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Defarmation Against Government in National Criminal Code: Review on Freedom of Expression and Opinion Rights

Kurdi[1]*, Sandi Yudha Prayoga[2], Teuku Ahmad Dadek[3]
1,2 Sekolah Tinggi Ilmu Hukum Adhyaksa, Jakarta Indonesia
3 Universitas Syiah Kuala, Aceh Indonesia
Corresponding Author: *kurdi@stih-adhyaksa.ac.id

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Abstract
The offense of insulting the government or state institutions is considered contrary to the right to freedom of expression and opinion. This study aims to determine the regulation of the offense of insulting the government or state institutions based on the perspective of the right to freedom of expression and opinion. In addition, it also aims to compare the regulation of insulting offenses against the government or state institutions in Indonesia with other countries. The research is included in normative legal research using a statutory approach, conceptual approach, and comparative legal approach. The results show that the offence under discussion does not violate the right to freedom of expression and opinion because Article 240 of the National Criminal Code has clearly distinguished between the act of "insulting" and the act of criticizing the government, which is a right of expression. In addition, the offense is included in the complaint offense so that it cannot be prosecuted prior to a report. Moreover, the regulation of the offense of insulting the government or state institutions is still in line with the principle of limiting the right to freedom of expression and opinion as a derogable right. Because the act of insulting is included in acts that violate morals and public order, which are the limits of the guaranteed rights.

1. Introduction

The politics of criminal law includes efforts to implement legislation in the field of criminal law that is more in line with current and future conditions.[1] This action is intended to enforce criminal law in accordance with the values and norms that live in society.[2] The form of Indonesian legal politics is seen with the renewal of the Criminal Code (KUHP). The Criminal Code itself is a law that regulates the general provisions regarding punishment, punishment, and criminal offenses in general in Indonesia. The reform of the KUHP has been pursued since 1958 with the establishment of the "National Law Development Institute". In addition, the drafting of RKUHP has been conducted since 1968. Until it was successfully realized through the enactment of Law No. 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code) on January 2, 2023.

Looking at its history, it can be seen that the Criminal Code originated from the WvSNI which was enforced by the Netherlands based on the principle of concordantie. Which means that its enforcement was imposed because it did not consider the original law that lives in Indonesia. Thus, the reformation of the Criminal Code through the enactment of the National

[1] Maroni, *Pengantar Politik Hukum Pidana* (Bandar Lampung: AURA, 2016).
[2] Sandie Kurnia, "Urgensi Ancaman Pidana Kerja Sosial (Community Service Order) Terhadap Tindak Pidana Ringan Dalam RUU Kuhp Nasional (Suatu Studi Sistem Pemidanaan Dalam Perspektif Pembaharuan Hukum Pidana)" (Universitas Muhammadiyah Malang, 2017).

Criminal Code is very important for the advancement of law enforcement in Indonesia. There are at least 3 urgencies of the enactment of the National Criminal Code, namely:[3] First, Political Reason, the State of Indonesia has been independent from various forms of colonization. Meanwhile, the use of colonial law shows a symbol of colonization from the Netherlands. Second, Sociological Reason, the drafting of the National Criminal Code is necessary in order to create a criminal law that is in accordance with the nation's identity. That is, a Criminal Code that shows the social and cultural values of the nation. In the context of the Criminal Code, criminalization can only be carried out on acts that must be in accordance with the collective view of the community and beneficial to them. Third, Practical Reason, the Old Criminal Code actually uses the Dutch language and does not have an official translation using the Indonesian language. therefore, to understand the Criminal Code, it is necessary to understand the Dutch language as the original text. Meanwhile, this cannot be done because the Indonesian state has become independent so it needs its own Criminal Code.

The promulgation of the National Criminal Code resulted in pros and cons. The opposition to the National Criminal Code has even resulted in a delay in its promulgation. On September 18, 2019, the House of Representatives of the 2014-2019 period had actually agreed to approve the draft revision of the National Criminal Code and was in the first level of decision making. However, activists and students criticized the decision through demonstrations. The reason for the criticism was that there were several articles that were considered problematic and needed to be reviewed. President Joko Widodo and the DPR then chose to postpone the ratification and make improvements and review of the criticized articles.

