

Law Enforcement of Government Insult Crimes in Relation to the *Ultimum Remedium* Principle and Freedom of Expression

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Abstract. *This study examines law enforcement practices or state responses to the crime of insulting the government and how this principle of ultimum remedium works in law enforcement of the crime of insulting the government in Indonesia. Through comparative study methods with countries outside Indonesia, literature studies, and interviews with law enforcement officials to see their law enforcement practices from the perspective of law enforcement. The results of the study show that although the 2023 Criminal Code has regulated insults against the government as an absolute complaint, the norm still leaves room for multiple interpretations between criticism and insults. Law enforcement practices in Indonesia show a tendency to use criminal law as the primary instrument (primum remedium), although normatively recognizing ultimum remedium so that clearer limits, strengthening non-criminal mechanisms, and procedural safeguards are needed to be in line with freedom of expression in a democratic country. This study aims to find out the practice of law enforcement and how this principle of ultimum remedium is present in law enforcement.*

Keywords: *Enforcement; Government; Insults; Law; Ultimum.*

1. Introduction

The provisions regarding the criminal act of insulting the government are closely related to one of the aspects of human rights, namely the right to freedom of expression, which is contained in many forms ranging from freedom of association, assembly, and expression of opinion, as stated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Freedom of expression is recognized as a pillar of modern democracy and fundamental human rights as stipulated in the Convention on Human Rights, namely *the International Covenant on Civil and Political Rights* (ICCPR) through Law No. 12 of 2005, which

affirms the state's obligation to protect the right to freedom of opinion as stated in Article 19 of the ICCPR. The UN Human Rights Committee, through General Comment No. 34 also affirms that personal opinions are absolute and cannot be restricted under any circumstances.

But in reality, often the relationship between freedom of expression and the criminal laws governing contempt of government is in tension, as it was in the New Order era, where criticism of the government was silenced and it was difficult to criticize or express opinions. In the current era of democracy, similar problems have resurfaced due to the increase in reports and prosecutions of alleged insults to the government or state officials. The reports by LBH Pers (2024) and Amnesty International (2023) show an increasing trend in the criminalization of expression, including in cases that are actually legitimate criticisms of public policy. Such legislation will have the potential to cause a chilling effect or deterrent that makes people afraid to express their opinions (Kendrick, 2013).

One of the real cases that entered the criminal court was Harriz Azhar and Fathiah Maulidyanty in their video entitled "THERE IS LORD LUHUT BEHIND THE ECONOMIC-OPS MILITARY RELATIONS OF INTAN JAYA! GENERAL BIN IS ALSO THERE! NgeHAMtam" on August 20, 2021" uploaded to the Youtube channel shows content containing the involvement of Luhut Binsar Pandjaitan (Coordinating Minister for Agriculture and Investment of the Republic of Indonesia) in the mining business in Papua and referred to him as "Lord Luhut" and "criminal" on several occasions even though the essence of the video is only part of the advocacy of human rights and freedom of expression. Haris Azhar and Fatiah Maulidyanty faced charges with the crime of defamation and insult against Luhut Binsar Pandjaitan. Although eventually the judge decided to release them because the elements were not met, this is a problem that shows the gap between freedom of expression and the article on the crime of insult or defamation (East Jakarta District Court Decision Number 202/Pid.Sus/2023/PN. Jkt Team on Special Crimes Information and Electronic Transactions).

Based on the data above, it can be seen that the act of insulting the government with criticism as a form of expression often raises the potential for multiple interpretations, and there is no clear boundary between the two. Normative studies that regulate the criminal act of insulting the government and criticism as a form of expression have been outlined in several previous studies. For example, a study by Muhammad Firdaus examines how the article of insult to the government is considered contrary to the principle of constitutionalism because it opens up opportunities for excessive restrictions on freedom of expression (Firdaus, 2023). On the other hand, a study by Robinsius Nainggolan examines that the policy of reviving the insult of the President and/or Vice President in the Criminal Code is intended as an effort to protect the law against the President/Vice President as a symbol in state life (a symbol of the state) (Nainggolan, 2021).

