

Insult To The Government: Legal And Maqāsid Al-Syarī'ah Analysis Of Freedom Of Expression

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Abstract

Since the enactment of Law Number 1 of 2023 concerning the Criminal Code, a main problem related to Articles 240-241 regarding insults to the government has arisen. This has the potential to criminalize public freedoms. This study examines these provisions through the lens of maqāsid al-sharī'a, which was chosen as the framework of analysis due to its ability to provide a benefit-based philosophical framework that is considered more appropriate than the textual approach of positive law. The method used is normative legal research. The results of the study indicate that Articles 240-241 are subject to multiple interpretations and overlap with Article 433 regarding defamation of individuals. In answering this problem, maqāsid al-sharī'a provides a profound solution with a balancing principle. Freedom of opinion, as part of ḥifẓ al-'aql (safeguarding reason), is required to be in harmony with ḥifẓ an-nafs wa al-'ird (safeguarding the soul and honor). Therefore, this approach is expected to provide a basis for protecting freedom of expression more fairly, allowing freedom of expression to be protected while upholding respect for the state, while still weighing the benefits and harms of criticism substantively.

Keywords

Freedom of Expression; Insult to the Government; Maqāsid Al-Sharī'a

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1. INTRODUCTION

The advancement of information technology has had a substantial impact on the fabric of social life. This development has also given birth to new patterns of legal activities in society. On the positive side, technological advancements can be enjoyed in almost all fields, including communication, government, education, and economics. However, these technological advances also have negative impacts, including an increasing number of cybercrimes, ranging from online insults to espionage, data manipulation, illicit trade, and various other problems (Supriyono et al., 2023). Cyber law refers to the legal rules related to the use of information and communication technology. (Ramadhan, 2019)

As stated in Article 45 paragraph (1) of Law Number 11 of 2008, concerning ITE regulates insults or defamation through social media (Saragih & Lubis, 2020). Within the scope of constitutional law,



there is a theory or foundation closely related to public freedom, namely the theory of democracy, which guarantees the opportunity to express opinions and oneself. One of the constitutional law experts, Jimly Asshidiqie, explained that there are four main principles in democracy, including the protection of equality and equality in life, respect for diversity, strict provisions and foundations including the existence of a system for resolving a problem or dispute in accordance with the rules that apply in the scope of the nation and state. (Ellandra et al., 2022)

The problem of implementing the ITE Law is also related to the lack of understanding of law enforcement officials about the characteristics of digital communication that have their own peculiarities, such as the use of emoticons, memes, sarcasm, or slang that is often multi-meaning. (Samsudin & Aminulloh, 2025)

Article 28 of the 1945 Indonesian Constitution provides guarantees for the right to freedom of opinion and expression. This provision emphasizes that every citizen has the right to unionize, assemble, and express their thoughts, both orally and in writing, as long as such activities are conducted in accordance with the law. Therefore, freedom of expression can be seen as a key factor in democratic life. (Irsyahma & Lestatika, 2024)

As an act against the law, especially defamation, it is often categorized as criticism or public opinion against the government in the reality of law enforcement. Initially, provisions regarding the spread of false information and defamation already existed. However, as time went by, the government finally revised the regulation to be more specific. (Pratama, 2022) The regulation also contains provisions regarding insults to the president, state institutions, and the government (Hadijaya, 2025). Freedom of opinion can be conveyed through social media. Social media has brought about significant changes in society. (Budijarto, 2020)

One form of violation of freedom of opinion can be seen in the case that occurred in 2020, specifically, insults to the President and state institutions. In May, Ruslan Buton made a voice recording urging President Joko Widodo to step down from his position because he was suspected of not siding with the public amid the COVID-19 pandemic. The recording contained words that were quite inciting to the public and were considered to harass state institutions and legitimate governments. As a result of his actions, he was brought in by the National Police Criminal Investigation team, along with the Southeast Sulawesi Police and the Buton Police. (CNNIndonesia, 2020)

Driven by today's digital advancements, people are increasingly bold in expressing their thoughts and views on various issues. Social media, for example, can be accessed by various people to communicate, thus having a significant impact. However, it is essential to recognize that these digital developments can also give rise to legal issues (Amelia, 2024). The ratification of the new Criminal Code (KUHP) has led to conflicts within the community.

In the context of this case, attention is focused on Articles 240 and 241 of the Criminal Code, which regulate insults to legitimate government officials. Both are listed in Book II of the Criminal Code. At the same time, Article 240 is formulated as follows: "Every person who in public verbally or in writing insults the government or state institutions, shall be sentenced to imprisonment for a maximum of 1 (one) year and 6 (six) months or a maximum fine of category II." Article 241 of the Criminal Code states "Every person who broadcasts, performs, or pastes writings or images so that they are visible to the public, plays recordings so that the public hears them, or disseminates by means of information technology that contains insults to the government or state institutions, with the intention that the content of the insult is known to the public, shall be punished with imprisonment for a maximum of 3 (three) years or a maximum fine of category IV". The problem arising from these two articles is uncertainty around the object defined by insulting the government or state institutions. The meaning of these two articles still seems to be unclear, with no specific subject identified (Alfina, 2024)

Related to this research, several previous studies have shown a close relationship with the problems discussed, including, first, a journal article written by Nur Yusriyyah Bakhtiar et al., titled "Fulfillment of the Right to Freedom of Opinion Based on Law Number 9 of 1999 Concerning Freedom of Expression in Public." To examine the role of the state in preventing the abuse of freedom of opinion that has the potential to become anarchic, this study was carried out as a form of guarantee of the right to express thoughts and ideas in accordance with Law No. 9 of 1999 and what are the state's efforts in guaranteeing human rights from criminalized acts in the context of freedom of thought and expression of ideas.

