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# ANALYSIS OF THE DECRIMINALIZATION OF THE OFFENSE OF INSULTING THE GOVERNMENT IN THE NEW CRIMINAL CODE FOLLOWING THE CONSTITUTIONAL COURT DECISION

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**Abstract**

Constitutional Court Decision Number 282/PUU-XXIII/2025 declared Article 240 along with its Elucidation and Article 241 of Law Number 1 of 2023 on the Criminal Code (KUHP) to be contrary to the 1945 Constitution of the Republic of Indonesia and without binding legal force, so that the offense of insulting the government and state institutions can no longer be applied. This study aims to analyze the ratio decidendi of the decision and its legal implications for the guarantee of freedom of opinion and expression in Indonesia. This study is normative legal research using the statute, case, and conceptual approaches, with the primary legal materials, in the form of Constitutional Court decisions, analyzed qualitatively and prescriptively. The results show that the Court's ratio decidendi rests on five main considerations: the prohibition on reviving a norm that has been declared unconstitutional, the distinction between the protection of the honor of individuals and of state institutions, the expansion of the objects of protection that gives rise to legal uncertainty, the insufficiency of the construction of the complaint-based offense, and the disproportionality that creates a chilling effect. The decision strengthens the guarantees of Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia, but the protection of officials' personal honor now depends on other offenses based on individual complaints.

**Keywords:** Decriminalization, Freedom of Expression, Criminal Code, Constitutional Court, Insulting the Government

## INTRODUCTION

Indonesia is a state governed by the rule of law with popular sovereignty (Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia). In a democratic state governed by the rule of law, the freedom to express thoughts and attitudes, to express opinions, and to obtain and convey information is not merely an individual right, but a means for citizens to oversee and correct the exercise of power. These rights are guaranteed in Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), and Article 28F of the 1945 Constitution, and may be restricted only by law as provided in Article 28J paragraph (2) (Karomi & Ardyansyah, 2025).

The reform of national criminal law through Law Number 1 of 2023 on the Criminal Code (hereinafter Law 1/2023), which was promulgated on 2 January 2023 and entered into force on 2 January 2026, has revived the long-standing debate on the offense of insulting those in power. Article 240 of Law 1/2023 threatens criminal punishment against anyone who, in public, orally or in writing, insults the government or state institutions, while Article 241 extends this to broadcasting, performing, and disseminating through information technology. Yet, through Decision Number 013-022/PUU-IV/2006 the Constitutional Court had declared Article 134, Article 136 bis, and Article 137 of the old Criminal Code unconstitutional, and through Decision Number 6/PUU-V/2007 declared the same of Article 154 and Article 155 of the old Criminal Code. Lawmakers argue that the new formulation has been corrected because it is constructed as a complaint-based offense and is accompanied by a distinction between criticism and insult, but academic studies assess that such a formulation remains open to multiple interpretations and has the potential to silence criticism (Ahwan & Daulay, 2026, Karomi & Ardyansyah, 2025).

Twelve university students subsequently filed a petition with the Constitutional Court to review Article 240 along with its Elucidation and Article 241 of Law 1/2023, contending that there are legal uncertainty, room for subjective interpretation by law enforcement officials, and a chilling effect. Through Decision Number 282/PUU-XXIII/2025, pronounced on 28 August 2026, the Court granted the petition in its entirety. Technically, the Court acted as a negative legislator that annuls norms, the legal consequence is the disappearance of the criminal threat for the act of "insulting the government or state institutions". In this article, that consequence is called judicial

decriminalization, namely the removal of the criminal character of an act through a constitutional judicial decision, which differs from decriminalization through the legislative process.

The urgency of this study lies in two matters. First, the decision concerns the consistency of the Court and lawmakers in safeguarding freedom of expression in the early period of the new Criminal Code's entry into force. Second, previous studies are generally norm critiques written before the decision was handed down. This study aims to analyze the ratio decidendi of the Constitutional Court in decriminalizing the offense of insulting the government in Law 1/2023, and to analyze the legal implications of that decriminalization for the guarantee of freedom of opinion and expression in Indonesia.