It was further explained that regulations regarding criminal acts against the president as part of the government are still considered to be present in order to protect the honor and dignity of the president as a form of state symbol. This is important to be criminalized as a criminal regulation of insulting the President and/or Vice President in the 2023 Criminal Code (Nainggolan, 2021). Further criminalization means making an act that originally legal, into a crime. Criteria or steps for criminalization include determining an act as prohibited. Threats and the application of punishment are the main ways to prevent violations of the law and the government must be able to carry out these criminal threats if their actions occur (Nainggolan, 2021). This act of insulting the government qualifies for criminalization because it undermines societal stability and violated the laws that mandate mutual respect among citizens. In addition, the president who acts as the head of state and head of government is a symbol of the state as the holder of the highest power and is the result of the people's choice. So that in order to provide legal protection to the president from acts of insult and attacks on authority, every country is obliged to protect and maintain the dignity of the president and vice president while still paying attention to the elements of insult to the government.

Indonesia, in this case, is faced with two situations where it must protect the human rights of its people to be able to freely express their opinions without any coercion, but on the one hand, there needs to be a firm arrangement to protect the honor and dignity of state leaders as a form of state symbol. Based on this, this research will later cover two main things about how the implementation or practice of law enforcement overcomes the crime of insulting the government, especially through interviews conducted with the Bandung regional police and also the Bandung district court. This study aims to identify how the criminal act of insulting the government aligns with the principle of *ultimum remedium*. The research aims to see how law enforcement practices in Indonesia deal with criminal acts of insulting the government, whether Indonesia tends to overcome everything with criminality (prioritizing the principle of *primum remedium*) or whether it is in line with the universal principle, namely the principle of *ultimum remedium*.

2. Research Methods

The research method that will be used is normative juridical, where this research will focus on the study of legal principles, and laws and regulations (Benur and Azhar, 2020) with a legislative, doctrinal, and comparative legal approach with other countries to see how the practice of certain countries in responding to the crime of insulting the government and how the criminal provisions exist in that country.

This normative approach that uses a statutory approach is used to see the provisions of the insult article, both in the Criminal Code as a colonial legacy and the 2023 Criminal Code made in Indonesia, in addition to the ITE Law, which contains provisions regarding insult as well. This normative research emphasizes the legal literature with the aim of understanding the material and procedural legal basis in making articles of contempt for the government.

The data collection techniques that will be used are literature studies and field research. At the literature study stage, author will collect data from reading literature ranging from books, journal articles, electronic media, and laws and regulations (Soekanto, 2014). In order to complement the findings of the existing legal literature, a field research stage is also carried out where the researcher will conduct direct observations by conducting interviews with law enforcement officials, data will be obtained through interviews with law enforcement officials, namely judges and the police to obtain a practical overview of the practice of the criminal act of insulting the government in society and how the law is enforced.

3. Results and Discussion

3.1. Implementation of Law Enforcement for the Crime of Contempt of the Government

The crime of insulting the government itself has been regulated since the Dutch colonial era, including those regulated in articles 134, 136, and 137 of the Criminal Code, which are specifically for the President/Vice President, as well as articles 207, and 208 which are specifically aimed at public bodies/authorities, which have been canceled by the Constitutional Court Decision No. 013-022/PUU-IV/2006 and the Constitutional Court Decision No. 6/PUU-V/2007. Meanwhile, in the 2023 Criminal Code, the criminal act of insulting the government is regulated in Chapter VII concerning Insult (Articles 240-258 of the 2023 Criminal Code). In addition to the Criminal Code, the crime of insult is also regulated in Law No. 11 of 2008, which was later amended by Law No. 19 of 2016 and finally amended again by Law No. 1 of 2024 concerning Information and Electronic Transactions. The article that specifically regulates this criminal act is in article 27 paragraph (3) of Law No. 11 of 2008 jo. Article 45 paragraph (3) of Law No. 19 of 2016.