Based on the study's findings, the regulation is considered less than optimal in its implementation, as the limits of the provisions that cannot be violated are not clearly defined in the context of freedom of opinion. Furthermore, expressing opinions and expressions that cause chaos can be punished for violating human rights provisions (Bakhtiar et al., 2020). The recognition and protection of human rights take precedence and can be said to be the primary goal of the legal state founded on Pancasila. On the other hand, in a totalitarian state, there is no place for human rights. (Putra, 2025)

Second, the thesis written by Sumiati with the title Freedom of Opinion and Expression on Social Media in a Juridical Perspective and Fiqih Siyasah. This research is not in accordance with the issue of violations of rights and freedoms in Indonesia which is charged by Law No. 11 of 2008 which has been amended by Law No. 19 of 2016 concerning ITE stating that the right to express thoughts and ideas is a natural right that must be protected in the constitution, as written in Article 28 and Article 28E paragraph (3) of the 1945 Constitution, Article 1 of Law No. 9 of 1998, and Article 23 paragraph (2) of Law No. 39 of 1999.

This research explains that the freedom to articulate thoughts, feelings, and opinions through social networks that align with positive views of law and Islamic law is a right of every individual that cannot be eliminated. However, in practice, freedom also has limits. From the two views above, there is no mention of limitations and ethics in the practice of exercising the right to express oneself and opinions, both in writing and orally. (Sumiati, 2022)

Third, research conducted by Moh. Faizur Rohman, in his journal entitled *The Right to Freedom of Opinion Related to Defamation According to the Criminal Code from the Perspective of Sharia Maqosid*. The results of this study suggest that human rights often voiced by the general public frequently contradict each other. Including those who experience it firsthand, namely journalists who usually go directly into the field related to expressing opinions and expressing themselves in public on the basis that their rights are protected in the 1945 Constitution, Article 28 E paragraph (3), actually has an impact on criminal cases of defamation, because there are parties who have personal motives to bring it down.

As an instrument that has the potential to limit criticism of the government, the defamation provision is often viewed as a key component of the Criminal Code. Therefore, efforts are needed to classify acts of exercising rights and acts that lead to criminal acts. When viewed from the perspective of *maqāsid al-syarī'ah*, the existence of the law guarantees the right of everyone to express their opinion. Every person has the right and freedom to express their criticism and suggestions, but within certain limits, such as refraining from insulting individuals, defamation, and especially when it comes to leaders. The principle of *maqāsid al-syarī'ah* states that there is a guarantee and protection of the soul and survival of human beings in *ḥifẓ al-nafs wa al-'ird*. From this, it can be concluded that in every expression of opinion and social interaction, it is mandatory by law to respect and appreciate others in order to achieve a harmonious and harmonious life. (Rohman, 2017)

Moreover, finally, research by Rizky Al Ikhsan, titled "*Maqosid Syariah*," examines the theory and application of legal analysis in Law Number 1 of 2023, which replaces the old Criminal Code. The findings of this study indicate that although Law Number 1 of 2023 has the power to develop guarantees of individual rights, its implementation must take into account societal diversity, avoid injustice and stigma, and pursue a recovery approach to return to good conditions. This study also supports the creation of an in-depth and extensive study space by involving various elements of society in order to realize fair law enforcement and consistent with the orientation of *maqāsid al-syarī'ah*, so that a society that respects and harmoniously each other can be built. (R, 2003)

In various previous studies, the discussion of freedom of expression has generally been approached from a positive legal perspective, especially in the context of insults to the government and the limits of expressing opinions in the public sphere. However, these studies have not comprehensively

linked juridical analysis with the maqāsid al-syari'ah approach as an ethical and philosophical framework in arranging the relationship between freedom of speech and the protection of the honor of state institutions.

In Islam, freedom of opinion is also regulated by certain principles. Islam supports the use of reason and science in decision-making and the expression of opinions (Sukoco, 2024). This study gap presents an important opportunity for this research to offer a new perspective. The maqāsid al-shari'ah approach not only affords freedom of expression as a protected right, but also directs that these freedoms be exercised responsibly, maintain dignity, and avoid social harm resulting from speech that exceeds the limits.

Through the integration of these two juridical and maqāsid approaches, it is hoped that a more balanced mindset will be obtained between freedom of opinion and the obligation to maintain the honor of the government as a public institution. Thus, this research is expected to make a scientific contribution that presents a solution to the problem of disharmony between the right to expression and the protection of honor, while also offering a foundation for creating harmony, security, and peace in the lives of society, nation, and state. This integration is crucial for building a more stable and respectful social order in the future.

2. METHOD

This study employs a qualitative approach with a normative juridical research type, as its focus is on analyzing legal norms and Sharia principles that regulate the boundaries of freedom of expression and the protection of government honor. This approach was chosen to understand in depth how Indonesia's positive law regulates acts of contempt of government and how maqāsid al-syari'ah views the ethics of speech, honor ('ird), and the limits of freedom of opinion in social life.

