



Legal Certainty and the Chilling Effect of Complaint-Based Insult Offenses on Digital Public Participation in Indonesia

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ABSTRACT

This study examines how the shift toward a complaint-based offense for insulting state institutions, introduced under Law Number 1 of 2023, functions in practice, with particular attention to questions of legal certainty and the risk of a chilling effect on digital public participation. Much of the existing literature on this issue relies heavily on a juridical-normative approach, which tends to fall short in explaining the frequent mismatch between the law as written and the law as enforced. To address this gap, the study adopts a doctrinal legal research design, supplemented by a qualitative case and document analysis, examining decided cases from 2021-2026 alongside relevant statutory and secondary legal sources. The analysis focuses on how ambiguous provisions in the insult offense articles are interpreted and applied, particularly the boundary between what constitutes an insult and what constitutes legitimate criticism, and how concepts such as "public interest" and "self-defense" are treated in the reviewed cases. The findings indicate that reclassifying the offense as complaint-based has not, by itself, resolved the underlying legal uncertainty. Ambiguous norms and inconsistent investigative procedures continue to allow for differing interpretations across cases, which in turn creates conditions conducive to a chilling effect, potentially discouraging individuals from expressing themselves freely in digital spaces. This study contributes to closing a methodological gap in the existing literature by connecting "law in books" with "law in action" through a systematic case-based analysis, offering interpretative parameters that distinguish legitimate criticism from unlawful insult under the still-ambiguous provisions of the current insult offense



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INTRODUCTION

The Criminalizing insults against state institutions often raises concerns about restrictions on freedom of expression. (Agustina et al., 2023) In Mexico and South Korea, courts have held that such provisions are excessively vague and inconsistent with the principle of legality, and have indicated that removing such provisions would strengthen democratic values (Won, 2020). Indonesia is facing a global trend of democratic decline, accompanied by weaknesses in the rule of law and civil liberties in expression (Slater, 2023). The enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) marks a new direction in Indonesia's national criminal law reform. The regulation is not merely intended to replace a colonial legal product, but also seeks to adapt criminal law to social developments in an increasingly democratic and digitalized society (Aditama, 2026). Within this framework, the regulation of insults against state institutions has again attracted attention because similar provisions had previously been challenged for their potential to restrict freedom of expression (Ellandra et al., 2022). Under human rights law, insult or hate-related offenses can only be justified when directed against human beings, rather than governments or institutions, because entities or symbols cannot

experience insult (Winarta, 2025). The reactivation of this norm therefore reveals a tension between the need to protect the dignity of state institutions and the obligation to guarantee freedom of expression as a component of democratic principles.

Under the new Criminal Code, the provision has not been abolished but reconstructed as a complaint-based offense. This change is intended to narrow the scope of criminalization by requiring a complaint from the party directly harmed. (DM et al., 2025) Such a model is considered more proportionate because it limits potential misuse of criminal law by third parties while reflecting the principle of *ultimum remedium* in law enforcement (Abdurrachman et al., 2021). Nevertheless, the change has not fully resolved the fundamental problem, particularly concerning the boundary between legitimate criticism and punishable insult. In practice, the distinction between the two remains unclear and depends heavily on context and interpretation.

The problem becomes increasingly complex in digital spaces, where citizens have broad access to express opinions rapidly and openly. The spontaneous and often unstructured character of digital communication makes the boundary between criticism of public policy and attacks on the dignity of state institutions increasingly blurred (Mukromin et al., 2023). In addition, the formulation of the norms in the new Criminal Code still contains ambiguity, particularly concerning the phrase “public interest” as a ground of justification. The absence of clear indicators for this concept may generate legal uncertainty because it creates room for different interpretations among law enforcement officers.

