

The Legitimacy of Criminalizing Insults Against The President And Vice President: A Minimalist Criminal Law Analysis of Articles 218–220 of Indonesia’s Law No. 1 of 2023

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ABSTRACT

This study evaluates the legitimacy of criminalizing insults against the President and Vice President under Articles 218–220 of Law No. 1 of 2023 on the Criminal Code through Douglas Husak’s theory of minimalist criminal law. The reintroduction of these offenses raises concerns about overcriminalization and restrictions on freedom of expression, particularly in light of Constitutional Court Decision No. 013-022/PUU-IV/2006, which invalidated the corresponding provisions of the former Criminal Code. This normative legal study uses statutory, conceptual, historical, and comparative approaches to examine the boundaries of punishable conduct, the complaint mechanism under Article 220, and possible reforms. The analysis combines grammatical, systematic, historical, teleological, and comparative interpretation. It argues that the phrase “attacking the honor or dignity” requires a restrictive interpretation that distinguishes personal reputational harm from criticism of public policy or official conduct. It also finds that the complaint mechanism is a procedural safeguard but does not, by itself, establish that a separate criminal offense is necessary, effective, or proportionate. Comparisons with the Netherlands and the United States illustrate alternative approaches to protecting reputation and public debate, although foreign standards cannot be transferred mechanically into Indonesian criminal law. The study proposes a staged reform agenda: prosecutorial guidance in the short term, statutory clarification and proportionality review in the medium term, and consideration of integration into generally applicable defamation provisions in the long term. It concludes that the legitimacy of Articles 218–220 requires stronger justification, clearer statutory boundaries, and safeguards for constitutionally protected expression.

Keywords: criminalization; presidential insult; minimalist criminal law; Douglas Husak; complaint-based offense.

1. INTRODUCTION

Indonesia is a constitutional state governed by the rule of law, as expressly stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This principle requires the exercise of state power and the formulation of legislation to comply with constitutional values. The rule of law is closely connected to democracy and the protection of human rights, which require the state to respect individual freedoms and ensure that legal restrictions are justified. Accordingly, criminal law, as one of the instruments used by the state to protect individual, public, and state interests, must be formulated and enforced in accordance with



constitutional principles. The authority to criminalize conduct should not be exercised without sufficient justification, particularly when criminal provisions may restrict fundamental rights, including freedom of expression and the right to criticize public officials. (Saputro, 2023)

The enactment of Law Number 1 of 2023 concerning the Criminal Code represents a significant development in Indonesia's national criminal law reform. After a lengthy process of codification, the new Criminal Code was intended to replace the colonial legal framework with a national criminal law system reflecting Indonesia's legal values and contemporary needs. Nevertheless, the enactment of a new Criminal Code does not necessarily mean that all of its provisions are free from constitutional and substantive concerns. One of the most controversial issues is the reintroduction of offenses concerning insults against the President and Vice President under Articles 218, 219, and 220. These provisions have generated debate because of their potential implications for freedom of expression, public criticism, and the relationship between the protection of state officials and democratic accountability. (Indra, 2011)

The controversy surrounding presidential insult offenses cannot be separated from their historical background. Similar provisions originated in the Dutch colonial criminal law system and were subsequently incorporated into Indonesia's former Criminal Code. During different political periods, provisions concerning insults against the authorities were associated with the restriction of critical expression. Historical cases involving political activists, journalists, and public figures demonstrate the risk that broadly formulated criminal provisions may be used against expressions challenging government power. These experiences indicate that the legal regulation of insults against the President and Vice President requires particular scrutiny, especially where the boundaries between punishable insults and legitimate criticism are not clearly established. (Yunita, 2022)

A fundamental constitutional development occurred through Constitutional Court Decision Number 013-022/PUU-IV/2006, which declared Articles 134, 136 bis, and 137 of the former Criminal Code unconstitutional. In its considerations, the Constitutional Court emphasized the incompatibility of these provisions with principles including equality before the law, freedom of expression, freedom to obtain information, and legal certainty within a democratic constitutional state. The decision also highlighted the potential for such provisions to obstruct democratic participation. However, the enactment of the new Criminal Code reintroduced offenses concerning attacks on the honor or dignity of the President and Vice President through Articles 218 and 219, accompanied by the complaint mechanism under Article 220. This development raises a fundamental question about whether the new provisions adequately address the constitutional



concerns underlying the previous decision or merely introduce a revised formulation of substantially similar offenses. (Hiariej, 2016)