The research data was obtained through library research. All materials used are secondary data, in the form of laws and regulations, such as the Criminal Code, the ITE Law, the 1945 Constitution, as well as decisions of the Constitutional Court related to insults, hate speech, criticism of the government, and the guarantee of freedom of expression. This data is complemented by scientific literature, including books, journal articles, and academic works, that discuss criminal law, human rights, communication ethics, and maqāsid al-shari'ah. In addition, the writings of classical and contemporary scholars on *amar ma'ruf nahi munkar*, *adab al-hiwar*, and the principle of honor in sharia are also used as references to strengthen theological-normative analysis.

The data collection process involves tracing legal documents, fiqh literature, criminal law theory, and case studies related to insults to the government that have been observed in practice. All materials are collected, read critically, and then organized according to the research theme to produce a structured

understanding. The collected data were analyzed using qualitative-descriptive analysis. This technique is carried out through several stages: examining relevant legal norms, identifying the construction of the concepts of insult and freedom of expression from a positive legal perspective, grouping the principles of *maqāṣid al-syarī'ah*, especially those related to the protection of honor (*ḥifẓ al-'ird*), and comparing the two to identify points of harmonization. The analysis is conducted in a deductive manner, beginning with the general theory of law and sharia, and then applying it to a specific problem: insulting the government.

Through this approach, the research seeks to produce a comprehensive understanding of how laws and regulations regulate the limits of freedom of expression without eliminating the space for criticism, as well as how *maqāṣid al-syarī'ah* guides the ummah in maintaining honor, avoiding humiliation, and still providing space for constructive criticism.

Thus, this research method enables the formulation of a balanced conclusion between the right of citizens to express their opinions and the obligation to maintain the honor of public officials within the framework of legal and Sharia benefits. *Maqashid al-Sharī'ah* serves as a framework to safeguard the five primary objectives: religion, life, intellect, property, and lineage. Classical Islamic thought also emphasizes the need for a balance between rights and responsibilities in the realm of freedom of opinion. (Nasoha, 2025)

3. FINDINGS AND DISCUSSION

3.1. Freedom Of Opinion In Positive Law And Islamic Law

Freedom of expression and criticism in Indonesia has been protected in the 1945 Constitution Article 28E paragraph (2), which reads "Everyone has the right to freedom of belief, expression of thoughts, and attitudes, in accordance with his or her conscience". This demonstrates that the constitution is not only limited to the declaration of citizens' rights to hold thoughts or ideas, but also provides convenience for the public expression of opinions in public places. (Rizki, 2023)

The implementation of the positive legal system is regulated in the constitution, which serves as the basis for *lex superior*, superseding other legal provisions. Thus, all regulations that hinder freedom of opinion and expression must be in accordance with the constitution and not contradict it. The Constitutional Court Decision No. 6/PUU-V/2007 affirms that constitutional rights protected by the 1945 Constitution can only be prevented through legislation, but on the condition that these obstacles must be balanced and do not eliminate the essence of the right itself. (Firdaus, 2023)

The right to express ideas, both orally and in writing, is reaffirmed in Law Number 39 of 1999 concerning Human Rights, specifically Article 23, which stipulates that its implementation must still take into account the principles of spirituality, morality, social stability, and national unity. This indicates an effort to approach qualified rights, namely rights that are guaranteed but not absolute

(Jimmly, 2016). In its implementation, this approach aims to strike a balance between freedom of opinion and the public interest. However, problems arise when there are multiple and comprehensive limitations, thus opening up space for abuse (Alfina, 2024). The State of Pancasila Law recognizes humans as individuals who possess rights and freedoms, while also acknowledging that humans are social creatures who cannot fully develop as individuals unless they interact with others. (Shine, 2023)

In addition to Law No. 39 of 1999, several other legal provisions also address freedom of expression, including Law No. 40 of 1999 concerning the Press, which protects the public's right to seek, obtain, and disseminate information (Selvi, 2024). However, press freedom is also limited by rights and norms that must be upheld. Next, Law No. 11 of 2008, which was later replaced by Law No. 19 of 2016 concerning information and electronic transactions, facilitates digital expression space but also contains articles that have the potential to hinder freedom, especially Article 27, paragraph (3), related to defamation. (Saragih & Lubis, 2020)

Moreover, Law No. 2023 of the New Criminal Code (KUHP), particularly Articles 240 and 241, which regulate insults to the government, may have an overly broad impact on deterring criticism. While the government argues that these articles are intended to protect the nation's honor, many experts believe it could lead to a repeat of past events experienced by Indonesia, such as those experienced during the New Order era. (Simon & Lindsey, 2008)

The provisions of Article 28J paragraph (2) of the 1945 Constitution relate to the obstruction of Rights and Release. However, the most fundamental problem in this case arises because the existence of such obstacles is still justifiable. According to the legal theory of human rights, an obstruction can be considered valid or correct if it meets the following three conditions: it is regulated by law, oriented towards legitimate purposes, such as protecting the rights of others, ethics and morality, national security, stability, public order, and balance in its application. (Asshiddiqie, 2021)