This normative tension cannot be fully understood without situating it within Indonesia's constitutional framework governing freedom of expression. Article 28E and Article 28F of the 1945 Constitution guarantee the right to hold opinions and to communicate information, while Article 28J (2) permits limitations on constitutional rights only insofar as they are established by law and are necessary to respect the rights of others or to meet the just demands of morality, religious values, security, and public order in a democratic society (Ishak, 2022). Any restriction on expression, including the criminalization of insult against state institutions, must therefore satisfy the principle of legality and, more specifically, the *lex certa* requirement namely, that criminal norms must be formulated with sufficient clarity and precision to allow citizens to reasonably foresee which conduct is prohibited (Haritjahjono & Sodikin, 2025). Where a provision fails to meet this standard, it risks violating the principle of proportionality, under which any limitation on a constitutional right must be the least restrictive means necessary to achieve a legitimate aim (Setiawan et al., 2024). This constitutional lens is essential to assessing whether the reconstruction of insult offenses as complaint-based crimes genuinely narrows the scope of criminalization, or merely relocates the same underlying ambiguity into a different procedural form.

It is also necessary to distinguish clearly among several related but legally distinct offenses that are frequently discussed together in public and academic discourse: insult against the President and/or Vice President, insult against the Government, insult against state institutions, defamation involving public officials, and offenses under the Electronic Information and Transactions Law (ITE Law) (Alhakim, 2022). Each of these categories involves distinct legal subjects, elements of offense, and normative justifications for instance, offenses against individual officials (such as the President) engage personal dignity as a legal interest, whereas offenses against institutions raise the separate and contested question of whether an abstract entity can be the bearer of dignity capable of being insulted at all. This distinction is analytically important because subsequent discussion in this article specifically concerns insult against state institutions as reconstructed under Law Number 1 of 2023, rather than the adjacent but doctrinally separate categories listed above.

From the perspective of academic developments, studies of insult offenses have largely been dominated by doctrinal legal approaches focusing on legislation and judicial decisions. This approach is important for understanding formal legal construction, but it has not adequately explained how the norms are implemented in practice. Several previous studies have addressed constitutionality and the protection of freedom of expression, but remain largely limited to legal-text analysis without connecting it to the realities of law enforcement (Libra et al., 2026). In practice, however, law enforcement officers play a decisive role in interpreting and applying abstract norms.

This condition demonstrates a significant research gap, both methodologically and substantively. Methodologically, the dominance of normative approaches has not sufficiently explained the difference between law in books and law in action. Substantively, there has been no in-depth study of how law enforcement officers interpret the boundary between criticism and insult, or how normative

ambiguity affects public behavior. One implication is the potential emergence of a chilling effect, namely a tendency among citizens to limit their expression because of fear of legal consequences (Rauf et al., 2025). In digital spaces, this phenomenon may reduce the quality of public discourse and weaken the public's function of controlling state institutions.

Against this background, this study seeks to fill the existing gap by examining the reconstruction of the complaint-based offense in the regulation of insults against state institutions under the new Criminal Code and its implications for legal certainty and public participation. Specifically, the study aims to analyze the extent to which the transformation of the offense can guarantee legal certainty for citizens who express criticism, and to identify the potential for a chilling effect arising from the ambiguity of the "public interest" limitation. Building on these objectives, this study addresses the following research questions: (1) To what extent does the reconstruction of insult offenses against state institutions as a complaint-based crime under Law Number 1 of 2023 provide legal certainty in distinguishing legitimate criticism from punishable insult? (2) How does the normative ambiguity surrounding the "public interest" limitation, as reflected in decided cases, contribute to a potential chilling effect on digital public participation? Unlike previous studies, this study employs a doctrinal legal research design supplemented by qualitative case and document analysis, examining decided cases alongside statutory and secondary legal sources, thereby providing a more grounded contribution to theoretical development and to the formulation of legal policies responsive to the dynamics of a digital society.

RESEARCH METHODS

This study employs a doctrinal legal research design, supplemented by a qualitative case and document analysis, to examine legal certainty and the potential chilling effect arising from the application of insult offenses against state institutions under Law Number 1 of 2023. The scope of the study is limited to the interpretation of the relevant insult provisions, their application in decided cases, and their implications for freedom of expression in digital spaces.