## LITERATURE REVIEW

### Democratic State Governed by the Rule of Law and Freedom of Expression

Freedom of expression is recognized in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law Number 12 of 2005. Its restriction is valid only if it is established by law, aims to protect the rights and freedoms of others or a legitimate public interest, and is necessary in a democratic society, as provided in Article 28J paragraph (2) of the 1945 Constitution. In a democratic state, freedom of opinion functions as a means of control, a channel for aspirations, and criticism of state administrators (Karomi & Ardyansyah, 2025).

### The Offense of Insulting Those in Power and the Chilling Effect

The law on defamation is fundamentally aimed at protecting personal reputation and dignity. The Academic Paper of the Criminal Code Bill places insult as a rechtsdelict, or an act that is inherently reprehensible, and makes it the basis for punishing insults against the President (Ahwan & Daulay, 2026). However, Ahwan and Daulay (2026) show that placing the President and Vice President as exclusive subjects means that criticism of them receives a different level of protection compared with criticism of officials and ordinary citizens, and has the potential to cause a chilling effect and citizen apathy. Karomi and Ardyansyah (2025), using progressive and responsive legal theory, conclude that Article 217 and Article 240 of Law 1/2023 restrict citizens' right to express opinions and need to be revised. Other studies discuss the problems of legal policy on criminalization in the new Criminal Code (Koriahningsih, 2024) and the threat of the provision on insulting the President to freedom of opinion (Ardian, 2024). After Decision Number 105/PUU-XXII/2024, defamation under the Electronic Information and Transactions Law (ITE Law) may be brought as a complaint only by individuals, not by government agencies, institutions, or offices (Rachman & Yamin, 2025). The most recent studies confirm similar findings. Sopandi et al. (2026) conclude that the term "insult" in Article 240 paragraph (1) and Article 241 paragraph (1) is subjective and elastic, thereby opening the way to the criminalization of criticism and a chilling effect, even though the offense has become a complaint-based offense with a lighter criminal penalty. Rahman et al. (2025) review the provisions on insulting the President in the new Criminal Code from the perspective of freedom of opinion, Yusuf and Nugroho (2024) examine the ratio legis of the provisions on insulting the President and Vice President, and Tasimia and Suherman (2025) discuss freedom of opinion and expression in the digital era from a human rights perspective.

### The Constitutional Court as a Negative Legislator and Ratio Decidendi

Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia gives the Constitutional Court the authority to review laws against the Constitution through decisions that are final. The annulment of laws by a constitutional judiciary is commonly called the negative legislative function (negative legislator) because it nullifies, rather than creates, norms. The Court's decisions acquire permanent legal force from the time they are pronounced in a plenary session open to the public (Article 47 of Law Number 24 of 2003 as amended) and are generally binding (erga omnes). In the case approach, the binding part of a decision is not only the operative part, but also the ratio decidendi, namely the legal reasons that serve as the basis on which judges render the decision.

### Research Gap

Previous research is generally a norm critique of the formulation of Article 240 and Article 241 or of the provisions on insulting the President before the Court handed down its decision, even the most recent studies, such as Sopandi et al. (2026), were published in June 2026, that is, before the decision was pronounced. To the author's knowledge, few studies have yet dissected the ratio decidendi of Decision Number 282/PUU-XXIII/2025 and its legal implications for the guarantee of freedom of opinion and expression. This article fills this void.


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## RESEARCH METHOD

This study is normative (doctrinal) legal research that examines norms, principles, and court decisions. The approaches used include the statute approach to the 1945 Constitution and Law 1/2023, the case approach to Constitutional Court Decision Number 282/PUU-XXIII/2025 and related decisions, and the conceptual approach to the concepts of a democratic state governed by the rule of law, freedom of expression, the offense of insult, and chilling effect.