However, the proportionality requirement is sometimes not met, for example, in cases where an activist is arrested under the ITE Law for criticizing the government (Hadijaya, 2025). Including the case of Ruslan Buton who was brought by the National Police team together for making a voice recording demanding that President Joko Widodo step down from his position by containing words that were considered provocative and insulting state institutions and legitimate government which were charged with multiple articles, namely Article 45 A paragraph (2) Jo article 28 paragraph (2) of the Law. No. 19 of 2016 concerning amendments to the Law. No. 11 of 2008 concerning ITE, Article 14 paragraphs (1) and (2), Article 15 of the Law. No. 1 of 1946 concerning Criminal Law Regulations and Article 207 of the Criminal Code. Defendant Ruslan was also required to serve the first 20 days of detention, from May 29 to June 17, 2020 (CNNIndonesia, 2020). Criticism, which should be guaranteed within the scope of democracy, is actually treated as a form of criminal act. Therefore, this incident can give rise to the

assumption that positive law is more intended as a rule that has full control, rather than as a guarantee of freedom. Freedom of speech and freedom of expression apply to all types of ideas, including those that are offensive or constitute criticism. (Matompo, 2014)

In this digital era, freedom of opinion and expression has certainly affected freedom of speech. Social media has become a significant means of public expression. However, this freedom of expression also carries significant consequences, namely, increasing the potential for cybercrime. According to SAFEnet data from 2023, more than 70 cases of violations of the ITE Law have been reported due to uploads on social media. (SAFEnet, 2023)

In the legal framework, the primary issue arises from the inconsistency of the law's provisions. The protection of freedom of expression is guaranteed by law, as stipulated in Law Number 39 of 1999. However, the provisions in Law Number 19 of 2016 and Law Number 1 of 2023 actually create obstacles that have the potential to hinder access to criticism. Various legal perspectives in Indonesia are shaped by the concept of freedom of thought and expression, as explained earlier. One upholds the protection of citizens' constitutional rights, while the other expands the scope of criminalization through multi-interpreted regulations. This situation can weaken democratic principles and create legal uncertainty. (Heryani et al., 2022)

Therefore, the main challenge for Indonesia's positive law is the harmonization of regulations. The highest legal standing and respect for democratic procedures are the main focus. The Constitutional Court, as a state institution that is authorized as the custodian of the 1945 Constitution, is obliged to provide a firm understanding so that freedom of opinion and expression is not hindered by provisions that are contrary to the spirit of the 1945 Constitution (Arifin, 2023). One of the other challenges is the limited access to legal channels for citizens whose constitutional rights are not respected or ignored by the authorities, as they can only use the constitutional judicial channels through the mechanism of legal testing against the constitution. (Simanjuntak, 2024)

In Islamic teachings, expressing opinions and criticisms is an essential part of implementing *amar ma'ruf nahi munkar*, a form of moral responsibility that a Muslim has towards society. Islam not only allows a person to express his views but also encourages him to have the courage to speak the truth in order to maintain justice, welfare, and social harmony. In principle, freedom of opinion (*hurriyyah al-ra'y*) in Islam is rooted in the value of human freedom as a caliph on earth who has reason and the ability to weigh the truth.

The Prophet PBUH gave an example that the people are given space to express ideas and objections, both in worldly affairs and public policy. In the Islamic tradition, communication is not just an exchange of words, but is a reflection of one's morals and the quality of one's faith. The concept of *adab al-hiwar*, or ethics in dialogue and communication, occupies an important position as a guideline

for civilized, constructive, and wise interactions. Islam teaches that every speech has moral consequences, so speaking must be done with consideration, politeness, and good intentions. *Hiwar*, in the Islamic view, is based on the value of the glory of man as a creature of reason.

Therefore, dialogue must be a means of seeking the truth, not a place to bring each other down. However, Islam provides sharia ethics and limitations in expressing opinions. The criticism conveyed must be aimed at upholding the truth, not degrading dignity or causing slander. The Qur'an emphasizes that every speech should be delivered with *qaulan sadidan* (the right word), *qaulan layyinan* (gentle), and *qaulan ma'rufan* (good and proper). Criticism that is rude, insulting, or divisive is seen as contrary to the values of *ukhuwah* and *rahmah* upheld by Islam.

In the tradition of *fiqh siyasah* (Islamic politics), criticism of leaders is part of the mechanism of public control (*muhasabah al-ummah*). As long as it is done with manners, argumentative, and aims to maintain the benefits, criticism is not only justified, but considered as social worship. Freedom of opinion in Islam also emphasizes moral and intellectual responsibility. Opinions must be based on knowledge, evidence, and sincere intentions. Spreading fake news or baseless opinions is a serious offense that can disrupt the social order. The various principles of *fiqh siyasah* conveyed by Muslim scholars are based on the model of thought and the perspective of the scholars. These principles of *siyash* cannot be separated from the results of the *ijtihad* of the scholars. (Irwansyah, 2023)

3.2. Contempt Of State Regulations: History And Decisions Of The Constitutional Court

Insulting the head of state is not a criminal offense under Indonesian law. Its history can be traced through the Dutch Criminal Code, known as *the Wetboek van Strafrecht voor Nederlandsch Indie (WvS)*, which became law during the Dutch colonial period. The WvS contains rules that protect the dignity of the King and Queen of the Netherlands from acts of insult. After Indonesia's independence, these provisions were incorporated into the old Criminal Code, specifically Articles 134, 136 bis, and 137, which prohibited insults to the Head of State and his Deputy. (Hamzah, 2015)

These articles are intended to protect the dignity of the presidential institution as a symbol of the state. However, in practice, these articles are often exploited to limit public criticism and political opposition. During the New Order period, many students and activists were criminalized on charges of "insulting the president" for harshly criticizing government policies. (Saragih & Lubis, 2020)

The discussion of the article insulting the president's honor elicited a critical response from various segments of society, particularly activists and civil society organizations. The alleged violation is inconsistent with the constitutional right to express opinions, as regulated by the 1945 Constitution. With the case of Ruslan Buton, which in the end was an *inkrah* verdict up to the cassation level with a 1-year prison sentence, it certainly makes us aware that a harsh criticism of officials or the government

can lead to legal action (Supreme Court of the Republic of Indonesia Decision Number: 873 K/Pid/2023). Provisions with multiple interpretations result in every criticism having the potential to be categorized as a form of insult (Heriansyah, 2025). Criticism of the head of state's policies can be perceived as an insult to their honor, which may have serious repercussions for society.

