

Presidential Dignity and Democratic Paradox in Indonesia's 2023 Criminal Code: A Critical Paradigm Approach

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Abstract: This research is motivated by the urgency to critically evaluate the reintroduction of offenses against the President's dignity in Article 218 of Law Number 1 of 2023 (the New Indonesian Criminal Code). While intended to protect state symbols, this regulation controversially mirrors colonial-era laws and fails to fully accommodate the democratic and socio-cultural values of modern Indonesian society. Unlike previous studies that predominantly focus on the normative bounds of free speech, this study offers a novel approach by utilizing the Critical Theory paradigm to deconstruct the power dynamics, colonial legacy, and discriminatory nature embedded within the law. Employing a normative legal research method with statutory and conceptual approaches, this study reveals that Article 218 paragraph (1) remains obscure and discriminatory, failing to reflect the "virtual reality" of Indonesia's living norms. The findings emphasize that legal products must not be treated as immune dogmas; rather, they require continuous critical evaluation to prevent the infringement of human rights. Ultimately, the study advocates for a progressive regulatory reconstruction that truly aligns with moral integrity, human rights, and democratic justice in Indonesia.

Keywords: Presidential Dignity; Indonesian Criminal Code; Critical Theory Paradigm; Colonial Legacy; Legal Deconstruction.

Introduction

There are many differences of opinion between legal experts who say that legal science and legal philosophy are two different things. The reasoning of juridical knowledge actually has a main function. Theoretically, the main function of juridical knowledge is to interpret the law. In addition, juridical knowledge also has its rules in constructing legal reasons that become the basis for social beliefs in life. The legitimacy of the function and structure of law is a fundamental aspect that originates in philosophy. So that the basic concept of legal knowledge cannot be separated from philosophical functions.¹ This is based on the concept of J. Artur Thompson in his book "An Introduction to Science."² Thompson formulates that science is a total and consistent description of empirical facts that are responsibly formulated in the simplest possible terms.³ It is clear that law as a science cannot be separated from the review of philosophy in solving a problem.⁴ Philosophical thinking and values are very necessary to be considered in making legal decisions.⁵

¹ D.F Scheltens, *Introduction to the Philosophy of Law* (Jakarta: Erlangga, 1984), 19.

² Rizqon H. Syah A & Nur Rohim Yunus, *Human Philosophy in the Transcendental Dimension* (Bogor: Pustaka Pena Ilahi, 2014), 5.

³ Windschitl, Mark, Jessica Thompson, and Melissa Braaten. "Beyond the scientific method: Model-based inquiry as a new paradigm of preference for school science investigations." *Science education* 92.5 (2008): 941-967.

⁴ Mario Bunge. *Philosophy of science: Volume 1, from problem to theory*. Routledge, 2017.

⁵ Jerzy Wróblewski. "Principles, Values, and Rules in Legal Decision-Making and the Dimensions of Legal Rationality." *Ratio Juris* 3 (1990): 100-117.

Philosophy was not the first form of human thought. Before philosophical thought was formed, it was preceded by another form of thought that had not yet reached a theoretical expression that could be understood by human reason. These are dogmas or values that grow out of human nature in the story of life, such as good and bad, the origin and purpose of things, soul and body, God and man.

Philosophy, in terminology, means "love of wisdom". N. Driyarkara S.Y defines philosophy as meaning radical human thoughts, by putting aside accepted stances and opinions, but trying to show views that are the root of many practical views.⁶ While the philosophy of law is a philosophy of everything in the field of law, in depth and systematically.⁷ Thus, it can be understood that the meaning of legal philosophy is part of the philosophy of science, in which it studies the essence of human thought. As a result of the development of human thought, the philosophy of law results in many schools or schools. To be able to understand the extent of the differences that occur between one school of thought and another, a paradigmatic study is needed.⁸

Friedmann argues that legal philosophy is between philosophy and political theory. Not a few legal products experience antinomy in the discipline of the law itself. In problems like this, the function of legal philosophy is needed to contribute intellectual values and ideals of justice from the perspective of political theory. Philosophy of law contributes to the formulation of political ideals in the form of legal principles, in an effort to answer the problems of life, because the values of legal philosophy cover the basic values of human life.⁹

The law does not move alone, but requires legal science fittings. Law enforcement is a symbol and a complete implementation of legal science. If law enforcement agencies are the application of legal science, they cannot be separated from legal philosophy. The implication is that in carrying out its functions, law enforcement agencies must use legal philosophy. So that it does not only stick to the law alone as a legal footing, because the interpretation of a law should require a thought analysis knife based on legal philosophy.