The first legal problem concerns the uncertainty surrounding the material scope of the phrase “attacking the honor or dignity of the President and/or Vice President.” Articles 218 and 219 establish prohibitions concerning such attacks and the dissemination of content containing them. However, the formulation does not, by itself, provide sufficiently detailed parameters for distinguishing criminally punishable insults from criticism of government policies or the conduct of public officials. This ambiguity may lead to inconsistent interpretations by law enforcement authorities and create uncertainty for individuals expressing opinions on matters of public interest. Consequently, the issue concerns not only the interpretation of statutory language but also compliance with the principle of legality, particularly the requirement of *lex certa*, which demands sufficient clarity in the formulation of criminal offenses. (Muntoha, 2009)

The second problem concerns the legitimacy of criminalization itself. The reintroduction of presidential insult offenses raises the possibility of overcriminalization, namely the excessive use of criminal law beyond what is adequately justified by the conduct and interests involved. Criminal sanctions carry significant consequences for individual liberty and may discourage citizens from participating in public discourse. This phenomenon can produce a chilling effect, in which individuals refrain from expressing criticism because they fear potential criminal proceedings. Although protecting the honor and dignity of the President and Vice President may be presented as a legitimate state interest, the existence of such an interest does not automatically establish that a separate criminal offense is necessary or proportionate. The state must also justify why criminal law is required and whether less restrictive legal mechanisms could provide adequate protection. (Nurul, 2018)

Article 220 introduces a complaint-based mechanism for the offenses regulated under Articles 218 and 219. This mechanism may be regarded as a procedural safeguard intended to limit the initiation of criminal proceedings. Nevertheless, changing an offense from a general offense into a complaint offense does not automatically resolve the substantive legitimacy of its criminalization. The mechanism does not, on its own, determine whether the prohibited conduct is sufficiently wrongful, whether criminal punishment effectively protects the stated interest, or whether the same objective could be achieved through less restrictive means. Therefore, the assessment of Article 220 must extend beyond its procedural character to examine whether the complaint requirement satisfies the substantive conditions for legitimate criminalization.

Douglas Husak’s theory of minimalist criminal law provides the principal analytical framework for addressing these issues. Husak’s theory emphasizes that criminalization must be

subject to substantive constraints to prevent the unjustified expansion of criminal liability. These constraints consist of four internal constraints and three external constraints. The internal constraints provide a framework for examining the justification of criminal liability in relation to the nature of the prohibited conduct, the harm involved, and the conditions under which an individual may legitimately be punished. Applied to Articles 218 and 219, this framework assists in assessing whether the material elements of the offenses are sufficiently defined and whether the distinction between criminally punishable insults and constitutionally protected criticism can be established through a defensible legal interpretation. (Wardani, 2021)

The external constraints focus on the justification for using criminal law as a means of achieving state objectives. They require the state to demonstrate a substantial interest, establish that criminalization directly advances the intended objective, and show that the prohibition does not extend beyond what is necessary. These requirements are particularly relevant to Articles 218, 219, and 220 because the protection of presidential honor must be evaluated against the potential restriction of freedom of expression. The analysis must therefore consider whether the protected interest justifies a distinct criminal offense, whether the offense effectively serves that interest, and whether less restrictive alternatives are available. Comparative examination of the Netherlands, the United States, and the Philippines further provides a basis for evaluating alternative approaches to regulating expressions concerning public officials without assuming that foreign legal models can be directly transplanted into Indonesia. (Asshiddiqie, 2008)

This study develops a more substantive approach than a review limited to the formal consistency of statutory provisions with existing constitutional decisions. The author's previous undergraduate research examined presidential insult provisions through normative legal analysis, focusing on vertical consistency with Constitutional Court decisions and comparative regulation in the Netherlands, the United States, and the Philippines. The present study extends that inquiry by applying Husak's minimalist criminal law theory, particularly its internal and external constraints, to assess the moral and substantive justification for criminalization. The central concern is not merely whether the provisions have been formally enacted, but whether the state has adequately justified the use of criminal sanctions and whether the existing formulation prevents excessive restrictions on constitutionally protected expression. (Hariyanto, 2017)

Accordingly, this study addresses three principal research questions. First, how should the material scope of the phrase "attacking the honor or dignity" under Articles 218 and 219 of Law Number 1 of 2023 be delimited through the internal constraints of Douglas Husak's minimalist criminal law theory? Second, does the complaint-based mechanism under Article 220 satisfy the external constraints governing legitimate criminalization? Third, how should the regulation of

presidential insult offenses be reformulated as *ius constituendum* to ensure greater legal certainty and compliance with the requirements of legitimate criminalization? Through statutory, conceptual, historical, and comparative legal approaches, this study seeks to establish clearer parameters for distinguishing punishable insults from protected criticism, evaluate the substantive legitimacy of the existing provisions, and formulate a staged framework for regulatory reform.