One of the arrangements that has caused cons in the community and legal experts is the offense of insulting the government or state institutions which is regulated in Article 240 of the National Criminal Code. The content of the article in question is a prohibition for everyone in public either orally or in writing to insult the government or state institutions. Constitutional law expert Bivitri Susanti argues that the regulation actually secures the government through the enactment of rubber articles or multiple interpretations, so that it can criminalize citizens who criticize the government. Furthermore, she explained that the offense is an effort to control the government as was done by the Dutch Colonial Government against the natives who rejected the arbitrary actions of the colonial government.[4]

The offense of defamation against the government has also generated opposition because it is considered to threaten the right to freedom of expression and opinion. This article is said to be a tool to silence criticism of government performance, opinions, and also reactions to government policies.[5] In fact, criticism and reactions to government policies are a form of

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[3] Nafi Mubarok, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan," *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 27, no. 1 (2024): 15–31. https://doi.org/10.15642/alqanun.2024.27.1.15-31

[4] Vitorio Mantalean and Novianti Setuningsih, "Kritik Pasal Penghinaan Pemerintah Di RKUHP, Pakar: Akan Buat Nyaman Presiden Dan Semua Lembaga Negara," *Kompas.Com*, last modified 2022, accessed April 21, 2025, https://nasional.kompas.com/read/2022/12/04/18285751/kritik-pasal-penghinaan-pemerintah-di-rkuhp-pakar-akan-buat-nyaman-presiden.

[5] Institute for Criminal Justice Reform, "Delik Pencemaran Nama Baik Dan Penghinaan Ditinjau Dari Hak Asasi Manusia," last modified 2022, accessed April 21, 2025, https://icjr.or.id/delik-pencemaran-nama-baik-dan-penghinaan-ditinjau-dari-hak-asasi-manusia/.

realization of the right to freedom of expression and opinion intended to realize nation building. This action is necessary because only with the participation of citizens providing criticism, suggestions, and reactions, can a clean state administration be realized.

Based on the pros and cons related to the existence of the offense of insulting the government or state institutions, the question arises whether or not the existence of this offense is necessary, especially if it is related to the guarantee of the right to freedom of expression and opinion. Thus, a further examination of the offense will be conducted based on the perspective of the right to freedom of expression and opinion. In addition, to determine whether or not the existence of this offense is necessary, a comparison of its regulation with other countries can be made. Through legal comparison, best practices can be known through the assessment of the regulation, application, or even elimination of this offense. In addition, through legal comparison with other countries, it can be seen whether the offense is effective in maintaining public order or is actually used as a tool to silence criticism of government performance. Based on this background, the problem formulations in this study include how is the regulation of defamation offenses against the government or state institutions based on the perspective of the right to freedom of expression and opinion and how does the regulation of defamation offenses against the government or state institutions in Indonesia compare with other countries

2. Methods

This research falls into the normative or doctrinal research type. Bambang Sunggono explains that this research is conducted by examining principles, systematics, history, and legal comparisons. Meanwhile, Peter Mahmud Marzuki explained that normative legal research is research conducted to obtain legal rules that can be used to resolve the legal issues discussed. The results of the research are in the form of theories or concepts, or arguments as prescriptions in answering the existing problems. The approaches used in this research are: First, the legislative approach because the problem is discussed using the law, especially the National Criminal Code, and the Criminal Code of other countries discussed in this study. Second, a conceptual approach which is an approach taken by using doctrines, concepts or theories recognized in law. In this case, the concept of human rights, the right to freedom of opinion and expression is used. In addition, a comparative law approach is also used which compares the legal system between one country and another.

The sources of legal materials in this research are primary and secondary legal materials. Primary legal materials are the 1945 Constitution of the Republic of Indonesia, the National Criminal Code, and the Criminal Codes of other countries, such as Turkey and Egypt. While the secondary legal materials used are books, journals, theses, legal dictionaries related to the issues discussed, namely those related to the offense of insulting the government or state institutions. Analysis of legal materials is carried out in the following steps: first, identifying legal facts in the form of the National Criminal Code. Then determine the Article on insulting state institutions or government as the legal issue discussed. Furthermore, obtaining the source material used in the research and using it to review and analyze its suitability with theories and doctrines as legal material obtained. Also, comparing it with the offense of insulting state institutions or governments regulated in other countries. Finally, drawing conclusions from legal issues and compiling arguments in the form of prescriptions as suggestions.

3. Results and Discussion

3.1. Regulation of Defamation Offenses Against the Government or State Institutions Based on the Perspective of the Right to Freedom of Expression and Opinion

Before being used as a basis for analysis, it is essential to first explain the right to freedom of expression and opinion. To provide such an explanation, reference must be made to its legal regulation. Internationally, this right is enshrined in the *Universal Declaration of Human Rights* (UDHR), particularly Article 19, which guarantees that everyone has the right to freedom of opinion and expression. This includes the freedom to hold opinions without interference, as well as the right to seek, receive, and impart information and ideas through any media, irrespective of territorial boundaries. Similarly, the *International Covenant on Civil and Political Rights* (ICCPR), in Article 19, affirms these guarantees with substantially identical content.