The primary legal materials consist of the 1945 Constitution, Law 1/2023, the law on the Constitutional Court, and Constitutional Court Decisions Number 282/PUU-XXIII/2025 (pronounced 28 August 2026), Number 013-022/PUU-IV/2006, Number 6/PUU-V/2007, Number 31/PUU-XIII/2015, Number 80/PUU-XVII/2019, and Number 105/PUU-XXII/2024. Decision Number 275/PUU-XXIII/2025 is used as referred to in the considerations of Decision Number 282/PUU-XXIII/2025. The secondary legal materials are recent scholarly journal articles and legal theory literature. The legal materials were collected through library and document studies.

The analysis was carried out qualitatively and prescriptively using deductive reasoning. The ratio decidendi was identified from Paragraphs [3.12] to [3.15] of the legal considerations, by separating the legal reasons that form the basis of the operative part from the description of arguments, the statements of the parties, and additional considerations. Norms were interpreted grammatically, systematically, and teleologically, and the legal implications were then formulated by linking the ratio decidendi to the guarantees of Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), Article 28F, and Article 28J paragraph (2) of the 1945 Constitution.

## RESULTS AND DISCUSSION

### The Court's Ratio Decidendi in the Decriminalization of the Offense of Insulting the Government

In Decision Number 282/PUU-XXIII/2025, the Court granted the petition in its entirety and declared Article 240 along with its Elucidation and Article 241 of Law 1/2023 contrary to the 1945 Constitution and without binding legal force. The decision was taken by nine constitutional justices and pronounced on 28 August 2026, the copy of the decision analyzed contains no differing opinion (dissenting opinion). Article 240 threatens criminal punishment for insulting the government or state institutions in public, while Article 241 extends to broadcasting and dissemination through information technology, both are constructed as complaint-based offenses filed in writing by the head of the government or state institution. The Court's legal considerations in Paragraphs [3.13] to [3.15] can be formulated into five main ratio decidendi as summarized in Table 1.

**Table 1.** Summary of the Ratio Decidendi of Decision Number 282/PUU-XXIII/2025

| No. | Main consideration | Core of the consideration | References |
|---|---|---|---|
| 1 | Prohibition on reviving a norm that has been declared unconstitutional | The annulment concerns the substance of the norm, not the article number; the new Criminal Code must not contain the same or a similar article | Decision 013-022/PUU-IV/2006, 6/PUU-V/2007 |
| 2 | The honor of individuals differs from the "honor" of state institutions | Institutions have no feelings of being insulted, the government must be open to criticism, officials may file a complaint only in a personal capacity | Decision 105/PUU-XXII/2024, 275/PUU-XXIII/2025, Article 1 paragraph (2) of the 1945 Constitution |
| 3 | Expansion of the objects of protection creates differential treatment and legal uncertainty | The objects include the President, Vice President, ministers, (deputy ministers), the People's Consultative Assembly (MPR), House of Representatives (DPR), Regional Representative Council (DPD), Supreme Court (MA), and Constitutional Court (MK), but not the Audit Board (BPK) and Judicial Commission (KY), the list is open to expansion | Decision 80/PUU-XVII/2019, Article 28D paragraph (1) |
| 4 | The complaint-based offense is insufficient to meet the paradigm shift | Changing from an ordinary offense to a complaint-based offense does not close off the potential for the article to be used to reduce constitutional rights | Decision 013-022/PUU-IV/2006, 31/PUU-XIII/2015 |


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| No. | Main consideration | Core of the consideration | References |
|---|---|---|---|
| 5 | Disproportionality and chilling effect | Protecting institutions through a prohibition on insult is not commensurate with citizens' right to express opinions as a form of participation in government | Articles 28D paragraph (1), 28E paragraphs (2) and (3), 28F of the 1945 Constitution |

