court at the cassation and/or judicial review level. On the other hand, problems also occur when the Constitutional Court examines the constitutionality of the article of contempt of state institutions within the authority of *judicial review*, which can potentially to cause *conflicts of interest* in testing laws and regulations. In other words, the existence of articles of insult to state institutions is very prone to causing *conflicts of interest* in its application,<sup>26</sup> so that it will degrade the principles of *law enforcement because of the* relationship and pattern of institutional relations, which will ultimately

---

<sup>24</sup> Constitutional Court, "Decision Number 013-022/PUU-IV/2006" (2006).

<sup>25</sup> Ali Imron, "The Role and Position of Four Pillars in Law Enforcement, Judges, Police Prosecutors, and Advocates Linked to Law Enforcement in Corruption Cases," *Jurnal Surya Kencana Dua: Dynamics of Law and Justice Issues* 6, no. 1 (2016): 92.

<sup>26</sup> Nur Azizah Hidayat Ubait Kurniawan Aziz, "Criminal Liability of Misuse Personal Identity Number for Cellphone Cards Registration Illegally," *Mulawarman Law Review* 5, no. 1 (2020): 47–60, <https://doi.org/https://doi.org/10.30872/mulrev.v7i1.790>.

increase the potential for articles of insult to state institutions to be used as a tool to kill freedom of opinion.

Freedom of exercise is essential that it must be protected in a democracy by legal structures. The presence of law should ideally be followed up professionally and proportionately by law enforcement so that the political direction of the law that animates its formation can be achieved.<sup>27</sup> However, the application of laws that intersect with the interests of the ruler has so far provided a sense of concern and pessimism towards the enforcement of articles of contempt of state institutions. This is because law enforcement is still far from being expected. Moreover, there is a role for law enforcement and state institutions in shaping *distrust* in society. The pattern of relations between institutions constructed in the Indonesian constitutional system raises problems in applying articles of contempt of state institutions based on the phenomenon of poor law enforcement so far.

The fundamental problem that occurs in Indonesian *legal culture* is the existence of pluralism of habits with different standards.<sup>28</sup> This also applies to the pattern of expressing opinions based on different standards between one community group and another community group. Thus, it is not surprising if each region has its way of arguing and expressing the contents of its head. In certain groups of people, the pattern of opinion and expression is carried out gently and uses fairly polite terms in general. However, in other groups of society, the pattern of opinion and expression is carried out loudly and uses terms that seem unethical (even though it is common in the group). Even symbolic interactionism, in my opinion, has different patterns in community groups. Pluralism, standardization, and this pattern have the potential to be misinterpreted by state institutions in the implementation of freedom of opinion.

The existence of articles of insult to state institutions has dire implications for democracy in Indonesia, such as fear of expressing opinions, criminalization of critics, and silencing freedom of opinion. This is due to three things, namely: (1) the vagueness of the delic formulation; (2) the characteristics of the article of contempt of office are prone to abuse; and (3) different standards in interpreting forms of humiliation in society. If you review some *of the regulations* governing the contempt clause of state institutions that have been applied so far, many find that they degrade the right to freedom of opinion. For example, Article 134, Article 136, and Article 137 of Law No. 1 of 1946 concerning Criminal Law Regulations were annulled by the Constitutional Court and insulted articles in the ITE Law that caused fear for the public to express opinions in Indonesia. This has adverse implications for Indonesia's democracy index. Based on a report by *The Economist Intelligence Unit*, Indonesia's democracy index is categorized as a "flawed democracy" caused by violations of civil rights (including the right to freedom of expression). The point of the problem lies in the existence of the article of contempt of office. Therefore, the article of contempt of state institutions will have great potential

---

<sup>27</sup> Erlyn Indarti, "Professionalism Carries the Main Function of the Police in Law Enforcement in Central Java Regional Police," *Legal Issues* 43, no. 3 (2016): 350–51.