The primary legal materials analyzed in this study consist of applicable legislation particularly Law Number 1 of 2023 concerning the Criminal Code together with judicial decisions involving the application of insult provisions against public officials or state institutions during the 2021-2026 period. These cases were selected purposively based on their relevance to normative ambiguity in the interpretation of "public interest" and to the exercise of discretion by law enforcement officers. The secondary legal materials consist of annotations of the Criminal Code, academic journal articles, books, and civil society reports relevant to the issues of legal certainty, freedom of expression, and the chilling effect.

Data collection was conducted through document study and systematic literature tracing, encompassing statutory texts, published judicial decisions, and secondary academic sources. The collected materials were analyzed qualitatively using legal-doctrinal analysis, examining the formulation and interpretation of the relevant norms, and were further examined through a case-based analytical approach that connects the norms as formulated in legislation (law in books) with their application in decided cases (law in action). This analytical approach is directed at identifying the relationship among normative ambiguity, the exercise of discretion in law enforcement, and the potential emergence of a chilling effect on public participation in digital spaces. Given that the data relied upon in this study consist of documented legal materials and decided cases rather than direct field data such as interviews or observations, the findings and conclusions presented in this study are formulated as an analysis of legal norms and their documented application, rather than as an empirical account of how individual law enforcement officers personally interpret or apply the law in practice.

RESULTS AND DISCUSSION

1. Reconstruction of the Offense and Ambiguity of Insult Norms

The transformation of the offense of insulting state institutions from an ordinary offense into a complaint-based offense under the new Criminal Code is often positioned as an effort to limit criminalization while strengthening the protection of freedom of expression. This normative construction represents an important shift because law enforcement requires a complaint from the party directly harmed. However, the change tends to be procedural and does not address the root of the problem at the substantive level (Shuhufi & Dubey, 2023; Alviolita & Arief, 2019).

The fundamental problem lies in the blurred boundary between legitimate criticism and the elements of punishable insult. Law Number 1 of 2023 provides exceptions through the concepts of “public interest” and “self-defense,” but neither concept is accompanied by operational parameters (Panjaitan et al., 2025). As a result, the norms remain open-textured and vulnerable to multiple interpretations.

In this context, changing the offense into a complaint-based offense does not automatically guarantee legal certainty. As long as the indicators distinguishing criticism from insult are not clearly formulated, the potential for law enforcement discretion, abuse of power, and criminalization remains open. The resulting legal certainty is therefore only apparent because the reform shifts the focus to the complaint mechanism without improving the quality of the substantive norm itself (Shadiq & Alladuniah, 2025). This condition risks producing what may be termed pseudo-legal certainty, in which the law appears more certain formally while remaining problematic in application.

Building on this gap, this study offers analytical reinforcement through the formulation of minimum indicators for distinguishing criticism from insult: (1) the object of expression is directed at public policy rather than the personal sphere; (2) the purpose of the expression is evaluative rather than an attack on honor; (3) the communicative context considers the medium, audience, and circumstances of delivery; and (4) the provisions concerning insults against state institutions apply only to certain government entities at the central-government level and are not universal, in order to prevent indiscriminate application. Accordingly, this study does not merely repeat the finding that the norms are ambiguous; it provides an operational framework that has not been adequately elaborated in the literature of the past five years.

Before turning to the case analysis below, it is necessary to situate Articles 240 and 241 of Law Number 1 of 2023 within the broader landscape of related offenses with which they are often conflated in both public discourse and prior scholarship. Articles 240-241 specifically govern insult directed at “the Government” and “state institutions” as defined institutional entities, and are therefore doctrinally distinct from defamation offenses directed at individual persons, hate-speech-related provisions, and offenses under the Electronic Information and Transactions Law (ITE Law) under Article 27A of Law Number 1 of 2024, and defamation offenses against individual persons under Article 433 of Law Number 1 of 2023. Each of these offenses protects a distinct legal interest and applies to a different category of complainant, and this distinction matters analytically: the normative ambiguity examined in this study is specific to the institutional character of the protected interest under Articles 240-241, and does not necessarily extend uniformly to the adjacent offenses noted above.