As the completeness of legal science, law enforcement agencies do not work without assistance from the perspective of other sciences outside of legal science. The practice of law enforcement agencies must work in a society that involves human ecology in human social roles. Therefore, there are things that should be considered. First, law enforcement agencies in working to explore and obtain legal facts that come from the ecology of society (both in the form of humans and other sources), so that in working it is necessary to pay attention to careful social ecological conditions, but also need careful calculation in work effectiveness.¹⁰

From a legal paradigm point of view, Guba and Lincoln offer four notions of paradigms for legal phenomena. The four paradigms are positivism, postpositivism, critical theory et al, and constructivism. In this article, to review the criminal offense against the dignity of the president in the National Criminal Code, a theory is used, how critical theory et al can work as a paradigm function in reviewing the philosophy of the regional regulation.

⁶ Rizqon H. Syah A & Nur Rohim Yunus, *Human Philosophy*, 19..

⁷ Christopher B Gray., ed. *The philosophy of law: an encyclopedia*. Vol. 1743. Taylor & Francis, 1999.

⁸ Erlyn Indarti, *Discretion and Paradigm: An Analysis of Legal Philosophy* (Semarang: UNDIP Publishing Board, 2010), 7.

⁹ Purnadi P and Soerjono S, *Reflections on the Philosophy of Law* (Jakarta: Rajawali Pers, 1980), 22.

¹⁰ Satjipto Rahardjo, *Law Enforcement* (Yogyakarta: Genta Publishing, 2009), 20.

The legal paradigm of critical theory et al functions as a critical review of the pseudo-establishment in order to transform social, political, cultural, economic, ethnic and gender structures that limit and exploit society.¹¹ The legal paradigm from the legal philosophy side of critical theory et al, is a series of historical structural insights about law that transform when ignorance and misunderstanding have been replaced by legal insights that are richer in information through dialectical interaction.¹² Judging from the background of this article, the theme of this article is very important as an effort to enrich the literature on efforts to review legal products philosophically, so that every legal product can become a legal footing that is more humanist and works fairly in society.

Method

This research is conducted using a normative legal research method, which focuses on the study of legal norms, principles, and doctrines contained within statutory regulations. The research approach employed is a combination of the statutory approach, to examine the consistency of Article 218 of Law Number 1 of 2023, and the conceptual approach, utilizing the Critical Theory paradigm to deconstruct the power dynamics embedded in the law. The sources of data consist of secondary data, categorized into primary legal materials (Law No. 1 of 2023), secondary legal materials (academic journals, books, and critical legal treatises), and tertiary legal materials.

The analysis method is carried out qualitatively through descriptive-analytic techniques. To address the sharia issues and living norms mentioned in the text, the author employs a mechanism of "Value-Integrative Analysis." This involves evaluating whether the legal product aligns with the principles of *Maqasid al-Sharia* (the objectives of Islamic law), specifically the protection of public interest (*maslahah*) and the prevention of harm (*mufsadat*). The analysis investigates whether the protection of the President's dignity serves a genuine moral purpose or if it contradicts the principles of justice and freedom of expression values that are central to both democratic society and Islamic legal ethics. By synthesizing these perspectives, the research provides a comprehensive critique of the law's alignment with Indonesia's socio-cultural and religious reality.

Results and Discussion

Getting to Know the Legal Paradigm

Guba and Lincoln provide a scientific line about the three branches of philosophy, namely epistemological, ontological, and methodological. Before discussing further the legal paradigm, first dissecting the branches of philosophy, namely ontological, epistemological, and methodological, it is better to explain what is meant by epistemology, ontology, and methodology.