In the 2023 Criminal Code, it is further regulated specifically regarding the crime of insulting the government and is separate from the article on the crime of insult aimed at individuals. Articles 240 and 241 of the 2023 Criminal Code regulate contempt of government as a public institution, which is substantially different from the offense of insulting individuals in general criminal law. In academic texts, the article formulates the phrase "attacking his honor and position" (the interests protected are the dignity of the position and the authority of the state/general power). The intended subject is the government consisting of the President, Vice President, and Minister, who assists in their duties according to the constitutional

mandate (Firdaus, 2023). Meanwhile, the criminal act of insulting a person's person as stipulated in article 436 of the 2023 Criminal Code, the object is aimed at ordinary individuals who are not related to their capacity as a state institution and the interests they protect are personal honor and good name.

This criminal act against the government is considered more complex than interpersonal insults because of its relationship with the country's constitution and human rights that must be protected (Adi and Edmond, 2024). There needs to be proportionality in both the legal provisions and the enforcement of law. In responding to this, there needs to be a clear boundary between criticism and insults. In the explanation of Law No. 1 of 2023 concerning the Criminal Code, it distinguishes insult from criticism, where criticism is defined as a form of supervision, correction, and advice on matters related to the interests of the community (Wiwin, et.al., 2023). Furthermore, from the theory of dysphemism, insults are defined as speech that contains a rude or disrespectful tone, often in the form of harsh verbal attacks and expressions of hatred aimed at provoking unpleasant feelings. Meanwhile, criticism aims to assess something to facilitate improvement, increase understanding, and expand appreciation (Agustina, Madjid, et.al., 2023).

Based on interviews with the police, data was obtained from several law enforcers, indicating that in law enforcement practice, the assessment of whether a statement constitutes an insult to the government still relies heavily on the subjective interpretations of law enforcement officials regarding the intent and purpose of that statement. Investigators of Polrestabes Bandung say there is no concrete and rigid SOP that discusses the boundaries between criticism and insult, so that the assessment is based on the intention of delivery in public spaces, the use of language that is contrary to the values and morals of the community, and the attack on the honor of the government. Such an approach is what distinguishes Indonesia from practices in other countries because it upholds the values and cultural norms that develop in society. Furthermore, in an interview with investigators from POLDA Jawa Barat, he argued that in order to be able to categorize a person who can be said to have committed a criminal act of insulting the government, there must be preliminary evidence to assist the investigator in the investigation process to determine whether it is a criminal act or not.

Investigators from the Bandung police highlighted one case, namely the case of Mrs. Iriana where there was a twitter account @KoprifilJati considered to have degraded and insulted First Lady Iriana Joko Widodo. The account uploaded a photo of Iriana Jokowi with the wife of the President of Korea, Kim Kun Hee with the caption, "Bi, please make our guests drink," "Okay, ma'am," wrote the caption on the post which later went viral (Tempo, 2022). This post then went viral, and a unit in the police force, commonly referred to as cyber patrol, observed content in digital media that allegedly had content that violated the ITE Law in it. Police

cyber patrols detected this case, prompting them to act as witnesses, despite the absence of a direct report from the victim. However, the legal process was discontinued because the criminal act required a complaint, and Mrs. Iriana did not file one. This case shows that the police actively monitor alleged insults in digital media, but their law enforcement still depends on the victim's complaint and the assessment that the content is contrary to the values and morals of the community.

In an interview with the judge, it was said that the context between criticism and insult did not have a clear boundary and relied on the assessment of the substance, context, and intent of the statement conveyed. Criticism is understood as a constructive and well-founded expression, conveyed with the aim of building, while insults contain negative connotations, are unfounded, demeaning, and are directed at important figures of the state in an inappropriate way. The judge's assessment is expected to be carried out objectively by considering the substance of the speech, the party being criticized, the subject addressed (personal or government institution), whether it violates religious norms, morality, laws of living in society, and local social customs. From the perspective of the judge, criminal law should ideally be used as an *ultimum remedium*, in line with the New Criminal Code, by prioritizing a wiser settlement and not escalating political conflicts, without eliminating the authority of the law itself.