Under the ICCPR, freedom of expression is protected without interference, encompassing the right to seek, receive, and convey information and ideas in any form, across national borders, orally, in writing, in print, in artistic works, or by other media. However, pursuant to Article 19(3) of the ICCPR, this right is subject to permissible limitations and therefore constitutes a derogable right.

According to Bonaventure Rutin and Jimly Asshiddiqie, the right to expression and opinion comprises two essential elements: first, the freedom to obtain and communicate all forms of ideas without restriction; second, the freedom to determine the means by which such ideas are conveyed. Hence, protection extends not only to the substance of information but also to its form, medium, and method of transmission. This right is expressly guaranteed in the Indonesian Constitution, which obliges all domestic regulations to avoid undermining its protection.[6] Article 28E paragraphs (2) and (3), together with Article 28F of the 1945 Constitution, guarantee every individual the right to express opinions, communicate for personal development, and possess as well as disseminate information through any available media.

Emily Howie emphasizes that the right to freedom of expression carries both private and social dimensions. Privately, it safeguards individual self-development; socially, it underpins the functioning of a free and democratic society. Such a society requires legal protection of various forms of communication, including criticism of government policies, public services, scientific debate, journalism, teaching, and religious discourse. The UN Human Rights Committee further highlights that enjoyment of this right is essential for the realization of other fundamental rights. For instance, the right to vote presupposes freedom of expression and association, given that electoral processes require the unrestricted circulation of information and open discussion on matters of governance. [7]

Nevertheless, the right to freedom of expression in Indonesia faces potential restrictions due to the criminalization of insults against government or state institutions. The *Center for Law and Policy Studies* (PSHK) argues that all public responses—whether approval, criticism, or ridicule should be understood as legitimate assessments of governmental performance. The

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[6] Abdullah Candra Triadi, "Analisis Yuridis Normatif Batas-Batas Kebebasan Berpendapat Menurut Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (Universitas Muhammadiyah Malang, 2020).

[7] Emily Howie, "Protecting The Human Right To Freedom Of Expression In International Law," *International Journal of Speech-Language Pathology* 20, no. 1 (2018): 12–15. https://doi.org/10.1080/17549507.2018.1392612

style or manner of communication, meanwhile, belongs to the realm of ethics rather than criminal law and thus should not warrant penal sanctions. This indicates the need to critically assess laws on insult against government institutions from a human rights perspective. [8]

Defamation offenses, often classified as crimes against honor, are generally designed to protect both dignity and reputation (*goede naam*). Proof of such offenses typically involves demonstrating an attack on honor or good name. The *Elucidation of Article 240 of the National Criminal Code* defines insult as conduct that demeans or damages the honor or image of government or state institutions, including through defamation or slander.

Defamation against government or state institutions is regulated under Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code), which was promulgated on January 2, 2023, and will take effect three years thereafter, replacing the Dutch colonial Criminal Code currently in force. Within this Code, insults directed at government or state institutions are classified as crimes against public order. Article 240(1) prescribes imprisonment of up to one year and six months for those who publicly, either orally or in writing, insult the government or a state institution. Article 240(2) aggravates the penalty if such insults incite public disorder. Importantly, Article 240(3) stipulates that prosecution requires a formal complaint from the affected government leader or institution, rendering the offense a *delik aduan* (complaint-based crime).

Further, Article 241(1) of the National Criminal Code regulates insult by specific means, such as disseminating writings or images, broadcasting audio or visual material, or distributing content via information technology. The maximum penalty in such cases is three years' imprisonment, which is more severe than that prescribed under Article 240. As with Article 240, these provisions also constitute complaint-based offenses, enforceable only upon written complaint by the head of the insulted government body or institution.

Despite these provisions, the National Criminal Code distinguishes between "criticism" and "insult" without providing clear normative standards to differentiate the two. This lack of legal parameters whether in terms of intent (mens rea), the language employed, or the actual impact on public order—creates significant uncertainty and risks encroaching upon the constitutionally protected right to freedom of expression. To address this gap, at least three normative indicators should be developed to provide clarity:

1. Intent (mens rea) – Insult should be defined by the deliberate intention to humiliate, degrade, or attack the dignity of a person or institution, whereas criticism should be recognized as an effort to evaluate, supervise, or demand accountability, even when expressed in strong language.
2. Form and Language Used – Insult often manifests through vulgar, degrading, or purely pejorative language lacking substantive argumentation. By contrast, criticism typically involves factual claims, opinions, or evaluative reasoning connected to issues of public concern.