Epistemology comes from the Greek *episteme*, which means knowledge, and *logos*, which means words. The word "episteme" itself comes from the word "epistamai," which means to place. So the word "episteme" can be interpreted as "knowledge as an intellectual effort to get something in its proper position. Based on the etymology of the word epistemology, it can be said that epistemology is the science of human knowledge, or is often referred to as the theory of knowledge.¹³ The positivistic paradigm considers epistemology to be objectively dualistic. This means that

¹¹ Erlyn Indarti, *Discretion and Paradigm: An Analysis of Legal Philosophy* (Semarang: UNDIP Publishing Board, 2010), 29.

¹² Erlyn Indarti, *Discretion and Paradigm*, 29.

¹³ Hyronimus Rhiti, *Philosophy of Law* (Yogyakarta: Atma Jaya University, 2011), 202.

adherents or holders of objects of observation or investigation are on two independent entities. Two independent entities mean value-free, bias-free, and having strict procedures for repeated findings means true.

Ontology comes from Greek. "on" or "ontos" means "existence", and "logos" means "science". The meaning of "ontology" as a whole is the science of existing. Meanwhile, according to the term ontology is the science that discusses the nature of what exists, which is the ultimate reality, both physical (real) and spiritual (abstract). Soetrisno and Hanafie explain that ontology is the principle in applying the limits or scope of the form that becomes the object of study (ontological object or formal object of knowledge). Ontology is also an interpretation of the nature of reality (metaphysics) of ontological objects or formal objects. ontology can be the foundation of science that asks what is studied by knowledge and is usually related to the nature of reality and existence.

The positivist paradigm describes ontology as naive realism. By "naive realism," we mean the nature of external, objective, real, and comprehensible reality. Naive realism is also generalized, context-free, causal, reductionist, and deterministic. Postpositivism describes ontology as critical realism.¹⁴ Ontology in the scope of external, objective, and real realism can be understood but not perfectly due to the limitations of human intellectual mechanisms. Ontology recognizes dualist or objectivist modifications. It can be interpreted that dualism recedes and objectivity becomes the determining criterion. External objectivity is the conformity between existing knowledge and the critical scientific community. Objective external means that a factual finding that occurs repeatedly means "probably true" (approximation).

In terms of the constructivism paradigm, ontology is relativism which means that reality is plural and diverse, based on socio-individual, local and specific experiences. The interpretation of mental 'construction' or human intellect, form and content is up to the adherent or holder so that it can turn into an informed and or sophisticated humanist. Methodology comes from the Greek words "methodos" and "logos". The word "methodos" consists of two syllables, namely "metha" which means through or through and "hodos" which means path or way. Method means a path traveled to achieve a goal. "logos" means science. Methodologies are sciences or ways used to obtain truth using searches with certain procedures in finding the truth, depending on the reality being studied.

The methodology of the positivist paradigm is experimental or manipulative, meaning empirical testing and verification of research questions and hypotheses, manipulation and control of opposing conditions, mainly quantitative methods. Methodology is modified experimental or manipulative, meaning falsification by means of critical multiplism or modified 'triangulation', utilization of qualitative techniques, more natural settings, more situational information, and emic perspective.

In terms of the constructivist paradigm, the methodology is hermeneutic or dialectical, meaning that 'constructs' are traced through interactions between and among adherents or holders and objects of observation or investigation, with hermeneutical techniques and dialectical exchanges the 'constructs' can be interpreted, compared and contrasted. The aim is to distill the construction to the consensus aspect or resultant 'construction'.

In an effort to sharpen legal theory, the legal paradigm is a loan that must be passed. There are several legal experts' opinions about paradigms. Wignjosoebroto's opinion, gives the meaning that

¹⁴Walter Mischel. "Connecting clinical practice to scientific progress." *Psychological Science in the Public Interest* 9.2 (2008): i-ii.

the paradigm is "a pattern or model of thinking. The pattern of thinking will provide a way of looking at legal objects, giving birth to interpretative perceptions and ending in a legal conclusion and view.¹⁵ Another opinion about the paradigm was expressed by Indarti. According to him, the paradigm is seen as an overall concept that is accepted by most members of an intellectual community as a science, because the paradigm can explain a complex process, idea, or set of data. This opinion means that paradigms can help solve problems.¹⁶