The Court affirmed that a declaration of unconstitutionality of a norm must be understood as the annulment of the material or substance of the norm, not the annulment of the number or letter of an article. Therefore, lawmakers may not revive a norm that has been declared unconstitutional by formulating it in a new article, whether in an amending law or in a new law. Decision Number 013-022/PUU-IV/2006 also mandated that the new Criminal Code no longer contain articles whose content or substance is the same as or similar to Article 134, Article 136 bis, and Article 137 of the old Criminal Code. For the Court, retaining that substance or similarity of substance in Article 240 and Article 241 amounts to negating equality before the law, the freedom to express thoughts and opinions, the freedom to obtain information, and legal certainty. This consideration is reinforced by Decision Number 6/PUU-V/2007, which viewed formal offenses such as Article 154 and Article 155 of the old Criminal Code as easily interpreted according to the whims of those in power and as stemming from colonial interests.

This argument is doctrinal and has broad consequences for the relationship between the constitutional judiciary and lawmakers. By viewing annulment as the annulment of substance, the Court prevents its decision from being circumvented merely by changing the wording, changing article numbers, or adding softeners such as complaint-based offenses and lighter criminal penalties. The consideration of Decision Number 013-022/PUU-IV/2006 quoted by the Court shows that those old articles hindered the freedom to express thoughts because they were often used against demonstrations, obstructed clarification of alleged violations by the President under Article 7A of the 1945 Constitution, and contained criminal threats that could hinder access to public office. Ahwan and Daulay (2026) note that, in the offense of insulting the President, lawmakers only changed the nature of the offense and lowered the criminal penalty, the same pattern appears in Article 240 and Article 241, and the Court affirmed that such modifications do not change the substance that has been declared unconstitutional.

The Court acknowledged that a person's honor, dignity, and good name are legal interests protected by criminal law, but that this protection cannot be equated with protection of the government or state institutions as institutions. The Court referred to Decision Number 105/PUU-XXII/2024, which affirmed that a legal entity cannot be a complainant because defamation is directed only at individuals, and Decision Number 275/PUU-XXIII/2025, which affirmed that the President or Vice President as a private person cannot use the capacity of office to file a complaint about an insult. Its foundation is popular sovereignty in Article 1 paragraph (2) of the 1945 Constitution: the government and state institutions must be open to the oversight, criticism, and opinions of the people. Philosophically, the Court considers that an institution, as a legal subject, has no feelings of being praised, reproached, or insulted, the dignity of an institution is upheld by the individuals within it through the performance of their duties and functions.

This distinction changes the way the object of protection in the offense of insult is viewed. The legal interest protected by criminal law is human dignity, not the image of institutions. By referring to Decision Number 105/PUU-XXII/2024, which according to Rachman and Yamin (2025) limits those who may bring a defamation complaint to individuals and excludes government agencies, institutions, corporations, and offices, as well as Decision Number 275/PUU-XXIII/2025, the Court places the two on the same line: neither legal entities nor offices can be victims and complainants of insult, only humans as private persons. The consideration of Decision Number 31/PUU-XIII/2015 quoted by the Court adds a dimension of the relationship between the state and citizens: the shift in the position of officials from "master" in the colonial period to "servant" or "public servant" of society should also shift the privileged nature of their legal standing. Consequently, sharp criticism of the policies or performance of institutions is not an attack on human dignity, but part of the people's oversight mechanism.

Systematically, Article 240 and Article 241 are located in the chapter on criminal offenses against public order. The Court noted that the Elucidation of Article 240 defines "insulting" as an act that demeans or damages the honor or image of the government or state institutions, and contrasts it with "criticism", a term commonly interpreted elastically (mulur-mungkret) in law enforcement. Compared with the old Criminal Code, which protected only the President and Vice President, the objects of protection now include ministers as well as the MPR, DPR, DPD, MA, and MK. Because deputy ministers have been equated with ministers in Decision Number 80/PUU-XVII/2019, deputy ministers are also legally protected. The Court questioned why the Audit Board and the Judicial Commission,


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which are also mentioned in the 1945 Constitution, were not included. A list that can continue to be expanded gives rise to differential treatment among institutions as well as legal uncertainty, contrary to Article 28D paragraph (1) and the principle of lex certa.