2. RESEARCH METHOD

This study employs normative legal research, which focuses on examining applicable legal norms and principles within the positive legal system. The research is prescriptive in nature, aiming to develop legal arguments and formulate recommendations concerning the legitimacy of criminalizing insults against the President and Vice President under Articles 218, 219, and 220 of Law Number 1 of 2023 concerning the Criminal Code. The primary legal issue concerns the normative construction of these provisions and their legitimacy when assessed through Douglas Husak's theory of minimalist criminal law. (Baker, 2008)

This study uses statutory, conceptual, historical, and comparative approaches. The statutory approach examines Law No. 1 of 2023 on the Criminal Code, the 1945 Constitution of the Republic of Indonesia, the former Criminal Code, and Constitutional Court Decision No. 013-022/PUU-IV/2006. The conceptual approach clarifies the concepts of criminalization, overcriminalization, freedom of expression, and the internal and external constraints in Husak's minimalist criminal law theory. The historical approach traces the development of presidential-insult provisions from their colonial antecedents through their invalidation by the Constitutional Court and their reintroduction in the 2023 Criminal Code. The comparative approach considers the Netherlands, the United States, and the Philippines to identify different ways of balancing reputation and political expression. The comparison is functional rather than a claim that the jurisdictions are legally equivalent; differences in constitutional structure, offense definitions, and enforcement must be taken into account.

The comparative law approach examines the regulation of similar offenses in the Netherlands, the United States, and the Philippines. The comparison is intended to identify differences in the legal treatment of insults against heads of state and to evaluate alternative approaches to protecting public officials' dignity without imposing unnecessary restrictions on freedom of expression. The historical approach traces the development of presidential insult provisions from the colonial period through Indonesia's post-independence constitutional history to their reintroduction under Articles 218, 219, and 220 of the current Criminal Code. This approach helps explain the political and legal considerations underlying the enactment, removal, and

subsequent reintroduction of these provisions, thereby providing a historical basis for evaluating the legitimacy of the current criminalization policy. (Husak, 2020)

The legal materials comprise primary, secondary, and tertiary sources. Primary materials include Law No. 1 of 2023 on the Criminal Code, the 1945 Constitution, the former Criminal Code, the Academic Draft of the Criminal Code, relevant Dutch and Philippine legislation, relevant United States legal materials, and judicial decisions, particularly Constitutional Court Decision No. 013-022/PUU-IV/2006 and *New York Times Co. v. Sullivan*. Secondary materials include books, journal articles, theses, dissertations, and other scholarly publications on criminalization, presidential-insult offenses, freedom of expression, and minimalist criminal law. Tertiary materials, including legal dictionaries, are used to clarify terminology. Each legal proposition should be checked against the official text of the relevant legislation or judgment. (Marzuki, 2014)

The legal materials are collected through library research. This process involves identifying, inventorying, and systematically examining relevant legislation, judicial decisions, academic literature, and other legal documents. The materials are obtained from online sources, the central library of Universitas Brawijaya, the Faculty of Law's legal documentation and information center, and official documents published by Indonesian government institutions. The selection of materials is guided by their relevance to the legal issues and research objectives. (Ali, 2013)

The materials are analyzed qualitatively through grammatical, systematic, historical, teleological, and comparative interpretation. For the first research question, the analysis applies Husak's internal constraints to assess the seriousness of the alleged harm, the wrongfulness of the conduct, the proportionality of punishment, and the justification for imposing criminal liability. For the second question, the external constraints are used to assess the importance of the state's asserted interest, the suitability of criminalization for advancing that interest, and the availability of less restrictive alternatives. For the third question, the results of the statutory and comparative analyses inform recommendations for reform (*ius constituendum*). Because this is normative legal research, the findings are doctrinal arguments rather than empirical claims about the frequency or actual effects of enforcement.