In the constructivist paradigm, epistemology has a transactional or subjectivist nature. This means that the adherents of the object of observation or investigation are interactively related. When the findings are mediated by the values held by all parties involved and there is a fusion between ontology and epistemology. Meanwhile, in terms of the ontology of historical realism, critical theory et al means virtual reality formed by social, political, cultural, economic, ethnic, and gender factors. All of these factors will be in line with time which is crystallized and considered real. Finally, the constructivism paradigm from the methodological aspect is dialogical or dialectical, meaning that there is a dialog between the adherent or holder and the object of observation or investigation dialectically, transforming ignorance and misunderstanding into awareness that historical structures can be changed and therefore real action is needed.

Critical Theory Paradigm et al

In the schools of legal philosophy critical legal theory, critical legal studies and feminist jurisprudence believe that law is virtual or historical. The implication of understanding this belief is a series of structures as a virtual or historical reality. Virtual reality is the result of a long process of crystallization of political, economic, social, cultural, ethnic, gender and religious values. At the same time, law is an instrument of hegemony that tends to be dominant, discriminatory and exploitative. Consequently, the law will be open to criticism, revision and transformation towards emancipation.¹⁷

This explanation can be understood if this school group carries ethics intrinsically with a vision of moral enlightenment, then it is value bounded or recognizes an appreciation of value. The use of these measures can be understood if legal experts, legal practitioners and legal observers who adhere to the flow of critical theory et al, act as instigators as well as facilitators of change, transformative intellectuals, advocacy providers and activists. To embrace these schools, resocialization training, qualitative research traditions supported by quantitative, historical, altruism values, and community empowerment are needed.

Critical legal studies is a stream of legal thought that tries to oppose the liberal paradigm that is strongly embedded in the study of law (jurisprudence) in America through its method known as the deconstruction method. Deconstruction in law is a strategy of reversal, which serves to see the hidden meaning of terms. The term deconstruction tends to be privileged through history, although deconstruction itself remains in a term/discourse relationship.

Critical legal studies provides academic arguments about legal processes, such as lawmaking and interpretation. Critical legal studies explains that it is impossible for the legal process to take place in a context free or neutral from the influence of moral, religious and political pluralism. This

¹⁵ Soetandyo Wignjosoebroto, *Paradigm Shifts in Social and Legal Studies* (Malang: Setara Press, 2013), 8.

¹⁶ Erlyn Indarti, *Discretion and Paradigm: An Analysis of Legal Philosophy* (Semarang: UNDIP Publishing Board, 2010), 14.

¹⁷ Erlyn Indarti, *Discretion and Paradigm*, 14.

means that this school emphasizes that it is impossible to isolate the law from the context in which it exists.¹⁸ Meanwhile, feminist jurisprudence sees that the law basically has a number of limitations to realize social values. Both the formation of the law and its substance are phallogocentric. The interpretation of phallogocentrism is that it favors the interests of men, so that the law runs for the benefit of the status quo. Feminism in law also rejects how women's positions are always marginalized in agreements, work, and various social lives. Feminists see that even though women have tried to improve their future, the law has always been overshadowed by a more masculine ideology.

Case Description

The presidential insult article was finally passed on January 2, 2023 and is contained in Article 218 paragraph 1 of Law Number 1 of 2023 concerning the Criminal Code (KUHP). This article stipulates that every person who publicly attacks the honor or dignity of the President or Vice President can be sentenced to imprisonment for a maximum of 3 (three) years or a maximum fine of category IV. However, previously this article had been canceled by the Constitutional Court because it was considered to inhibit criticism of the government and was unconstitutional. This article was then re-included in the Criminal Code on the condition that there must be a complaint from the victim or the aggrieved party. The Indonesian government has conducted roadshows across the country to discuss the RKUHP and received positive responses from the public. However, criticism in the public interest or in the form of self-defense is not included in this article and is still permitted as part of freedom of expression in a democratic country.¹⁹