The third argument shows that the norm's constitutional defect lies not only in the content of the prohibition, but also in the design of the protected objects. The list of institutions in the Elucidation of Article 240 paragraph (1) is selective: the BPK and KY, which are explicitly mentioned in the 1945 Constitution, are not included, while other institutions whose authority is regulated by the Constitution could well be added. That selective choice has no objective yardstick and therefore fails to meet the requirement of lex certa and opens the way to differential treatment that is difficult to justify. The expansion to ministers and, logically, deputy ministers also shows a widening circle of officials under the umbrella of criminal law, the wider that circle, the greater the potential for criticism of the technical policies of ministries to be classified as insulting the government.

Lawmakers rely on the change from an ordinary offense to a complaint-based offense as proof that reform has been carried out. The Court did not accept this argument. According to the Court, that change is not sufficient to meet the paradigm shift toward a democratic state governed by the rule of law that places citizens and state administrators on an equal footing before the law, especially when the object of protection has instead been expanded. Even though it is constructed as a complaint-based offense, in enforcement Article 240 and Article 241 can still become instruments that reduce or eliminate citizens' constitutional rights. This assessment is consistent with the finding of Ahwan and Daulay (2026) that the absolute complaint-based offense and the public-interest exception are merely a minimal shield for critics.

Lawmakers put forward several arguments to support the constitutionality of the norm: the complaint-based offense is in line with the principle of ultimum remedium and does not permit total enforcement of the law, the principal criminal penalty is alternative so that judges give priority to the lighter penalty (Article 57), offenders may be sentenced to supervision (Article 75), and the formulation has been adjusted to Decision Number 013-022/PUU-IV/2006, which states that prosecution for insulting those in power should be based on a complaint. These arguments revolve around the lightness of the sanctions and the procedure, not the question of whether there is a constitutional basis for criminalizing insult against institutions. The Court shifted that question, because the substance and object of the norm are constitutionally problematic, the lightness of the sanctions and the dependence of the process on a complaint cannot save it. Moreover, the complaint is filed by the head of the government or state institution, so that the party being criticized becomes the determinant of whether a case is processed. Ahwan and Daulay (2026) assess that the absolute complaint-based offense and the public-interest exception are only a minimal shield, especially when the status of the reporting party often determines the follow-up of reports in law enforcement in Indonesia.

At the final stage, the Court weighed proportionality between protecting state institutions through a regime prohibiting insult and protecting citizens' right to convey thoughts and opinions openly as a real manifestation of participation in government. The Court places the right to express thoughts and attitudes in accordance with conscience as a right that must be safeguarded, because without that guarantee the fulfillment of other human rights and civil liberties loses its meaning. The Petitioners' argument that the norm a quo opens the way to subjective interpretation, threatens the criminalization of criticism, and creates an intimidating effect was declared well-founded. The Court concluded that Article 240 along with its Elucidation and Article 241 do not guarantee the rights protected by Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), and Article 28F of the 1945 Constitution.

The Court's proportionality consideration can be read in three steps. First, the aim of protecting the dignity of institutions has no strong footing because institutions have no feelings of being insulted. Second, the chosen means, namely criminal punishment, creates a heavy burden in the form of citizens' fear of criticizing, including when re-sharing critical opinions on social media as feared by the Petitioners and as reached by Article 241, which covers dissemination through information technology. Third, the benefit achieved is not commensurate because the dignity of institutions can be maintained through the performance and accountability of the officials within them. This three-step reading is the author's reconstruction, the Court itself did not set it out step by step. This finding is in line with Sopandi et al. (2026), who view these articles as a paradox between the protection of the dignity of state institutions and the guarantee of freedom of expression, and with the Court's decision, which resolves that paradox by giving priority to freedom.