It is also related to the ethics of every individual who demands compliance with mutually agreed social values and norms. This includes the content, form, and ethical dimensions. In line with the theory of social morality according to Thomas Hobbes, Emile Durkheim, and Max Weber, social morality is the basis for judging good or bad in people's lives (Maiwan, 2018). Based on this, the state has the right to use criminal law to maintain public morals and public order, provided that the restrictions are aimed at protecting the public interest rather than personal morality, which is the intended function of the law (Caron, 1969).

In the academic text of the 2023 Criminal Code, it is explained that the consideration of the reenactment of the article of insult to the President is based on the position or functions and duties of the President that are different from ordinary citizens from sociological, legal, and constitutional perspectives. However, this caused controversy considering that Indonesia's government system adheres to a presidential system, not a monarchy that places its leader as the symbol of the state so that it must be protected. Academician Zainal Ariffin Mochtar said that the president as an official of the election results will be attached to criticism, unlike the king in the monarchy system. This view is also in line with the constitution, which affirms the sovereignty of the people, and the treatise of the Criminal Code, which shows that the insult article was adopted from the Dutch monarchy system, not the presidential system like Indonesia (Najwa Shihab Youtube channel, 2022).

Article 112 of the Criminal Code in Thailand states that insulting the King or members of the royal family is illegal, and such acts have severe consequences. This rule is used to stop people from criticizing the monarchy. In a constitutional monarchy, this is considered acceptable (Sholeha, Musfianawati, et.al, 2023). Belarus, on the other hand, punishes people who insult government leaders, but the punishments and classifications for ordinary citizens are not that severe. It was further explained that criminal liability for insulting government officials must be carried out against every official who, within the scope of his authority, is entitled to perform administrative functions in front of people who are not under his power. The reason or motive for the insult must also be directed toward the implementation of the official duties of government representatives to protect state interests (Ischenko, 2021). The country that prioritizes freedom of expression for its people is Germany, which makes criticism of the government a unique crime that is rarely enforced. Germany prefers a non-criminal strategy in the digital world. They use NetzDG (*Netzwerkdurchsetzungsgesetz*) to predict insults on social media while still allowing freedom of speech at the level of politics and comedy as long as it does not harm personal dignity (Maab, Wortelker, et.al., 2024). Countries respond to insults and criticism of governments in diverse ways, taking into account state stability and individual freedoms (Borovyk, Tkachenko, et.al., 2023).

In this explanation, several important considerations can be formulated so that the law enforcement of the crime of insulting the government runs proportionately, protects freedom of expression, and maintains the authority of the state. First, the norms of the Criminal Code need to affirm insults against state officials or agencies as an absolute complaint so that criminal proceedings can only be initiated on the official complaint of the aggrieved party in order to prevent mass criminalization and political litigation. Although the 2023 Criminal Code has adopted this mechanism, its application is still potentially selective in practice. Second, a strict operational definition of the elements of contempt, including malicious intent, a real impact on state functions, and clear exceptions for criticism of public policy, is needed to limit the scope of interpretation by law enforcement officials. Third, Indonesia needs to strengthen procedural safeguards to prevent repressive law enforcement and avoid arbitrary arrests in cases of expression.

Procedural safeguards include mechanisms such as judges' permits for coercive efforts, complaint complaints, prosecution restrictions, and proportionality tests, which are important to ensure the protection of freedom of opinion as recognized in Article 19 of the Declaration of Human Rights and guaranteed in Article 28E paragraph (3) of the 1945 Constitution and Article 23 paragraph (2) of Law No. 39 of 1999 concerning human rights (Agustina, Madjid, et.al., 2023). However, the existence of Articles 240 and 241 of the Criminal Code raises concerns about the

potential restriction of freedom of expression and the risk of the state using criminal law to suppress public criticism.

In addition, the offense of insult in the 2023 Criminal Code still demonstrates its character as an instrument of personal protection for state officials. Butt and Lindsey's research cited by Aria Wiratama explained that this offense requires acts to be carried out openly in public with the intention of attacking the honor of the President and/or Vice President, does not include criticism for the public interest or self-defense, is a complaint offense, is threatened with a maximum prison sentence of three years, and includes acts through electronic media (Heriansyah, 2025).