Substantive criticism of the president's policies can be considered a personal attack on the dignity of the head of state, thereby hindering the ability to convey ideas and express oneself (Jimmly, 2016). Ideally, public officials should be more open to criticism, as they hold mandates that have comprehensive implications for the public. Thus, the insult to the head of state cannot be compared to the insult to ordinary people, because the head of state can conduct extensive public communication in order to clarify any criticism. Criticism of the ruler or state, or government, is often considered a criminal act of contempt based on the applicable law. (Ellandra, 2022)

The crucial beginning of the problem of insulting the head of state was the Constitutional Court's Decision Number 013-022/PUU-IV/2006. In this ruling, the Constitutional Court affirmed that Articles 134, 136 bis, and 137 of the Criminal Code are unconstitutional and do not possess absolute legal validity. The Constitutional Court affirmed that these articles are discriminatory because they position the Head of State and his Deputy in their capacity as citizens, who are afforded greater legal guarantees than ordinary citizens. (Ramdan, 2020)

In a democratic state of law, the principle of equality before the law must be upheld. Furthermore, the Constitutional Court emphasized that the rule of contempt for the Head of State and his Deputy can interfere with the freedom to express criticism as protected by Article 28E of the 1945 Constitution. According to the Constitutional Court, the guarantee of honor for the Head of State and his Deputy can be obtained through general legal procedures, for example, by using defamation articles that are binding on every citizen. Therefore, there is no basis for placing the President and Vice President in a privileged legal position. Ketentuan tersebut memiliki makna yang sangat penting karena menegaskan posisi Presiden sebagai pemegang kekuasaan tertinggi dalam pemerintahan. (Anugrah, 2025)

In 2006, the Constitutional Court deleted articles related to insulting the Head of State. However, the same arrangement is repeated almost verbatim in Law Number 1 of 2023, Articles 218-220. Article 218 paragraph (1) states that "Every person who publicly attacks the honor or dignity of the President or Vice President shall be sentenced to imprisonment for a maximum of 3 (three) years and 6 (six) months". The difference from the previous article is evident in the section on absolute complaint violations, indicating that the legal mechanism can be immediately implemented when a complaint is made directly by the Head of State and his Deputy. This change is intended to minimize the misuse of the article by third parties.

However, this article continues to receive scathing criticism from legal experts and the public, particularly regarding the existence of this provision, which has the potential to lead to the recriminalization of criticism in a more subtle manner (SAFEnet, 2023). The law of defamation against the President and Vice President has its roots in a time when the government was considered paramount. Any criticism was viewed as a potential threat to national stability, a legacy of the colonial era when the Dutch imposed their values on the Indonesian people and regarded their monarch as a symbol of the nation, considering criticism intolerable and potentially leading to turmoil. (Widayati, 2017)

In fact, the enactment of the Constitutional Court Decision in 2006 has provided a breath of fresh air for the guarantee of the right to expression and opinion. According to the Constitutional Court, the principle of equality before the law is a fundamental principle that must be upheld, as well as the importance of open space for criticism of public officials. However, the enactment of new regulations in Law Number 1 of 2023 concerning the Criminal Code can have an impact on legal inconsistencies and potentially lead to re-examination at the Constitutional Court (Bangsawan, 2019). If there is a party that submits a material test of Article 218 of the Criminal Code, the Constitutional Court is expected to be able to assess the article expressly in accordance with the principle of freedom of expression.

3.3. Analysis Of The Pros And Cons And Their Implications For Democracy

The argument for those who support the article of contempt for the Head of State is based on the view that the President and Vice President are symbolic representations of the state. From a legal perspective, the symbol of the state requires special protection, as an insult to the Head of State reflects a broader attack than just a personal insult, but also an insult to the dignity of the presidential institution. (Hamzah, 2015)

Additionally, policies that are often employed are crucial for maintaining political balance (Manan, 2019). In the presidential system, the legitimacy of the president is closely tied to the legitimacy of state institutions. When the president is often the target of unfettered, open insults, this can erode public trust and lead to political instability. Therefore, for pro-government groups, contempt of the Head of State is considered a preventive legal instrument to maintain the integrity of state institutions from all forms of undue attacks. Groups that side with the government emphasized that the provisions for insulting the Head of State in Law Number 1 of 2023 differ from those in the previous article because they constitute an absolute complaint offense. The goal is for the parties to report only the president and vice president, thereby reducing the chance of abuse by third parties. Thus, this regulation is considered more proportionate between freedom of opinion and the protection of the honor of public officials. Freedom of speech protections limit the ability of public officials to sue for defamation. (Roqib, 2020)