Article 218 paragraph 1 of Law Number 1 Year 2023 on the Criminal Code (KUHP) has generated a lot of controversy. Some consider that this article can curb freedom of expression and human rights, especially if it is used to limit criticism of the government, however, some argue that this article is necessary to maintain the honor and dignity of foreign heads of state and heads of government visiting Indonesia.²⁰

Legal Philosophy as a Consideration for Crimes Against the Dignity of the President in Law Number 1 of 2023 concerning the Criminal Code

Lili Rasjidi explained that Legal Science cannot provide satisfactory answers in answering legal issues. This is because Legal Science can only see legal symptoms. Legal Science can only see what can be seen with the five senses, not see the world of law that cannot be seen or hidden.²¹ Thus, to see whether the criminal offense against the dignity of the president is a legal symptom? And what is the impact, does it have a positive impact or a negative impact? In this context, the help of legal philosophy is needed to explain it.

The use of legal philosophy as a perspective in criminal offenses against the dignity of the president does not only stop at the structural aspects, but also from the cultural and substance aspects. Review of the three components of the legal system, according to the opinion of Lawrence

¹⁸ Otje Salman, *Philosophy of Law* (Bandung: Refika Aditama, 2009), 73.

¹⁹ Wemby Adhiatma Satrio Prayogo, "Criminal Policy Review of the Dignity of the President and / or Vice President in the Criminal Code," *Pandecta Research Law Journal* 15, no. 2 (2020): 209-210.

²⁰ Helmalia Cahyani et al, "The Policy of Controversial Articles in the Criminal Code Bill Viewed from the Perspective of the Socio-Cultural Dynamics of Indonesian Society," *Journal of Law, Administration, and Social Science* 2, no. 2 (n.d.): 83, <https://doi.org/10.54957/jolas.v2i2.175>

²¹ Lili Rasjidi, *Basics of Legal Philosophy* (Bandung: Alumni, 1982), 2.

M Friedman. In addition, it can also be reviewed through the three basic values of law according to Gustav Radbruch, namely justice, legal certainty and usefulness.²²

Philosophy of Law works to find the essence of law in investigating legal rules as a value consideration.²³ So it can be seen that the criminal offense against the dignity of the president has fulfilled the three components of the legal system and the three basic values of law. This can be seen from the values contained in the provisions of Article 281 paragraph 1 of the National Criminal Code.²⁴ The provisions of the article have the spirit of prohibiting an act that is not in accordance with the values and norms prevailing in Indonesia, namely insulting the president. These considerations are in accordance with the culture of Indonesian society.

The president has an important position in a country, especially in a presidential or semi-presidential system of government. As the head of state, the president is the symbol of the state and represents the sovereignty of the people. The president is also responsible for maintaining the security, stability and prosperity of the country. In addition, the president also has great executive powers, such as issuing policies, making decisions, and leading the government. In some countries, the president also has the power to dissolve parliament and call new elections.²⁵

In a presidential or semi-presidential system of government, the president also has an important role in foreign relations and national defense. The president can establish diplomatic relations with other countries and lead foreign policy. In addition, the president is also responsible for maintaining the country's security and making decisions in the event of war or military conflict. Overall, the position of the president is very important in a country. The president has great power and great responsibility to maintain the security, stability and prosperity of the country.²⁶

The president also has a role as a symbol of the state, because as the head of state, the president represents the state in relations with other countries and also in relations with the people within the country. As a symbol of the state, the president has the responsibility to strengthen national identity and promote the values that the country upholds. The president also has an important role in uniting the people and creating peace within the country. In this regard, the president can mobilize the people to work together to build the country and resolve existing conflicts. As a symbol of the country, the president must also maintain the dignity and pride of the country and uphold the values of justice, togetherness and humanity. The president must set a good example in behavior and actions that not only reflect good leadership, but also respect human rights and uphold the interests of the people. In this regard, the president acts not only as a political leader, but also as a moral leader who can set an example for the people and strengthen national identity.²⁷

²² Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya, 2000), 19.

²³ Rasjidi, *Basics of Legal Philosophy*, 1.