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[8] BBC News Indonesia, "DPR Resmi Sahkan RKUHP Menjadi Undang-Undang, PBB 'prihatin' Pasal-Pasal 'Diskriminatif,'" last modified 2022, accessed April 21, 2025, https://www.bbc.com/indonesia/articles/cv2qj19zp28o.

3. Impact on Public Order – Criminal liability should not be triggered merely by the subjective sense of offense on the part of officials or institutions, but only when the expression results in a concrete and demonstrable disruption of public order.

By articulating these standards, Indonesian law would not only safeguard legitimate criticism but also align with international human rights norms, which allow restrictions on freedom of expression only when they are necessary, proportionate, and prescribed by law to protect legitimate aims such as public order, national security, or the rights of others. Based on the arrangements related to freedom of expression and opinion as described above, according to the researcher, the regulation of the offense of insulting the government or state institutions in the National Criminal Code does not violate the right to freedom of expression and opinion. Several reasons underlie the researcher's conclusion, among others:

***First*, Distinguishing Insult from Criticism and Its Position as a Complaint Offense.**

The National Criminal Code establishes a distinction between acts of "insult" and legitimate criticism, the latter being recognized as a manifestation of the constitutional right to freedom of expression. Public concern has long centered on the possibility that the offense of insulting the government or state institutions might function as a *rubber article* a provision drafted in vague and multi-interpretive terms, open to broad application and prone to abuse. The term "insulting" is often regarded as problematic, as its scope could potentially encompass strong but lawful criticism of governmental policies or actions. To address this, the Elucidation of Article 240 of the National Criminal Code explicitly limits the scope of insult by clarifying that criticism whether expressed through demonstrations, written commentary, or other forms of dissent cannot be equated with criminal insult. Such expressions are instead framed as exercises of democratic rights, serving the broader purpose of public oversight, correction, and participation in governance.

Legal scholars, including Andi Hamzah, note that the boundary between criticism and defamation may at times be exceedingly narrow, since criticism does not always involve constructive alternatives and may still appear confrontational. Nevertheless, defamation requires clear intent and conscious awareness that the expression seeks to undermine authority, damage reputation, or cause humiliation. [9] Criticism, by contrast, is directed toward correction in matters of public interest and, when conveyed within an appropriate forum, is protected as an essential element of democratic discourse. By expressly acknowledging this difference, the National Criminal Code aims to prevent overly broad interpretation of "insult" and to safeguard citizens from criminal liability when engaging in legitimate criticism, proposals, or corrections directed at government performance.[10]

In addition to clarifying this substantive distinction, the offense of insulting the government or state institutions is classified as a complaint offense (*klacht delict*). This means that prosecution is contingent upon a formal complaint lodged by the relevant government official or state institution, as required under Article 72 of the Criminal Code.[11] In practice,

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[9] Hukum Online, "Delik Penghinaan Presiden Ancaman Buat DPR," last modified 2013, accessed April 21, 2025, https://www.hukumonline.com/berita/a/delik-penghinaan-presiden-ancaman-buat-dpr-lt51653b1446652/?page=2.

[10] Mudakir Iskandar Syah, *Tuntutan Hukum Malapraktik Medis* (Jakarta: Bhuana Ilmu Populer, 2019).

[11] Duwi Handoko, *Asas-Asas Hukum Pidana Dan Hukum Penitensier Di Indonesia* (Pekanbaru: Hawa dan AHWA, 2017).

law enforcement authorities may not act independently in the absence of such a complaint. The procedural requirement of an active report by the concerned institution is designed to enhance transparency and reduce the potential for arbitrary prosecution[12] It also opens space for non-litigation resolution, as complaint offenses allow for withdrawal of reports within a specified time frame three months from the date of filing, pursuant to Article 30 of the National Criminal Code. Once withdrawn, a report cannot be resubmitted, ensuring that state institutions retain discretion to assess whether pursuing prosecution serves the public interest. By combining these two dimensions the substantive limitation that protects criticism as a form of democratic participation and the procedural safeguard of the complaint mechanism the National Criminal Code seeks to strike a balance between preserving the honor of government institutions and upholding the fundamental right to freedom of expression.[13]

***Second*, In line with the principle of limitation of the right to freedom of expression and opinion as a derogable right.** Based on article 19 of the ICCPR, it can be explained that freedom of expression and opinion is included in the derogable right.