On the other hand, some parties oppose the law, arguing that the provision prohibiting insults to the Head of State is contrary to democracy. Their focus is that this regulation is inconsistent with the Constitutional Court Decision No. 013-022/PUU-IV/2006, which deleted a similar article. The Constitutional Court explicitly stated that the article is discriminatory and hinders freedom. Furthermore, these rules are flexible in their interpretation, making the line between insults and criticism unclear. In law enforcement in Indonesia, authorities often use subjective interpretations. This can create opportunities for criminalization of public criticism, especially in the digital era, when people are free to express themselves through social media. (Heriansyah, 2025)

Further criticism suggests that a provision prohibiting insults to the president will actually reduce the legitimacy of the Head of State. In democratic principles, legitimacy arises from a leader's ability to face criticism, not from impunity. Therefore, this article is considered to be potentially more controversial than offering a tangible benefit. System benefits from clearer judicial interpretation, an independent court system, and a deep-rooted culture of protecting dissent even when controversial. (Over & Tuncer-Ebeturk, 2022) The pros and cons of the above issues show that the enactment of articles related to insulting the president has serious implications for the quality of democracy in Indonesia. There are at least three main implications, among others.

First, the Impact on freedom of expression: The application of this article has the potential to narrow the space for freedom of expression, as outlined in Article 28E of the 1945 Constitution. People will be more cautious and even afraid to express criticism, fearing they may be perceived as insulting. This can limit public space, which is actually a means of democratic discourse. (SAFEnet, 2023)

Second, the impact on the principle of equality in the legal process. The provisions regarding contempt of the Head of State indicate that a special legal protection is afforded to the Head of State, which does not apply to citizens in general. This situation is certainly contrary to the principle of equality before the law, which is the main foundation of a democratic state that places the law as the highest authority. (Ashiddiqie, 2021)

Finally, Implications for the relationship between the state and its citizens. In a democracy, criticism of public officials is a form of legitimate political participation. With the introduction of the insult article, relations between the state and society tend to be vertical and authoritarian, rather than participatory and democratic. If this is ignored, public trust in the legal system and democracy can be eroded (Heryani et al., 2022). In practice, however, when the legislature and executive override or disregard the Constitutional Court's interpretations, the very fabric of constitutional democracy is strained. (Herlinanur, 2024)

Normatively, the re-enactment of the provisions regarding insults to the Head of State in Law Number 1 of 2023 creates a conflict between the Constitutional Court's decision No. 013-022/PUU-IV/2006 and the government's political and legislative systems. This dispute could lead to a re-examination of the law at the Constitutional Court. In retrospect, the Constitutional Court is likely to retain its more progressive ruling from 2006 (Bangsawan, 2019). However, political issues and constitutional interpretations can lead to differing interpretations of the law. From this, it can be seen that the arrangement of contempt against the Government and the president will always be a matter of balance between protecting the honor of state officials and respecting the right to free expression.

3.4. PERSPECTIVE OF MAQĀSID AL-SYARĪ'AH (Ḥifẓ Al-'Aql And Ḥifẓ Al-'Ird)

The theory of *maqāṣid al-syarī'ah* emphasizes five main goals: *ḥifẓ al-'aql* (safeguarding reason), *ḥifẓ al-dīn* (guaranteeing freedom of religion), *ḥifẓ al-naḥs wa al-'ird* (protecting human life, dignity, and honor), *ḥifẓ al-nasl* (safeguarding posterity), and *ḥifẓ al-māl* (protection of property). (R, 2003) Islam places reason as one of the primary means by which humans can distinguish right from wrong, as well as to advance science. The existence of freedom of opinion is essentially an implementation of *ḥifẓ al-'aql* (protection of reason). The existence of freedom of thought and expression will make human intellect and ideas healthier and developed. In the Qur'an, we try to motivate someone to use their intellect, as in the following verse:

أَمْ مَنْ هُوَ قَانِتٌ أَتَاءَ اللَّيْلِ سَاجِدًا وَقَائِمًا يَحْذَرُ الْآخِرَةَ وَيَرْجُوا رَحْمَةَ رَبِّهِ قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لَا يَعْلَمُونَ إِنَّمَا يَتَذَكَّرُ أُولُوا الْأَلْبَابِ

٩

Meaning: "(Is the polytheist more fortunate) or the one who worships at night, prostrates, stands, out of fear of the Hereafter, and expects the mercy of his Lord? Say, "Are those who know (the rights of Allah) the same as those who do not know (the rights of Allah)?" Indeed, only those who have understanding (ulul albab) can receive lessons." (QS. (Az-Zumar: 9).

This verse embodies a profound respect for the pursuit of knowledge and the freedom to seek the truth. On that basis, if viewed through the framework of *maqāṣid al-sharī'ah*, the existence of a public space that facilitates the public in conveying criticism and ideas is a form of the application of *shari'a* in protecting human reason. Without freedom of expression, the function of reason can be constrained, and people will receive information rigidly without critical thinking. On the one hand, in addition, from *maqāṣid al-sharī'ah* also emphasizes the importance of *ḥifẓ al-naḥs wa al-'ird*, i.e., respect for life, the basic right to life, and personal honor (Auda, 2008). Human dignity is an important part of the purpose of *sharia*, as Allah SWT says in the following verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرُ قَوْمٌ مِنْ قَوْمٍ عَسَىٰ أَنْ يَكُونُوا خَيْرًا مِنْهُمْ وَلَا نِسَاءٌ مِنْ نِسَاءٍ عَسَىٰ أَنْ يَكُنَّ خَيْرًا مِنْهُنَّ وَلَا تَلْمِزُوا أَنْفُسَكُمْ وَلَا تَنَابَرُوا بِالْأَلْقَابِ بِئْسَ الْإِسْمُ الْفُسُوقُ بَعْدَ الْإِيمَانِ وَمَنْ لَمْ يَتُبْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ١١

Meaning: "O you who have believed, let not one people make fun of another (because) they may be better than them (who are mocked), and do not let women (mock) other women (because) they may be better than women (who are mocked). Do not reproach one another or call each other bad names. The worst of the call is wickedness after believing. Whoever does not repent is the unrighteous." (QS. Al-Hujurot: 11).