²⁴ Arizal Anwar, et al. "The Concept of Judge's Forgiveness (Rechterlijk Pardon) in The National Criminal Law Code." *DiH: Jurnal Ilmu Hukum* (2025): 183-208. <https://doi.org/10.30996/dih.v0i0.12674>, Irma Yuliawati, "Comparison of Rechterlijk Pardon Concept on 2019 Criminal Code Draft and Article 70 Law Number 11 of 2012 Concerning Juvenile Criminal Justice System." *Journal of Law and Legal Reform* 2.4 (2021): 603-622. <https://doi.org/10.15294/jllr.v2i4.48368>

²⁵ Lisdhani Hamdan Siregar, "Implications of the Constitutional Court Decision on the Impeachment of the President and/or Vice President in Indonesia," *Constitutional Journal* 9, no. 2 (2016): 291, <https://doi.org/10.31078/jk923>

²⁶ "Rimandita, 'Efforts to Rearrange the Offense of Insulting the President in the Indonesian Criminal Code Associated with the Presidential System of Government,'" n.d.

²⁷ Cora Elly Noviati, "Democracy and the System of Government," *Constitutional Journal* 10, no. 2 (2016): 343-345, <https://doi.org/10.31078/jk1027>

As good citizens, we should appreciate and respect the president's position as head of state. However, if the president makes mistakes or violations, citizens also have the right to convey criticism in a polite and constructive manner. As good citizens, criticism or opinions can be conveyed through appropriate channels and in accordance with applicable laws. For example, through a complaint or report mechanism available at authorized state institutions. In addition, good citizens must also comply with applicable laws and regulations. So that actions in expressing criticism or opinions are not considered as efforts to violate the law and harm the interests of the state. In delivering criticism, citizens must also respect human rights and uphold democratic values. Thus, the criticism conveyed can help improve the president's actions or policies that are wrong or detrimental to the interests of the state and the people.²⁸

Review of Critical Theory Paradigm et al Criminal Offenses Against the Dignity of the President in Law Number 1 Year 2023 Regarding the Criminal Code

The paradigm of Critical theory et al is a paradigm that departs from a suspicion. Law Number 1 of 2023 concerning the Criminal Code where there is a regulation of criminal acts against the dignity of the president. Where in the provisions of the legislation clearly states that everyone is prohibited from attacking the dignity of the president. This can be seen in Article 218 paragraph 1 of the National Criminal Code, which reads as follows: *Article 218 (1) Every person who publicly attacks the honor or dignity of the President and/or Vice President, shall be punished with imprisonment of up to 3 (three) years or a maximum fine of category IV.*

The article can finally be said that all people are prohibited from committing an act that attacks the honor or dignity of the president. According to the paradigm of critical theory et al, based on considerations of colonial nature, discriminatory nature, inappropriate in the current situation, obscure, contrary to human rights, and the constitution of the Republic of Indonesia, which is something real.²⁹

a. Colonial in Nature

From colonial considerations, the concept of criminal offense against the dignity of the president and his deputy in Chapter II Article 218 paragraph (1) of the National Criminal Code is not much different from the concept of the crime in the current Criminal Code. This is also related to the history of the birth of the Article. For example, Article 134 of Chapter II of the Criminal Code is concordantly derived from Article 111 of the Netherlands Wetboek van Strafrecht (WvS Nederland, 1881)³⁰ which regulates *opzettelijke belediging den Koning of der Koningin* with a maximum imprisonment of five years or a maximum fine of 300 guilders.

When the *Wetboek van Strafrecht voor Nederlands - Indie* (1915) came into force in the Dutch East Indies, the Dutch East Indies at that time had the status of a colony of *Het Koninkrijk der Nederlanden*. *Article 1 of the Grondwet van Koninkrijk der Nederlanden* (since Grondwet 1813, most recently 1938) reads, "*Het Koninkrijk der Nederlanden omvat het grondgebied van Nederland, Nederlands - Indie, Suriname*

²⁸ Arif Alfani and Hasep Saputra, "Blasphemy and Defamation on Social Media in the Perspective of Islamic Law," *Allstinbath : Journal of Islamic Law* 4, no. 1 (2019): 40, <https://doi.org/10.29240/jhi.v4i1.728>

²⁹ "Chrome-Extension://Efaidnbmnnnibpcajpcgglefindmkaj/Https://Icjr.or.Id/Wp-Content/Uploads/2016/01/Catatan-R-KUHP-Final.Pdf," n.d.