A derogable right refers to a right whose enjoyment may be lawfully restricted by the state. The restrictions referred to under Article 19 paragraph 3 of the ICCPR are those that are stipulated by law and are necessary to respect the rights or reputations of others. Also to protect public order, or public health or morality. More explicitly, the Siracusa Principles stipulate that such limitations must meet the following criteria: First, legally regulated based on fairness, there is protection and remedy, and not arbitrary. Second, it does not cause chaos in the implementation of democracy. Third, to create public order in relation to the purpose of human rights protection and the body having authority. Fourth, the interests of public morality in relation to basic values and non-discrimination. Fifth, national security interests in relation to the protection of the nation and territorial integrity.[14] Therefore, it can be explained that as a derogable right, the right to freedom of expression and opinion can indeed be reduced as long as it fulfills these provisions.

In relation to the Siracusa Principles, the criminalization of insults against the government or state institutions is permissible. Its justification can be elaborated as follows. First, such regulation must be established by law, namely through statutory provisions such as the Criminal Code (KUHP), thereby ensuring that the public is aware of the prohibitions and the corresponding sanctions. Second, it does not undermine democracy, as it does not constitute a prohibition on criticizing the government. Third, its existence is intended to protect human rights, particularly the right to reputation as guaranteed under Article 12 of the Universal Declaration of Human Rights (UDHR). It also serves to safeguard public order by preventing social disorder that may arise from extreme and unrestricted insults against institutions. Fourth, it upholds public morals by prohibiting conduct that constitutes violations of morality, including acts of degradation, defamation, dishonor, or slander. Fifth, it ensures

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[12] Rusni Mayang Sari, Zulkarnain Ridlwan, and Rudi Natamiharja, "Pelembagaan Delik Penghinaan Terhadap Pemerintah Dalam KUHP Baru Antara Perlindungan Simbol Negara Dan Kebebasan Ekspresi," *Indonesian Journal of Law and Justice* 2, no. 3 (2025): 9. https://doi.org/10.47134/ijlj.v2i3.3893

[13] Yasser Arafat, "Penyelesaian Perkara Delik Aduan Dengan Perspektif Restorative Justice," *Borneo Law Review* 1, no. 2 (2017): 127–145. https://doi.org/10.35334/bolrev.v1i2.714

[14] Komnas HAM, *Menata Ulang RUU Penyadapan Dalam Perspektif HAM* (Jakarta: Komnas HAM, 2019).

national security, the protection of the nation, and territorial integrity by preventing extreme social unrest stemming from a loss of public trust.

Not only international human rights instruments regulate restrictions on the right to freedom of expression and opinion. Article 28J of the 1945 Constitution and Article 70 of Law No. 39/1999 on Human Rights also states that in the exercise of the right to freedom of expression, everyone must comply with the restrictions stipulated by law so that the rights of others can also be guaranteed, as well as to fulfill fair demands in accordance with moral considerations, security, and public order in a democratic society. Based on these considerations, it is only natural that this right can be limited.

The offense of insulting the government/state institutions can be used as an excuse to limit the right to freedom of opinion and expression as a derogable right. This offense qualifies for restrictions as mentioned in international human rights instruments and the 1945 Constitution. This is because the act of degrading, damaging honor, defaming, or slandering is included in violations of morals and public order. Violation of morals in this case occurs because the act of insulting as an act of damaging honor is contrary to the basic values, ethics, and morality of society. In addition, the act of insulting the government/state institutions can be said to result in a threat to public order because it has the potential to cause public distrust and political polarization.

In the report of the National Legal Development Agency (BPHN) prepared under the leadership of Loebby Loqman, several cases of insults against the President in Indonesia were documented. Historically, it can be argued that the offense of insult carries the potential to be misused as a tool to suppress criticism. To prevent such misuse in silencing dissent, the regulation of insults against the government or state institutions has undergone revisions in the National Criminal Code (KUHP). As previously explained, the Explanatory Note to Article 240 of the KUHP introduces a distinction between criticism recognized as an exercise of the right to freedom of expression and democracy and insults. Furthermore, this offense has been reclassified as a complaint-based offense (delik aduan). To avoid the silencing of legitimate criticism, law enforcement officials are thus required to exercise sensitivity by applying this provision in accordance with objective public standards.

The practice of democracy may indeed be threatened if the insult provision is excessively employed to control public reactions to government actions. Nevertheless, excessive insults directed at the government or state institutions can foster anarchic and destructive behavior. Against this backdrop, the offense of insulting the government or state institutions in the National Criminal Code may serve as a mediating instrument. This is because its formulation now clearly distinguishes between a political act and a political crime. A political act refers to criticism, which constitutes the right to freedom of expression and democratic participation. Such acts are permitted and not subject to criminalization, thereby safeguarding democratic freedoms. What is prohibited is only political crime, namely conduct intended to cause political destabilization or social disorder, including acts of degradation, dishonor, defamation, or slander against the government or state institutions.