Comparisons with other countries show a global tendency to limit contempt laws against public officials. The European Court of Human Rights affirms that state officials should have a higher tolerance for criticism than ordinary citizens (ECHR, 2002), while Japan has abolished such offenses since 1947 and transferred them to civil law mechanisms (Zang, 2023). Although the insult article in the 2023 Criminal Code is more moderate than the colonial provisions, Indonesia still faces the problem of multiple interpretations, especially in distinguishing public interest and the intention to attack dignity, which has the potential to have a chilling effect on freedom of expression (Barendt, 2019).

3.1. The Implementation of the Principle of *Ultimum Remedium* in Law Enforcement of the Crime of Insulting the Government in Relation to the Perspective of the Right to Freedom of Expression

The *Ultimum remedium* principle is a universal concept that is applied by various countries in their legal systems to address criminal acts within their jurisdictions. The principle of *Ultimum remedium* is an important and essential principle in criminal law because it has meaning as a means or last resort in criminal law enforcement (Ardika, 2020). Criminal law has a meaning as a law that causes suffering to people who violate it. This characteristics distinguishes criminal law from other types of law, as it uniquely inflicts suffering or misery on individuals who violate its provisions. The suffering in question is the restriction or revocation of the freedom and independence of these people. Therefore, criminal law must be considered a means or last resort (*ultimum remedium*) that must be used in correcting the behavior of people who deviate from the legal norms that apply in society. The word "*ultimum remedium*" was first proposed by the Dutch Minister of Justice, Mr. Modderman, who emphasized that criminal sanctions are only appropriate to be applied to violations of the law that cannot be resolved in other ways (Lamintang, 1997). This view was later criticized by Prof. van Bemmelen who defined *ultimum remedium* as a "tool" to improve unstable situations in society. If there is no action against injustice, it can cause people to play with the law themselves (Lamintang, 1997).

Sudikno Mertokusumo emphasized that the law functions to guarantee human interests and must meet the elements of legal certainty, practicality, and justice as its main goal (Wagiman, Jubsidi, 2024). The application of criminal law align with its goal of protecting society (Poernomo, 1993), which necessitates affirming the principle of *ultimum remedium* to ensure that criminal sanctions are used only as a last resort after administrative or civil instruments have proven ineffective. This principle aims to ensure justice and legal certainty for victims and perpetrators in the criminal law enforcement process (Fakih, Sujadmiko, et al., 2021), as well as being the basis for examining the complexity of the article on insulting the government and its implications for freedom of expression.

In practice, each country is different in responding to the crime of insulting the government. There are countries that tend not to put criminal law as a last resort. Thailand and Belarus are examples wherein their law enforcement practices, cases of *lèse-majesté* (insult to the monarchy) are often criminally prosecuted. In addition, the state of Belarus also still maintains criminal provisions against insulting and defaming the president, officials, and state symbols. Critics in Belarus risk long-term imprisonment due to a flawed and political criminal justice system, as seen in the cases of Mikhail Marinich and Yury Bandazhevsky. The Belarusian government also uses laws to restrict the freedom of expression of various groups, thus drawing international criticism for being considered to erode human rights (Amnesty International, 2005).

However, on the other hand, countries still place criminal law as a last resort, or it is clear that the principle of *ultimum remedium* is enforced in their countries. Germany is one of the countries that emphasizes proportionality and balance of rights (the right to expression and the protection of the government's honor or authority). First, Germany tries not to punish perpetrators by using only criminal law but can use civil sanctions such as compensation, apologies, or others. The Criminal Code stipulates relatively lenient sanctions for this criminal act, such as a prison sentence of three months to five years. In less serious cases, the court may reduce the sentence at its discretion (article 49 paragraph 2) if the requirements of article 188 are not met (April, 2024). In addition, such crimes will only be prosecuted with the permission of the Federal President. In cases that occur on social media, there is a regulation called NetzDG, which collaborates with the application provider to block accounts that are suspected of committing criminal acts of insulting the government. From this description, it can be concluded that Germany applies the principle of *ultimum remedium* more than the previous country because it places the criminal law as the last means of dealing with criminal acts of insult to the government, through the prioritization of non-criminal sanctions, restrictions on prosecution, and the application of administrative and proportionality mechanisms to protect freedom of expression.