The five ratios are part of the Court's consistent line of decisions. Decision Number 013-022/PUU-IV/2006 annulled Article 134, Article 136 bis, and Article 137 of the old Criminal Code, Decision Number 6/PUU-V/2007 annulled Article 154 and Article 155, Decision Number 14/PUU-VI/2008 reaffirmed that position in the review of Article 207 and Article 316, Decision Number 31/PUU-XIII/2015 shifted the paradigm of the relationship between officials and citizens, and Decision Number 105/PUU-XXII/2024 and Number 275/PUU-XXIII/2025 limited insult to individuals. Decision Number 282/PUU-XXIII/2025 becomes the meeting point of that series because for the first


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time the Court annulled the offense of insulting the government and state institutions in the new Criminal Code, rather than in the Criminal Code inherited from the colonial era. Thus, this decision shows that the Court treats articles of similar substance as one family of norms that are equally unconstitutional, regardless of the law in which the norm is formulated.

Critically, it should be noted that in the legal considerations analyzed there is no explicit reference to Article 28J paragraph (2) of the 1945 Constitution or to the ICCPR, and the proportionality test was conducted briefly. The strength of the decision lies in two arguments that are more doctrinal in nature, namely the prohibition on reviving norms that have been annulled and the distinction between the dignity of persons and of institutions. Thus, this ratio decidendi is better read as a reaffirmation of the Court's consistency with its previous decisions than as the development of a new test for the restriction of rights.

Another critical note is that the Court did not elaborate on how criticism is to be distinguished from insult against individuals after the norm was annulled, that matter was left to other offenses and to law enforcement practice. This is in line with the Court's function as a negative legislator that only nullifies norms, but leaves lawmakers and law enforcement officials the task of drawing up clear guidelines for the distinction. Without such guidelines, the shift from reporting in the name of institutions to reporting in the personal name of officials could reproduce the same problem.

**Legal Implications for the Guarantee of Freedom of Opinion and Expression**

The legal implications of the decision can be mapped into four aspects. First, from the time it was pronounced, the Court's decision has permanent legal force and is binding on the public generally, so that Article 240 and Article 241 can no longer be used as a basis for reporting, investigating, or prosecuting anyone. From the standpoint of the principle of legality (nullum crimen sine lege), the act of "insulting the government or state institutions" as a stand-alone offense no longer has a criminal law basis. For ongoing legal proceedings, this situation can be linked to the provisions on changes in legislation in Article 3 of Law 1/2023, so that proceedings that rely on those two articles should be terminated by law enforcement officials, the technical transitional provisions need to be confirmed further in practice.

With the disappearance of Article 240 and Article 241, reports that rely solely on critical statements against the government or state institutions lose their criminal basis, and officials can no longer use those articles as an entry point to process acts that were previously categorized as insulting institutions. This annulment also eliminates the uncertainty over the boundary between criticism and insult that previously rested on the Elucidation of Article 240, which the Court assessed as incapable of binding the interpretation of officials.

This decision affirms that criticism, evaluation, and opinions on the policies and performance of the government and state institutions fall within the realm of constitutional rights protected by Article 28E paragraph (2) and paragraph (3) and Article 28F, not within the criminal realm. Its implication is that the risk of criminal punishment for citizens who criticize, including those who re-share critical opinions through information technology as feared by the Petitioners regarding Article 241, is reduced. This strengthens popular sovereignty as the foundation of democracy because citizens can participate in overseeing power without fear, while also being in line with international standards on criticism of public institutions.

From a democratic perspective, freedom of opinion functions as a means of control, a channel for aspirations, and criticism of state administrators (Karomi & Ardyansyah, 2025). This decision returns that function to citizens, including in the digital space, which is the main arena of contemporary expression (Tasimia & Suherman, 2025). The constitutional message is clear: the government and state institutions must be more resilient to criticism, and the dignity of institutions is built through performance, not through criminal threats.