Although restrictions on freedom of expression are permissible under international law, it is important to acknowledge the potential risk of abuse when the offense of insult is applied by state officials or authorities to silence legitimate criticism. To address this concern, the

proportionality test, as articulated in the *Siracusa Principles* and applied by the UN Human Rights Committee, should be considered, requiring that any restriction be (i) necessary and proportionate to a legitimate objective, and (ii) the least intrusive means available. Moreover, jurisprudential analysis is essential. Constitutional Court Decision No. 013-022/PUU-IV/2006, which annulled certain insult provisions for being incompatible with freedom of expression, together with developments in judicial practice following the revision of the National Criminal Code, demonstrate the constitutional tension inherent in regulating such offenses. Therefore, while this research concludes that the offense of insulting the government or state institutions in Indonesia does not, in principle, violate the right to freedom of opinion and expression, this conclusion must be understood within the framework of strict proportionality, constitutional safeguards, and vigilant judicial oversight to prevent misuse that could undermine democratic freedoms

3.2. Comparison of the Regulation of Defamation Offenses Against the Government or State Institutions in Indonesia with Other Countries

Comparative law is a method of investigation to explain legal issues. Munir Fuady explains that comparative law is included in the method of learning legal science, which is carried out by examining two or more legal systems. The study is carried out on legal rules, rules, jurisprudence, and doctrine in the legal system discussed, this is done to obtain similarities and differences and then provide certain conclusions or concepts, as well as obtain factors that result in the occurrence of these similarities and differences. The factors referred to refer to sociological, historical, analytical, and normative factors.[15] Meanwhile, comparative criminal law is a branch of law science in the form of a method to understand more than one criminal law system to obtain similarities and differences so that conclusions can be drawn which are efforts towards criminal law reform. This comparative method can be applied to both substantive and procedural criminal law so that it can provide benefits both from a theoretical and practical perspective.

The advantage of doing comparative law is that it is one of the right efforts to carry out legal reform, because it can find out the similarities and differences with the legal system or law being compared. Legal reform efforts through legal comparison cannot be found in other fields. Because by comparing the legal system, objective conclusions can be drawn regarding the advantages and disadvantages of national law when compared to national laws from other countries. Looking at the benefits of comparative law, this research compares the regulation of the offense of insulting the government or state institutions in the Criminal Code in Indonesia with several other countries. One of the countries used for comparison is Egypt. Egypt was chosen because it is a republic. Similar to Indonesia, in Egypt also regulates the offense of insulting the government/state institutions. However, in Egypt the arrangements are more numerous and not only limited to the government (President and Vice President) and state institutions that are determined limitively in the National Criminal Code, namely the MPR, DPR, DPD, MA, and MK.

In Egypt, the prohibition of insulting the President is regulated in Article 179 of the Egyptian Penal Code (Law 58 of 1937). In addition, the prohibition of insulting public officials

[15] Kristiawanto, *Memahami Perbandingan Hukum Pidana* (Klaten: Nas Media Pustaka, 2021).

is also regulated in Article 179 of the Egyptian Penal Code.[16] This article itself reads: "Whoever commits an insult, by gesture, word, or threat, against a public official/civil servant, officer of the law, or any person charged with the performance of a public service, while in the performance of his duties, or on account of the performance of such duties, shall be punished by imprisonment for a term not exceeding six months, and a fine not exceeding two hundred pounds". In addition, it also stipulates the prohibition of insulting the People's Assembly, the Shura Council, or other regular organizations, the Army, the courts, the Ruler, or the General Department in Article 184 of the Egyptian Penal Code. Not only that, Article 185 of the Egyptian Penal Code also regulates the prohibition of insulting people who hold public office with a maximum penalty of 1 year imprisonment. Furthermore, the law also prohibits on anyone who criticizes the government or the law at a religious meeting.[17]

The various arrangements related to the prohibition of insults against public officials and bodies in Egypt as described above show that there are various offenses of insulting the government and state institutions in Egypt, this is even far more than in Indonesia. The Egyptian government argues that the diversity of the prohibition of insulting the government is done to ensure political stability and control freedom of expression. However, upon further investigation, it can be seen that the many prohibitions on insulting officials and public bodies in Egypt occur because historically Egypt has an authoritarian political culture.[18] Military entities also still dominate parliament both at the central and local levels.[19]