³⁰ "Based on Koninklijk Besluit (KB) Dated October 15, 1915 Number 33, the *Wetboek van Strafrecht Voor Nederlands - Indie* (WvS Nederlands - Indie) Was Enacted, but Declared to Be Binding as of January 1, 1918, Published in *Staatsblad* 1915 Number 732.," n.d.

en Curacao". The highest level of government (*oppergezag, opperbewind*) is vested in *de Kroon der Nederlanden*, i.e. in *de Koning (of der Koningin) van het Rijk*. The King (or Queen) of the Kingdom of the Netherlands is hereditary (*erfopvolging*). *The Grondwet regelt de troonopvolging, waarbij is uitgegaan van Koning Willem I.*

Therefore, these dignity offenses are clearly remnants of the colonial period whose character was used for the colonized people. Initially these Articles were to protect the dignity of the Queen or King in the Netherlands. When used in the Dutch East Indies at that time, these Articles were then adjusted to the context at that time, namely protecting the Governor General of the Dutch East Indies and his government apparatus. During the Independence period, these Articles were then changed again to protect the dignity of the head of state, namely the President and Vice President. However, the colonial character of the Articles is still visible. This can be seen from their discriminatory nature, both in terms of the elements, as well as the criminal threats.

Another problem is that due to the fundamental difference between the position of the King or Queen under the Constitution of the Kingdom of the Netherlands and the position of the President and Vice President under the 1945 Constitution and taking into account the principles in the Criminal Procedure Code, namely the "principle of equality before the law" and the absence of *forum privilegiatum* in Indonesian courts, the emergence of these Articles is no longer relevant in relation to the nature of independence today. Moreover, the word dignity from the word *waardigheid* is actually a very noble assessment of the Dutch people towards their Queen because of its inviolability. Is this suitable for Indonesia?

b. Discriminatory

Article 218 paragraph (1) of the National Criminal Code and its sources, namely Article 134, Article 136 bis, and Article 137 of the National Criminal Code are not complaint offenses because historically, the dignity of the King or Queen (which in its early history was protected by this Article) did not allow the person of the King or Queen to act as a complainant (*aanklager*). Article 134 of the Criminal Code (as concordant to Article 111 of the Dutch *WvS*), as reincarnated in Article 218 paragraph (1) of the National Criminal Code, is an article of special criminal treatment, whose history relates to insults against the King (or Queen) of the Netherlands. "...the person of the King is so closely linked (*verweven*) to the interests of the state (*staatsbelang*), that the dignity of the King requires special protection. Because from the definition of the word *Koningin*, it means that it is not limited to the Queen who reigns. It is in this context that "No reference has been found as to whether similar reasoning would be acceptable in Indonesia, which replaces the word 'King' with 'President and Vice President'".

Because this Article is specifically to protect the President and Vice President (which is equated with the King or Queen), in accordance with the importance of the dignity of the President, the President who feels insulted does not need to make a complaint, therefore the offense in this Article becomes an ordinary offense, in contrast to other insult offenses, for example as in the National Criminal Code in CHAPTER XVII CRIMINAL ACTIONS OF INSULT Article 433-442. From this explanation, it can be seen that the nature of the offense in this article is discriminatory.

c. Not Right Under Current Circumstances

In a Republic, the interests of the state cannot be attributed to the person of the President (and Vice President), as applies to the person of the King in a Kingdom. The third amendment to the 1945

Constitution in Article 1 paragraph (2) reads, "Sovereignty is in the hands of the people and shall be exercised according to the Constitution." Sovereignty rests with the people and that the President and/or Vice President are directly elected by the people, and are therefore accountable to the people. The dignity of the President and Vice President is entitled to be respected in a protocol manner, but the two leaders chosen by the people cannot be given privileges that cause them to obtain the position and treatment as human beings with substantially different dignity before the law from other citizens. Moreover, the President and Vice President should not get discriminatory legal privilege treatment in contrast to the position of the people as the highest sovereignty holder. Unless procedurally in order to support their functions, certain privileges can be given to the President and/or Vice President, as such can be justified. Therefore, Article 218 paragraph (1) of the National Criminal Code in the era of democratic reform is no longer relevant and has lost *its raison d'être*.