In the scope of positive law, the existence of regulations regarding insults, including insults to the Government and the Head of State, can be interpreted as an effort to protect *hifz al-nafs wa al-'ird*. The Head of State, although mandated as the head of the state, is in essence an individual who deserves honor and needs to be protected from insults, slander, and defamation (Masyhuri & Khunaini, 2024). This shows that the insult article can be interpreted as a form of positive law application. *Maqāṣid al-syarī'ah* in terms of protecting honor. However, problems arise when the boundaries between insults and criticism are unclear. When any criticism of the policies of a public official is considered an insult, the regulation that should be aimed at *hifz al-nafs wa al-'ird* will instead limit *hifz al-'aql* (al-Zuhaylī, 1986).

In *maqāṣid al-syarī'ah*, the basic principles of protection do not stand alone, but rather complement and reinforce each other. That is, *hifz al-'aql* should not be used with the intention of destroying *hifz al-nafs wa al-'ird*, and vice versa (Mussolli, 2018). The threat facing Indonesia's positive law is how to formulate a proportionate boundary between freedom of opinion and the protection of the honor of public officials. Imam al-Syāṭibī in *al-Muwāfaqāt* states that *maqāṣid al-syarī'ah* should be understood in the context of *jalb al-maṣāliḥ wa daf' al-mafāsid* (taking benefits and rejecting losses). With this approach, the restriction of freedom of opinion and expression can be declared legitimate if it is proven to provide greater benefits and prevent harm, not just because there is a political reason behind it (Wahbah, 1986). The authority of the legislature and the Constitutional Court underscores a critical weakness in Indonesia's legal and political structure. (Kansil & Laapen, 2024)

From the description above, when drawn into the scope of insults against the government and heads of state in the new Criminal Code, the following are among others. First, from the point of view of *hifz al-'aql*, obstruction that is too broad will eliminate the critical power of society, even though criticism is a vital component of socio-political *ijtihād*. Second, from the point of view of *hifz al-nafs wa al-'ird*, the protection of the honor of the government, especially the head of state, needs to be guaranteed, but only through general legal procedures such as defamation crimes, not making special articles that have the potential to be discriminatory. (Ajie, 2020)

Moreover, third, From the perspective of integrative *maqāṣid*, positive law must be aimed at producing balance, including providing ample space for rational criticism (*hifz al-'aql*), while limiting the presence of slander and hate speech that can damage the honor of *hifz al-nafs wa al-'ird* (Afifudin, 2017). Therefore, if traced from the point of view of *maqāṣid al-syarī'ah*, the discussion of the article of

insult to the Government and the Head of State can not only be seen from a legal point of view, but also concerns the assessment of the conformity of the act with ethical norms.

The application of this provision yields both benefits and disadvantages. For example, if its application has a deterrent effect and limits critical thinking, when viewed through the lens of *Maqāṣid al-Syari'ah*, this provision is considered contrary to the goals that the Shari'ah seeks to achieve. However, when these provisions are formulated proportionately, so that they only ensnare real personal insults and not criticism, they can be part of an effort to ensure harmony between *ḥifẓ al-'aql* and *ḥifẓ al-nafs wa al-'ird*.

3.5. Synthesis Between The Limits Of Criticism And Insults

One of the primary challenges in regulating insults against the government and the Head of State is distinguishing between criticism and insult. Article 28E paragraph (3) of the 1945 Constitution guarantees the constitutional right of every citizen to criticize, while acts of contempt are considered criminal acts because they attack a person's honor and self-esteem. However, the application of the law in Indonesia sometimes shows unclear boundaries between the two. (Bagir, 2019)

Criticism is often expressed in the form of argumentative statements related to public policy. For example, the public observes the government's failure to control food prices. This statement, although considered harsh, is still considered criticism because it is based on policy issues. On the contrary, insults tend to be personal, attacking a person's dignity and honor with abusive words, slander, or insults that are not related to the substance of the policy. (Asshiddiqie, 2021)

Article 218 of Law Number 1 of 2023 concerning Insults to the Head of State explains that these acts must be carried out in public, both verbally and non-verbally. However, the ambiguity of the term "insult" poses a threat to the criminalization of legitimate expression. This has sparked controversy among academics, legal practitioners, and human rights activists (Heriansyah, 2025). An aspect of human rights implementation in Indonesia is the principle of equality before the law. (Gettari & Viana, 2023) From a democratic perspective, criticism functions as an instrument of social control over power. The absence of criticism will result in the government tending to operate without adequate supervision. This arrangement reflects the principles of balance and mutual supervision in the constitutional structure. Therefore, blocking criticism is equivalent to limiting public political participation. (Miriam, 2003)