The regulation of the offense of insulting the government or state institutions in Indonesia is then compared with that regulated in Turkey. This is because Turkey has several similarities with Indonesia, such as both countries that adhere to the presidential system and also adopt multiparty.[20] The offense of insulting the government in Turkey is regulated in the Thirteenth Section on Offenses against Signs of Sovereignty and Supreme Political Tools of the State of the Turkish Criminal Code. Specifically, the regulation of the offense of insulting the president is regulated in Article 297 of the Turkish Criminal Code which states the prohibition of insulting the President with sanctions for violators, namely imprisonment starting from 1 year and a maximum of 4 years. The sanction can be aggravated by 1/6 (one-sixth) in the event that it is committed in public. Meanwhile, if committed through the press or broadcasting media, it will be aggravated by 1/3 (one third). However, prosecution for this offense can only be carried out if approval is obtained from the Ministry of Justice.

The offense of defaming state institutions in Turkey can be seen in Article 299 of the Turkish Penal Code. Under this article, it is prohibited to defame Turkey, the Republic, or the Turkish National Supreme Assembly. Sanctions for these acts are months to 3 years in prison.

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[16] Christopher Roberts Holds, *The State Of The Right To Freedom Of Expression In Egypt, Morocco And Tunisia, From 2011 To 2015* (Belgium: Avocats Sans Frontières (ASF), 2016).
[17] Article 201 Penal Code Mesir.
[18] Afini Nurdina Utami and Syaiful Anam, “Dominasi Militer Dalam Politik Dan Pemerintahan Di Mesir: Kegagalan Demokratisasi Di Mesir Pada Kudeta 2013,” *Review of International Relations* 4, no. 2 (2022): 132–142. DOI:10.24252/rir.v4i2.29249
[19] Yezid Sayigh, “The Changing Role of the Egyptian Military Under El-Sisi,” *ISPI*, last modified 2023, accessed April 21, 2025, https://www.ispionline.it/en/publication/the-changing-role-of-the-egyptian-military-under-el-sisi-156254.
[20] Raharjo Raharjo, “The Role of Government in Revitalization of Islamic School in Turkey,” *Walisongo: Jurnal Penelitian Sosial Keagamaan* 22, no. 1 (2014): 181–210. DOI: https://doi.org/10.21580/ws.22.1.264

Meanwhile, if you insult the Government of the Republic of Turkey, State judicial institutions, military or security organizations will be sentenced to 6 months to 2 years in prison.[21] The aggravation of the act occurs if a Turkish citizen commits the act in another country. This condition makes the sanction 1/3 (one-third) more severe. Article 297 paragraph 4 of the Turkish Penal Code expressly states that expressions or opinions that are intended to criticize are not crimes.

The similarity between the regulation of the offense of insulting the government or state institutions in Indonesia and Turkey is that both regulate the offense of insulting the President. Another similarity is that both explicitly state that the offense of insult in this case cannot be committed against expressions in the form of criticism. The differences may be classified into the following: First, with regard to sanction severity, the offense of insulting the government/state institutions in Turkey is much more severe than that stipulated in the Indonesian National Criminal Code. In addition to being more severe, criminal witnesses in the Turkish Criminal Code also recognize a minimum criminal sanction, such as the Article on insulting the President which has a minimum criminal sanction of 1 year. Second, the prohibition of insulting state institutions in Indonesia is limited to the MPR, DPR, DPD, Supreme Court, and Constitutional Court. Whereas in Turkey it is aimed at the Turkish National Supreme Assembly, the Government of the Republic of Turkey, State judicial institutions, military or security organizations. Third, in Indonesia the offense of insult is included in the complaint offense, while in Turkey, although it is not mentioned that it is included in the complaint offense, the prosecution can only be carried out if the approval of the Ministry of Justice is obtained.

Unlike Indonesia, Turkey and Egypt which regulate the offense of insulting the government/state institutions in the Criminal Code, Malaysia regulates the offense in a special law, namely the Malaysian Sedition Act 1948. Article 3 (1) (A) regulates insults using the term "seditious tendency" or tendency of hatred, contempt, or incitement against the government. The government in this case refers to the Government of Malaysia and each State in Malaysia. In addition, Article 3 (1) (C) also prohibits insulting the administration of justice in Malaysia or in any State. The Malaysian Sedition Act 1948 clarifies what is not included in the act of seditious tendency, namely: actions, speeches, words, publications or anything else that has a tendency to point out the errors or mistakes of the actions of the government / authorities, judicial institutions. Also those that intend to correct the errors or shortcomings of their actions. The offense of sedition may result in the imposition of imprisonment of up to three years and/or a fine of up to 5,000 Ringgit.[22] From this explanation, it can be seen that the offense of defamation of government/state institutions in Malaysia also does not criminalize the act of criticizing the performance or actions of the government by implicitly stating that the act of pointing out the errors or mistakes of government actions is not a "seditious tendency".