For lawmakers, the first ratio of the decision closes off the possibility of reformulating offenses of similar substance, including through the revision of Law 1/2023 or other laws. For the government and law enforcement officials, the decision requires adjusting internal guidelines so that reports that are essentially criticism of institutions are not processed as criminal matters, and so that other provisions, such as the article on attacks on the honor of the President and Vice President, are applied in accordance with Decision Number 275/PUU-XXIII/2025, namely only upon the complaint of the person concerned in a personal capacity.

These guidelines should distinguish at least three matters, namely criticism of the policies and performance of institutions, which must not be criminally punished, attacks on the honor of individuals, which may be processed upon the complaint of the person concerned, and the spread of false information, which is regulated in other provisions. Lawmakers also need to re-examine the criminal law policy on insulting those in power, including the ratio legis that has been used to justify these articles (Yusuf & Nugroho, 2024).


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This judicial decriminalization is limited. The decision does not remove the protection of the honor of individuals, including officials in their personal capacity, who remain protected by the general offense of insult that targets "any person" and is complaint-based (Ahwan & Daulay, 2026), as well as other provisions that the Court has limited to individuals, such as defamation under the ITE Law according to Decision Number 105/PUU-XXII/2024 (Rachman & Yamin, 2025). Thus, freedom of expression is not a license to attack a person individually. The remaining risk is a shift of reporting to those channels by officials in their personal names. Therefore, the mechanism for proving truth and the public-interest exception need to be closely monitored so that criticism of public office is not classified as a personal attack (Ahwan & Daulay, 2026).

Fifth, from the standpoint of criminal law policy, this decision affirms that criminal law is a last resort that must have a constitutional basis and a clear purpose. Decriminalization through the Court's decision also shows that the correction of excessive criminalization does not always come from lawmakers, so that public participation in the review of laws becomes an important means of keeping criminal law in line with the constitution. At the same time, the success of this decriminalization depends on the willingness of law enforcement officials and lawmakers to accept the decision consistently, not merely to comply with its operative part.

Another consequence is an inconsistency that needs to be examined: the President and Vice President still receive protection through the article on attacks on honor, but according to Decision Number 275/PUU-XXIII/2025 as referred to by the Court, that protection is personal and can be brought as a complaint only by the person concerned or their authorized representative. State institutions and ministers no longer have special protection. The consistency of the Court's ratio demands that all protection of the honor of officials be read as protection of the person, not of the office or institution.

## CONCLUSION

The ratio decidendi of the Constitutional Court in Decision Number 282/PUU-XXIII/2025 rests on five main considerations: the prohibition on reviving a norm that has been declared unconstitutional, the distinction between the protection of the honor of individuals and of state institutions, the expansion of the objects of protection that creates differential treatment and legal uncertainty, the insufficiency of the construction of the complaint-based offense, and the disproportionality that gives rise to a chilling effect. On that basis, Article 240 along with its Elucidation and Article 241 of Law 1/2023 were declared contrary to Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia and without binding legal force.

This judicial decriminalization strengthens the guarantee of freedom of opinion and expression because criticism of the government and state institutions can no longer be punished as insult, and it reaffirms that lawmakers are bound by the substance of the Court's decisions. However, the protection of officials' personal honor continues through offenses based on individual complaints, so that monitoring of their application is necessary. It is recommended that (1) lawmakers not reformulate similar offenses and harmonize Law 1/2023 with this decision, (2) law enforcement officials issue guidelines that distinguish criticism from personal insult, and (3) further research empirically examine post-decision law enforcement practice.

This study has limitations because it analyzes only the decision documents and literature, and therefore does not yet describe changes in reporting and law enforcement practice after the decision was pronounced. Empirical research on this matter is important so that the real impact of the decision on freedom of expression can be measured.

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