The Constitutional Court, in its decision No. 013-022/PUU-IV/2006, affirmed that the provisions of contempt of the head of state in the previous Criminal Code were not in line with the principle of equal rights of every citizen before the law. The Constitutional Court believes that the Head of State is not entitled to special legal guarantees that exceed those of ordinary citizens, which has the potential to undermine the democratic principles that form the basis of state administration (Ajie, 2020). However,

it is essential to recognize that democracy should not be neglected and must remain organized. When insults are allowed to spread without limits, it can damage the nation's dignity and erode public trust in government institutions. Therefore, legal arrangements are still necessary, but must prioritize clear proportions and limits. (Alfina, 2024)

According to the framework of *maqāṣid al-syarī'ah*, the dividing line between criticism and insult can be determined based on the concepts of *ḥifẓ al-'aql* (attention to reason) and *ḥifẓ al-nafs wa al-'ird* (protection of the soul and honor). Good criticism is a manifestation of *ḥifẓ al-'aql*. The public uses its intellect to assess government policies and then conveys its opinions openly. This is a component of both social responsibility and Islamic law, commonly referred to as Sharia. On the other hand, insults that attack human dignity fall under the category of acts that undermine *ḥifẓ al-nafs wa al-'ird*. Sharia prohibits this behavior as stated in the Qur'an, Surah al-Hujurāt verse 11, which criticizes mutual insulting and degrading behavior (QS. Al-Hujurot: 11).

Therefore, the boundary between criticism and contempt is that criticism protects reason, while contempt damages honor. Protects freedom of expression under the First Amendment, where criticism of public officials, including the President, is not criminalized (Fillah, 2023). The provisions of the law should aim to achieve proportionality between *ḥifẓ al-'aql* and *ḥifẓ al-nafs wa al-'ird* (Rohman, 2017).

To prevent multiple interpretations, there are at least three normative criteria that can be used as a barrier between criticism and insults, including:

1. Substance Orientation: Criticism is oriented towards the policies, programs, or actions of officials in their official capacity. Insults tend to concern personal aspects, such as the physical appearance, family, or character of individuals that are not related to state duties. (Wahbah, 1986)
2. Argument-Based: Criticism is based on data, facts, or rational judgment. Even if the language is harsh, criticism remains within the limits of public discourse. On the other hand, insults are sometimes not based on data, but are simply expressions of emotion, insults, or slander.
3. Social Impact: Criticism encourages policy evaluation and improvement, ultimately benefiting society. On the other hand, insults will only lead to hatred, horizontal conflicts, and divisions. According to *maqāṣid al-syarī'ah*, these are the forms of danger that must be avoided. (Imam, 2003)

In accordance with the above synthesis, the practical implication is that regulations must avoid articles that are multi-interpreted and vulnerable to misinterpretation, thereby preventing potential criminalization. Defamation should be formulated in detail, for example, limiting it to statements that clearly and inappropriately attack a person's personal honor. Criticism must be guaranteed as an important element of constitutionality. In the law enforcement process, the apparatus must be able to distinguish between criticism and insult. The *judicial review* procedure for defamation articles must

remain open to ensure that positive laws are in line with the principles of democracy and *maqāṣid al-syari'ah*. (Mussoli, 2018)

Therefore, the boundary between criticism and contempt is not only limited to the definition of the law, but also to the proportionality of values between freedom of thought (*hifẓ al-'aql*) and the protection of human dignity (*hifẓ al-nafs wa al-'ird*). Criticism should be protected as widely as an important tool of democracy, while insults should be limited to preserve human dignity and state honor. This synthesis highlights the importance of continually evaluating Indonesia's positive laws to prevent them from becoming limiting obstacles, including the destructive deprivation of full freedom. Some essential issues raised by this article include freedom of speech, overcriminalization, and the constitutional function of the Constitutional Court as a negative legislator.

4. CONCLUSION

From the explanation above, it can be concluded that the provisions for insulting the government in Articles 218-219 and 240-241 of Law Number 1 of 2023 have the potential to cause extreme restrictions on freedom of opinion and expression. These articles still contain unclear boundaries between legitimate criticism and prohibited insults, thus opening up space for the criminalization of forms of critical expression. Criticism is a fundamental part of democracy and cannot be equated with insulting individuals or groups.

Furthermore, from the perspective of communication ethics, a good dialogue between citizens and the government must be implemented based on mutual respect. The criticism conveyed should meet the principles of *adab al-hiwar*, including honesty (*sidq*), sincere intentions (*sincerity*), using polite and proportionate language, and aiming to seek truth and improvement (*islah*), not to insult or slander (Al-Qaradawi, 1994). On the other hand, the government, as a criticized party, is also required to have manners in listening, meaning to be open-minded (*al-hilm*), objective, and respond with substance, without using force to hinder freedom of opinion.

From the perspective of *maqāṣid al-syari'ah*, this case of criticism and insult demands proportionality between *hifẓ al-'aql* (protection of freedom of thought and expression) and *hifẓ al-nafs wa al-'ird* (protection of honor and dignity). Sharia law prohibits any form of insult that can damage a person's reputation, but it also does not preclude logical and constructive criticism. Therefore, as a normative recommendation, a review of Articles 218-219 and 240-241 of Law Number 1 of 2023 is necessary to decide the explicit boundary between criticism and insult against a person. This can be implemented through official definitions, jurisprudence, or the regulation of intentional elements (*mens rea*), so that freedom of opinion and expression is guaranteed without sacrificing the protection of the honor of the government and public officials. An integrative approach, by harmonizing legal certainty, the spirit of the constitution, *maqāṣid al-shari'ah*, and the ethics of *adab al-hiwar* from all parties, is the key

to producing a dynamic yet civilized public space.

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