<sup>28</sup> Joeni Arianto Kurniawan, "Legal Pluralism and the Urgency of Socio-Legal Studies Towards the Study and Development of Social Justice Law," in *National Symposium and Socio-Legal Workshop "Reconstruction of Legal Aid that Guarantees Access to Justice"*. Brawijaya University, Malang, East Java, 2013, 18–19.

to become a tool to kill freedom of expression in Indonesia as some articles of contempt of office have set a bad precedent in killing the freedom of expression of the Indonesian people.

## CONCLUSION

The contempt clause of state institutions is regulated in Article 240 and Article 241 of Law No. 1 of 2023 concerning the Criminal Code, which qualifies as a complaint offense. Previously, similar articles had been regulated in Article 134, Article 136, and Article 137 of Law No. 1 of 1946 concerning the Regulation of Criminal Law but were canceled by the Constitutional Court. The regulation of articles of insult to state institutions aims to protect the dignity and dignity of state institutions as personifications of the state in carrying out their duties and functions. In the explanation section of the regulation, state institutions are simplified to the President, MPR, DPR, DPR, MA, and MK. The existence of articles of insult to state institutions has negative implications for the right to freedom of opinion in Indonesia because it has the potential to be used as a tool to kill freedom of opinion. There are at least three reasons for this negative justification, namely: (1) the article on insulting state institutions does not regulate the distinction and distinction between "insult" and "criticism" concretely and clearly; (2) the article on contempt of state institutions is vulnerable to abuse because there are power relations both structurally and functionally between law enforcement and state institutions, and (3) standardization of articles of insult to state institutions has the potential to degrade the pluralism of customs in society.

## ACKNOWLEDGEMENTS

The author would like to thank all parties who have contributed (both material and non-material) to the completion of this article. We realize that without the contribution of relevant parties, this article would not have been completed.

## REFERENCES

- Andini, Orin Gusta. 2019. "Tinjauan Hukum Pencemaran Nama Baik Terhadap Pejabat Negara: Kajian Atas Putusan Hakim Nomor 341/Pid.B/2014/PN.SGM". *Wacana Hukum* 25 (2):44-58. <https://doi.org/10.33061/1.jwh.2019.25.2.3002>.
- Arvita Hastarini and Orin Gusta Andini, "Tindak Pidana Pencemaran Nama Baik Pasca Putusan Mahkamah Konstitusi Nomor 31/PUU-XIII/2015," *Jatiswara* 34, no. 2 (2019): 143, <https://doi.org/10.29303/jatiswara.v34i2.199>.
- Aswandi, Bobi, and Kholis Roisah. "Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (HAM)." *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 128–45.
- Efendi, Jonaedi, Jhonny Ibrahim, and Prasetijo Rijadi. "Metode Penelitian Hukum: Normatif Dan Empiris," 2016.
- Ellandra, Athallah Zahran, Muhammad Faqih, and Kemal Azizi. "Status Quo Pengaturan Pasal Penghinaan Presiden Sebagai Pembatas Hak Konstitusional Terkait Kebebasan Berpendapat Di Indonesia Beserta Potensi Pengaturannya Di Masa Depan: Studi Kasus Penghinaan Presiden di Media Sosial (Kasus Ruslan Buton)." *Jurnal Studia Legalia* 3, no. 01 (2022): 1–12.