Based on the comparison between Indonesia and Egypt, Turkey and Malaysia, it can be seen that the offense of insulting the government or state institutions is still relevant to be maintained and does not violate the right to opinion and expression. Because these countries

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[21] Pasal 297 ayat 2 KUHP Turki.

[22] Global Campaign for Free Expression, *Memorandum on the Malaysian Sedition Act 1948* (London, 2003).

make it clear that criticism of the government will be considered as a manifestation of the right to opinion and expression to control the government. In addition, criticism is also considered to show the mistakes and misguidance of the government for the benefit of the country. This makes the act of criticizing the government not criminalized using insulting the government or state institutions.

From this comparison, it can also be seen that the scope of institutions that can use the offense of insulting the government or state institutions in Indonesia is within reasonable limits. Because in Indonesia the scope is only limited to the President (Government) and the MPR, DPR, DPD, MA, and MK (State institutions). Meanwhile, countries such as Egypt and Turkey regulate the use of the offense of insulting the government or state institutions in a much broader scope than Indonesia. Where public officials such as military or security organizations are also subjects that can report the perpetrators of insults against them using this special offense. In addition, the threat of sanctions against perpetrators of the offense of insulting the government or state institutions in Indonesia is also much lower than those regulated in Egypt, Turkey, and also Malaysia.

Apart from Indonesia and the countries used for comparison above, several other countries also retain the offense of insulting the government or state institutions, such as Denmark, Iceland, Poland, India, the Philippines, etc. Although it needs to be recognized that there are also countries such as the Netherlands, Uganda, Ghana, Croatia, West Africa, and several other countries that abolish the offense of insulting the government or state institutions. Countries that abolish the offense make the act of insulting the government subject to fines that fall into the civil realm.[23] However, according to the BPHN Team, the countries that abolish the offense have certain conditions that are different from Indonesia, such as historical, social, political, etc. factors. It is further explained that the existence of the offense of insulting the government or state institutions in countries that maintain it is not a form of restraint on the right to freedom of expression and opinion. On the contrary, the existence of the offense will maximize the role of the community as a means of government control, where the implementation is carried out in a transparent, professional, balanced, and legally accountable manner. In the absence of regulation, excessive criticism has the potential to lead to anarchism and disruption of social, economic and governmental stability. Preventing this condition is the urgency of the offense of insulting the government.

From the comparison of the offense of insulting the government or state institutions between Indonesia and Egypt, Turkey, and also Malaysia, the thing that can be adopted in Indonesia because of its advantages is related to the prosecution which can only be carried out if it obtains approval from the Ministry of Justice. The arrangement made in Turkey in enforcing the offense of insulting the government or institution will further prevent the criminalization of those who criticize the government because the prosecution can only be carried out after permission from the Ministry / similar institution. Because the license can be a filter in the use of the offense of insulting the government or state institutions.

4. Conclusions

[23] Badan Pembinaan Hukum Nasional, *Laporan Akhir Tim Analisa Dan Evaluasi Hukum Tentang Delik-Delik Penghinaan Terhadap Pejabat Negara Dan Simbol-Simbol Negara (KUHP Pasal 310-321)*.

The offense of insulting the government or state institutions does not violate the right to freedom of expression and opinion for several reasons: First, Article 240 of the National Criminal Code has clearly distinguished between the act of "insulting" and criticism, which is a right of expression. Second, the offense is included in the complaint offense. Third, the regulation of this offense is still in line with the principle of limiting the right to freedom of expression and opinion as a derogable right. There are still many countries that maintain the offense of insulting the government or state institutions, including Indonesia, Turkey, Egypt, Malaysia, and other countries. The regulation of the offense of insulting the government or state institutions in Indonesia has some similarities with other countries, such as with Turkey and Malaysia, which both make it clear that criticism of the government will be considered as a manifestation of the right to opinion and expression so that it cannot be an act of insulting the government. However, it shows some differences such as the scope of the subject of officials or state institutions, as well as the severity of criminal sanctions. The recommendations generated based on the comparison of laws related to insulting the government or state institutions, namely criticism, reactions, and other actions to point out the mistakes of the government or state institutions in carrying out their duties and responsibilities should not be criminalized using the offense. In addition, the use of the offense must be done carefully and really aimed at actions that are subjectively and objectively insulting.

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