3. RESULTS AND DISCUSSION

Defining "Attacking the Honor or Dignity" under Articles 218 and 219 of Law No. 1 of 2023 through Husak's Internal Constraints

Articles 218 and 219 of Law No. 1 of 2023 on the Criminal Code reintroduce criminal offenses concerning attacks on the honor or dignity of the President and/or Vice President. The legitimacy of these provisions must be examined not only through their textual formulation but



also through their historical background, systematic relationship with other legal norms, and justification for imposing criminal liability. This examination is particularly important because similar provisions in the former Criminal Code were declared unconstitutional by the Constitutional Court in Decision No. 013-022/PUU-IV/2006. The historical experience demonstrates the risk of using special criminal provisions to suppress political criticism. (Arief, 2021)

Historically, presidential-insult offenses are associated with the broader tradition of *lèse-majesté*, under which special legal protection was afforded to the authority or person of the ruler. The Indonesian provisions must nevertheless be examined in their specific historical and statutory context rather than treated as identical to every colonial offense. The Constitutional Court's invalidation of the former provisions in Decision No. 013-022/PUU-IV/2006 is an important part of that context. This history supports careful scrutiny of any special offense that may deter criticism of government, but the historical argument should be supported by authoritative sources and should not substitute for analysis of the current statutory text.

Grammatically, the phrase "attacking the honor or dignity" may be interpreted in different ways unless its scope is clarified through the complete text of Articles 218 and 219, including their exceptions. The central issue is whether the provisions target a sufficiently identifiable injury to personal reputation or could also be read to cover criticism of policy and official conduct. Article 219's treatment of disseminated content raises a related question about the required connection between the content, the accused person's conduct, and the alleged injury. The principle of legality, including *lex certa*, therefore supports a restrictive interpretation and, where necessary, legislative clarification. The analysis should account for the exact statutory wording rather than rely on the phrase in isolation.

Systematically, Articles 218 and 219 should be read alongside the general defamation provisions in Articles 433–442 of the Criminal Code and the constitutional guarantees of expression and communication in Articles 28E(3) and 28F of the 1945 Constitution. Article 19 of the International Covenant on Civil and Political Rights is also relevant: restrictions on expression must be provided by law and necessary for a legitimate purpose. The overlap with general defamation provisions raises a question of necessity: the existence of a special offense should be justified by a distinct and sufficiently important harm that cannot adequately be addressed through generally applicable rules. The precise scope and current wording of each cited provision should be verified against the official legislation.

Husak's internal constraints offer a framework for evaluating whether criminal liability is justified. First, the nontrivial-harm requirement asks whether the conduct causes or risks



sufficiently serious harm; disagreement with government policy or unfavorable commentary does not, without more, establish such harm. Second, the wrongfulness requirement asks whether the conduct is independently wrongful, rather than merely unpopular or offensive to an officeholder. Third, the requirement concerning deserved punishment calls for a proportionate relationship between the seriousness of the wrongdoing and the sanction. Fourth, the burden-of-justification requirement places pressure on the state to explain why the conduct should be criminalized, particularly where less restrictive or generally applicable legal rules may be available. The terminology and formulation of these constraints should be checked against Husak's original work and cited precisely. (Ramdan, 2020)

Taken together, these considerations support four interpretive criteria. First, "attacking" should be construed narrowly and in context. Second, the provisions should be interpreted in light of the historical risk that special insult offenses may chill political criticism. Third, the application of a special offense should be justified where general defamation rules are inadequate to address the specific harm. Fourth, the protected interest should be personal reputation, not immunity from criticism of the President's or Vice President's policies or official conduct. These criteria are the authors' synthesis of the statutory analysis and Husak's framework; they should not be presented as verbatim rules formulated by Husak.

Accordingly, Articles 218 and 219 should be interpreted restrictively so that criminal liability is limited to clearly defined and sufficiently serious wrongful conduct. Criticism of public policy, evaluations of official performance, and contributions to debate on matters of public interest should not be treated as criminal insults merely because they are harsh or unwelcome. A restrictive interpretation can reduce uncertainty, but it cannot fully replace clear legislative drafting and consistent safeguards in investigation and prosecution. (Anwar, 2023)

Article 220's Complaint Mechanism and Husak's External Constraints

Article 220 makes prosecution for offenses under Articles 218 and 219 dependent on a complaint by the President and/or Vice President, as provided by the statute. This requirement may reduce the risk of prosecution initiated without the affected officeholder's complaint, but it does not resolve the substantive question of whether the offenses should exist as distinct crimes. Under Husak's external constraints, the state must identify a sufficiently important interest, show that criminalization is suitable for advancing that interest, and demonstrate that the restriction does not go further than necessary. In particular, the analysis should distinguish the personal interest in reputation from a broader claim to protect the state or the institution of the presidency. The precise complainant eligibility and procedural requirements must be checked against the official text of Article 220. (Rahmani, 2025)