- El-Muhtaj, Majda. *Hak Asasi Manusia Dalam Konstitusi Indonesia*. Prenada Media, 2017.
- Fernando, Zico Junius. "Telaah Pasal Penghinaan Terhadap Presiden Dan Wakil Presiden Di Indonesia (Study on The Article Concerning Contempt Against President Ans Vice President in Indonesia)." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 135–51.
- Friedman, Lawrence M. "Hukum Amerika Sebuah Pengantar." *Terjemahan Dari American Law an Introduction, 2nd Edition, Alih Bahasa: Wisnu Basuki, Jakarta: Tatanusa, 2001.*
- Imron, Ali. "Peran Dan Kedudukan Empat Pilar Dalam Penegakan Hukum Hakim Jaksa Polisi Serta Advocat Dihubungkan Dengan Penegakan Hukum Pada Kasus Korupsi." *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 6, no. 1 (2016): 96.
- Indarti, Erlyn. "Profesionalisme Mengemban Fungsi Utama Kepolisian Dalam Penegakan Hukum Di Polda Jawa Tengah." *Masalah-Masalah Hukum* 43, no. 3 (2016): 348–55.
- Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus, 1st ed., vol. 1 (Yogyakarta: Mitra Buana Media, 2020).
- Julyano, Mario, and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Crepido* 1, no. 1 (2019): 13–22.
- KUHP. Undang Undang Nomor 1 Tahun 2023 Tentang Kitab Undang Undang Hukum Pidana (2023).
- Kurniawan, Joeni Arianto. "Pluralisme Hukum Dan Urgensi Kajian Socio-Legal Menuju Studi Dan Pengembangan Hukum Yang Berkeadilan Sosial." In *Simposium Nasional Dan Workshop Sosio Legal "Rekonstruksi Bantuan Hukum Yang Menjamin Access to Justice"*. Universitas Brawijaya, Malang, Jawa Timur, 2013.
- Mahkamah Konstitusi. Putusan Nomor Nomor 013-022/PUU-IV/2006 (2006).
- Mahmud Marzuki, Peter. "Penelitian Hukum." *Jakarta: Kencana Prenada Media* 55 (2005).
- Masahiro Suzuki and Tamera Jenkins, "The Role of (Self-)Forgiveness in Restorative Justice: Linking Restorative Justice to Desistance," *European Journal of Criminology* 19, no. 2 (March 1, 2022): 202–19, <https://doi.org/10.1177/1477370819895959>.
- Moeljatno, S H. "Asas-Asas Hukum Pidana." *Rineka Cipta, Jakarta, 2002.*
- Nasution, Latipah. "Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital." *Adalah* 4, no. 3 (2020): 37–48.
- Ng, Silvia. "Setara Institute-INFID: Indeks Kinerja HAM Indonesia Tahun 2022 Naik Tipis." detikNews, 2022. <https://news.detik.com/berita/d-6454200/setara-institute-infid-indeks-kinerja-ham-indonesia-tahun-2022-naik-tipis>.
- Nur Azizah Hidayat Ubait Kurniawan Aziz, "Criminal Liability of Misuse Personal Identity Number for Cellphone Cards Registration Illegally," *Mulawarman Law Review* 5, no. 1 (2020): 47–60, <https://doi.org/https://doi.org/10.30872/mulrev.v7i1.790>.
- Orin Gusta Andini, "Progressive Legal Framework for the Regulation of Sexual Violence Crimes in Indonesia," *Jurisprudentie* 10, no. 1 (2023): 37–46, <https://doi.org/10.24252/jurisprudentie>.

- Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia," *Legality Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72–90, <https://ejournal.umm.ac.id/index.php/legality/article/view/24247/12233>.
- Pradana, Syafa'at Anugrah, Rusdianto Sudirman, and Muh. Andri Alvian. "Kemelitan Penegakan Hukum Terhadap Hak Kebebasan Berpendapat." *DIKTUM: Jurnal Syariah Dan Hukum* 20, no. 1 (2022): 156–68.
- (PSHK), Siaran Pers Pusat Studi Hukum dan Kebijakan Indonesia. "5 Alasan Menolak Pasal Penghinaan Presiden Dimasukkan Kembali Ke Dalam RKUHP." Siaran Pers Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2021. <https://pshk.or.id/publikasi/siaran-pers/5-alasan-menolak-pasal-penghinaan-presiden-dimasukkan-kembali-ke-dalam-rkuhp/>.
- SA, A Widiada Gunakaya, and M H SH. *Hukum Hak Asasi Manusia*. Penerbit Andi, 2019.
- Sopiani, Sopiani, and Zainal Mubaraq. "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 146–53.
- Tripa, Sulaiman. *Rekonseptualisasi Hukum Indonesia*. Bandar Publishing, 2019.