Indonesia has historically regulated the criminal act of insult contained in the Criminal Code, including insulting the government, because this Criminal Code is a Dutch colonial legacy, which of course must be realigned with the conditions and situation of the Indonesian state at this time. So that the provisions in the Criminal Code of colonial heritage have many criticisms and legal challenges related to the ambiguity of norms and the protection of freedom of expression, which are then tested in the Constitutional Court's decision. This then became the basis for the rearrangement of the criminal act of insulting the government in the 2023 Criminal Code to enforce complaints, even though it is still considered broad and ambiguous because there is no clear boundary between criticism and insulting the government. Indonesia does recognize the existence of the principle of *ultimum remedium* in its criminal provisions, but the practice is considered to be at odds with existing principles. This can also be seen from the cases that occurred in Indonesia, especially during New Order era where many people were silenced so that they could not express their opinions in public freely. The case of Haris Azhar and Fatiah Maulidyanty was also highlighted as an illustration of law enforcement in Indonesia, which tends to lean towards the principle of *primum remedium*.

Interviews with police law enforcers indicated that similar cases in Indonesia have been infrequent in the last 5 years. This is because processing by investigators requires an official complaint from the victim. Cases of insulting the government that occur on social media also sometimes escape legal handling because usually public officials or the president, for example, do not report or complain that they are victims in the case, so here the police as investigators and investigators play a more active role in handling the case with the existence of cyber patrols that supervise social media activities or digital media related to content insulting to this government. So it can be said that Indonesia still tends to apply the principle of *primum remedium* rather than the principle of *ultimum remedium*.

It is hoped that in the future, through the existing 2023 Criminal Code, existing law enforcers can work together to continue to prioritize the existing principle of *ultimum remedium* and resort to the perpetrators who can really be punished for violating existing provisions and create protection of freedom of expression for the existing community so that these criticisms can be the basis for policymakers or the government to advance the country, and the public can also express their opinions without the existence of pressure. Criminal law as the *ultimum remedium* should not only be a theory that must be known by law enforcement officials, but also be an understanding of the meaning of the principle and its implementation in real life (Rahmawati, 2013). When the state has enforced the existing Criminal Code, I hope it can consider both sides, namely the freedom of expression of the public and also the protection of existing honor and prestige, so that this insulting article can accommodate both parties, both the people and the state officials.

4. Conclusion

The regulation and enforcement of the crime of insulting the government in Indonesia shows complex dynamics, both in terms of normative regulation and practices. Historically, the regulation of insults was a colonial legacy oriented towards the protection of symbols of power, which was later overturned by the Constitutional Court because it was contrary to the principles of a democratic state and freedom of expression. The study finds that, although the principle of *ultimum remedium* is formally acknowledged in the regulation of contempt offenses, its implementation in practice remains inconsistent and highly dependent on the subjective interpretation of law enforcement officials. In addition, law enforcement practices are still highly dependent on the subjectivity of law enforcement officials, as can be seen from concrete cases and interviews with the police, which indicates that there are no clear and consistent operational standards in assessing the elements of insult to the government. The implementation of the article of contempt of the government in Indonesia in the future needs to be accompanied by the strengthening of procedural safeguards, the formulation of stricter normative limits, and the commitment of law enforcement officials to place criminal law as a last resort, so as not to cause a chilling effect and remain in line with the principles of a democratic state of law that upholds freedom of expression.

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Regulation:

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Law No. 12 of 2005 concerning the Convention on Civil and Political Rights

Law No. 11 of 2008 on Electronic Information and Transactions and its amendments

Interview:

Interview with Polrestabes (Bandung metropolitan resort police) on December 22, 2025

Interview with POLDA West Java (West Java Regional Police) on December 22, 2025

Interview with Judge of Special District Court 1A Bandung on January 5, 2026