2. Discretion and Fragmentation of Interpretation in Law Enforcement

Normative ambiguity ultimately materializes in law enforcement practice, where officers play a central role in determining whether an expression can be qualified as an insult. Drawing on the conceptual distinction between law in books and law in action, this point is analytically significant because it illustrates a gap between normative construction and documented instances of implementation. When certain political interests and pressures become dominant, law enforcement officers may exercise authority beyond legitimate limits, resulting in criminalization and discriminatory legal policies that ultimately conflict with the principle of legality in criminal law (Anggraeniko, 2020; Kafrawi et al., 2023). The case examined below suggests that law enforcement officers' interpretations of insult offenses are not always uniform, though a broader claim about general patterns across enforcement practice would require a larger and more systematically sampled set of cases than the present study analyzes (Setyanegara & Agus, 2025). Where a norm is applied indiscriminately, officers may exercise broad discretion in assessing the elements of insult. The biased use of Articles 240 and 241 of Law Number 1 of 2023 (Criminal Code) on insults against state institutions as a basis for treating regional heads, such as regents or governors, as “government” creates legal uncertainty and narrows the space for freedom of expression. This can be observed in the case of a member of the public identified as Rangga, who attempted to criticize a public policy but ultimately faced criminalization.



Figure 1. Discretion and Fragmentation of Normative Interpretation in the Application of Articles 240 and 241 of Law Number 1 of 2023 on the National Criminal Code.

The dynamics of law enforcement can be seen in a complaint report submitted by a regional head (regent) to the Dompur Police (Tipidter Satreskrim), alleging that a member of the public had insulted and harmed him in his capacity as a government representative or state institution. The annotation of the Criminal Code explains that "government" under Article 240 paragraph (1) refers to the President of the Republic of Indonesia assisted by the Vice President and Ministers as provided in the 1945 Constitution. "State institutions" refer to the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, and the Constitutional Court (Hiariej & Santoso, 2025, pp. 244-245). Accordingly, a regent or other regional official is not included within the entities identified by the provision. The discretion exercised in such circumstances is inherently part of the legal system, but becomes problematic when it is unsupported by clear interpretive guidelines. A failure to understand the legal annotation at the police level when constructing the elements of an insult against a state institution may create bias and potentially criminalize freedom of expression in a democratic system, while reducing the predictability of the legal system.

Applying the four indicators developed in the preceding section to this case illustrates their analytical function. First, the object of Rangga's expression was directed at a public policy rather than at the regent's personal sphere, satisfying the first indicator. Second, the evaluative rather than honor-attacking purpose of the expression is reflected in its framing as policy criticism rather than personal insult. Third, the communicative context a public social media platform addressing a matter of public administration situates the expression within the sphere of public accountability rather than private communication. Fourth, and most decisively, the regent does not fall within the entities enumerated under "government" or "state institutions" as defined in the annotation of Articles 240–241 (Hiariej & Santoso, 2025, pp. 244-245), meaning that the provision should not have applied to this case at all on doctrinal grounds. This single case therefore illustrates not only interpretive discretion in the abstract, but a concrete instance in which the scope of application of Articles 240-241 was exceeded relative to their own annotated definition a distinct and narrower finding than a general claim about how enforcement officials as a group interpret the law.



Figure 2. Date on civil society members subjected to vague or "rubber" provisions (criminalization) in cases involving insults, defamation, and hate speech against public officials.

Based on data from the last five years, Amnesty International Indonesia reported 271 cases of criminalization involving vague or "rubber" provisions used against freedom of expression. Of these, 121 cases had reached a verdict at the district court level, while the remainder were still undergoing legal proceedings, either before the courts or at the investigation stage. The cases were distributed across 38 provinces, with East Java recording the highest number at 40. By early 2026, the cumulative figure had risen to 311 cases, of which 141 had resulted in a district court conviction and 170 remained in ongoing trial or investigation stages; East Java again recorded the highest count, at 45 cases. These figures indicate that criminalization under broadly worded provisions has continued across all 38 provinces without clear geographic concentration, a pattern consistent with the normative ambiguity discussed above, though the data alone do not establish the specific causal mechanisms linking case volume to patterns of self-censorship in digital spaces a relationship examined further, and with appropriate caution, in the following section (Amnesty International Indonesia, 2025).