The Netherlands offers a relevant point of comparison. The manuscript states that former Articles 111–113 of the Dutch Criminal Code, which specifically protected the King against insult, were repealed in 2020 while general insult provisions remained available. This example may support the argument that protection of reputation does not necessarily require a separate offense for a head of state. However, the legislative amendment, effective date, and scope of any remaining general offenses should be verified against official Dutch legal sources before publication. The comparison is illustrative and does not, by itself, prove that the same legislative choice is required in Indonesia. (Packer, 1968)

In the United States, *New York Times Co. v. Sullivan* established the “actual malice” standard for certain defamation claims brought by public officials under the First Amendment. In that context, actual malice means knowledge that a statement was false or reckless disregard for whether it was false; it does not mean personal hostility. The decision is a constitutional defamation precedent, not a directly equivalent rule of Indonesian criminal law. Its relevance here is therefore comparative: it illustrates a heightened protection for debate about public officials and the need to avoid chilling public-interest speech. Any proposal to adopt a similar fault threshold in Indonesia would require a separate analysis of constitutional doctrine, criminal-law principles, and compatibility with the statutory elements of the offenses. (Madiistriyatno, 2019)

A possible medium-term reform would clarify the fault element and narrow the scope of Article 218. The manuscript proposes requiring proof that the accused knew the statement was false or recklessly disregarded its truth, alongside a reduction in the maximum imprisonment. These are normative proposals, not descriptions of current law, and the proposed thresholds and penalty levels require a reasoned proportionality analysis against comparable offenses in the Criminal Code. A public-interest provision should expressly protect opinions, value judgments, criticism of public policy, and statements concerning official conduct, while carefully defining any exclusions for independently unlawful conduct. The wording should be drafted so that the exception does not become ineffective through vague or overly broad qualifications. (Ruslan, 2016)

A corresponding amendment to Article 219 could align the dissemination offense with the clarified elements and exceptions under Article 218 and provide a proportionate penalty. Article 220 could retain a complaint requirement while adding transparent prosecutorial screening criteria, including a written assessment of the public-interest context, the evidence of the required fault element, the seriousness of the alleged harm, and the availability of less restrictive alternatives. Any such mechanism should identify the competent authority, the legal basis for issuing guidance, and safeguards to promote consistency and prevent selective enforcement. These proposals should

be presented as options for legislative consideration, rather than as rules that already apply. (Prodjodikoro, 2002)

Any proposed reform should also address transitional law. Article 3 of Law No. 1 of 2023 should be discussed with reference to its exact wording and the relevant rules on the application of more favorable criminal provisions. The effect on pending cases depends on the applicable statutory conditions and the procedural posture of each case; it should not be stated categorically without supporting legal authority. Overall, the reform objective should be to improve clarity, proportionality, and protection for public-interest expression while ensuring that criminal law remains a last resort (*ultimum remedium*). (Anwar H. A., 1994)

4. CONCLUSION

This study addresses three questions. First, the material scope of “attacking the honor or dignity” under Articles 218 and 219 requires a restrictive interpretation focused on clearly identifiable personal reputational harm and excluding criticism of policy or official conduct merely because it is forceful or unwelcome. Husak’s internal constraints support scrutiny of the seriousness of the harm, the wrongfulness of the conduct, proportionality of punishment, and the justification for criminal liability. Second, Article 220’s complaint mechanism may operate as a procedural safeguard, but it does not by itself demonstrate that separate criminalization is necessary, effective, or the least restrictive means of protecting reputation. General defamation rules, civil remedies, and mechanisms such as the right of reply should be evaluated as possible alternatives. Third, reform should proceed in stages: issue clear prosecutorial guidance in the short term; clarify statutory elements, fault requirements, exceptions, and penalties in the medium term; and consider whether the special offenses should be integrated into generally applicable defamation provisions in the long term. These recommendations are normative and require further verification against official statutory texts and relevant judgments.

The central conclusion is that the legitimacy of Articles 218–220 depends not merely on the existence of a complaint requirement, but on clear offense definitions, a defensible account of the protected interest, proportionate sanctions, and safeguards for constitutionally protected expression. Comparative examples from the Netherlands and the United States are informative but must be adapted cautiously to Indonesia’s legal framework. The manuscript’s reference to Constitutional Court Decision No. 275/PUU-XXIII/2025 should be verified against the official judgment and its exact holding before it is relied upon; if relevant, the decision should be analyzed in the main discussion as well as the conclusion. The study is doctrinal and does not establish empirically how often the provisions are enforced or what effects they have in practice.



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