3. Legal Certainty and Chilling Effects on Public Participation in Digital Spaces

The combination of normative ambiguity and broad law enforcement discretion has direct implications for legal certainty and public behavior. Although transforming the offense into a complaint-based offense is expected to create a more proportionate mechanism, in practice legal certainty remains limited and cannot be fully predicted (Pavelek & Marek, 2024). Under such conditions, citizens tend to respond by becoming more cautious in expressing their views, particularly in digital spaces (Büchi et al., 2022). This phenomenon is understood as a chilling effect, in which individuals limit their expression because of concerns about legal consequences. The documented case pattern discussed above, considered alongside existing literature on chilling effects, suggests that this phenomenon extends beyond a purely theoretical possibility, although confirming its precise behavioral dimensions among digital users would require primary data collection such as surveys or interviews with affected individuals that falls outside the scope of the present case-based analysis.

Existing research suggests that, rather than ceasing to express criticism altogether, citizens facing legal uncertainty may instead alter their communication patterns by becoming more implicit, concealed, or anonymous (Rauf et al., 2025; Yudha & Yogantari, 2026). If accurate, this pattern would indicate that freedom of expression does not disappear outright but is distorted in its mode of delivery under normative pressure, with a corresponding decline in the openness and argumentative quality of public discourse. Causally, this proposed mechanism is consistent with the interaction between normative ambiguity and inconsistent law enforcement practice documented in the preceding sections (Rauf et al., 2025; Yudha & Yogantari, 2026), though the present study's case-and-document-based

design allows it to identify this relationship as a plausible mechanism rather than to establish it as a confirmed causal finding.

Overall, the contribution of this study lies in its attempt to connect normative analysis, documented instances of law enforcement practice, and their downstream implications for public participation within a single case-based analytical framework. Rather than merely identifying weaknesses in the norm, the study offers an operational set of indicators for distinguishing criticism from insult and demonstrates, through case analysis, how normative ambiguity may be operationalized in specific instances of law enforcement and translated into constraints on public participation in digital spaces. This contribution is offered as a doctrinal and case-based account of the relationship between criminal-law construction and the dynamics of freedom of expression in the digital era, with the explicit caveat that broader claims about enforcement patterns nationwide, or about citizens' actual behavioral responses, would require further empirical validation beyond the scope of the present study.

CONCLUSION

This study examined the reconstruction of insult offenses against state institutions under Law Number 1 of 2023 through two lenses: legal certainty and the risk of a chilling effect on digital public participation. On legal certainty, the case and document analysis indicates that shifting the offense to a complaint-based mechanism has narrowed its procedural scope without resolving the underlying substantive ambiguity: the concepts of "public interest" and "self-defense" remain without operational parameters, and the annotated institutional scope of "government" and "state institutions" under Articles 240-241 is not always observed at the enforcement level, as the case examined in this study illustrates. The four indicators proposed here object, purpose, context, and institutional scope offer one way of narrowing this gap, though their applicability across a broader range of cases remains to be verified.

On the chilling effect, the documented pattern of criminalization cases, read alongside existing literature on public response to legal uncertainty, suggests that the risk to digital participation is plausible rather than merely hypothetical, with citizens more likely to adjust how they express criticism than to abandon it altogether; confirming the precise behavioral extent of this shift, however, falls outside what a case-and-document-based design can establish. Legal certainty and the chilling effect thus emerge as two expressions of the same underlying gap between the norm as formulated and the norm as applied, pointing to a need for clearer interpretive parameters and more consistent enforcement guidance, with future research involving direct engagement with law enforcement officers and affected citizens needed to establish the behavioral dimensions of this effect with greater empirical precision.

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