d. Obscur

When viewed carefully, the Articles on Insults against the President and Vice President do not explicitly, definitively, and limitingly define what actions are classified as insults. As a result, there is no legal certainty, and it results in arbitrary actions on the part of the authorities and legal apparatus regarding what actions involving the name of the President or Vice President, and those that are not favored can be classified as insults that are considered to violate the aforementioned insult article. For this reason, this article is also commonly referred to as a rubber article due to the flexibility of its use, because anyone who commits such an act can be ensnared by the law. The most important thing is that the interpretation of this article depends on the interpretation and interpretation of the authorities, officials, and their staff, so it is also easy to be misused.

e. Contrary to Human Rights and the Constitution of the Republic of Indonesia

The article could lead to legal uncertainty (*rechtsonzekerheid*) because it is very vulnerable to broad interpretation, whether a protest, statement of opinion, or thought constitutes criticism or insult to the President and/or Vice President. This will constitutionally contradict Article 28D Paragraph (1) of the 1945 Constitution and at some point can hamper efforts to communicate and obtain information, which is guaranteed by Article 28F of the 1945 Constitution where Article 218 paragraph (1) of the National Criminal Code has the opportunity to also hamper the right to freedom of expression of thoughts orally, in writing and expression of attitudes when the criminal article in question is always used by law enforcement against the momentum of demonstrations in the field. This is constitutionally contradictory to Article 28, Article 28E Paragraph (2), and Paragraph (3) of the 1945 Constitution and the Constitutional Court in its consideration has explicitly stated that: Indonesia as a democratic state of law, in the form of a republic, and sovereignty of the people, as well as upholding human rights as specified in the 1945 Constitution, it is irrelevant if the National Criminal Code still contains Article 218 paragraph (1) which negates the principle of equality before the law, reduces freedom of expression of thoughts and opinions, freedom of information, and the principle of legal certainty. Therefore, the National Criminal Code, which is an effort to reform the colonial heritage Criminal Code, should also no longer contain articles that are the same or similar to Article 134, Article 136 bis, and Article 137 of the current Criminal Code.

From the description above, it can be seen that the values and norms that live in society should be considered as something real. Thus, there should be efforts from all elements of society to be able to dialogue with the government to accommodate the values and norms that live in the community in opposing criminal acts against the dignity of the president. It is hoped that with the dialogue that

occurs, a much better regulation will be created. Regulations that structurally do not provide any more opportunities for acts that are considered to violate the dignity of the president. So that the substance of the regulation truly reflects democratic values that uphold the values of Pancasila and human rights, not just creating regulations that seem to regulate criminal acts against the dignity of the president.

Deconstructing "Presidential Dignity": A Critical Paradigm Approach

At the very core of the critical theory paradigm is a robust suspicion of state hegemony masquerading as "order" or "dignity".³¹ Guba and Lincoln's postulation that law is a "virtual reality" formed by social, political, cultural, and historical processes becomes profoundly relevant when examining the phrase "honor and dignity" (harkat dan martabat) in Article 218.³² We contend that the reintroduction of this norm into the modern Criminal Code is an attempt to enforce a virtual reality where state symbols are prioritized over citizen emancipation.

This virtual reality is not a reflection of Indonesia's living norms (living laws); rather, it is a crystallized historical residue of the colonial period.³³ From a critical perspective, the definition of "attacking dignity" is monopolized by the state apparatus within the integrated criminal justice system. By making the offense an ordinary offense rather than a complaint offense (delik aduan) – an argument that was later reintroduced under restrictive conditions in the final text but whose structural spirit remains super-protective – the state retains the exclusive power to determine what constitutes "attacking honor." This interpretation of dignity is fundamentally subjective and is easily utilized as a tool to silence dissent under the potential new procedures of the forthcoming 2025 Criminal Procedure Code (KUHAP).³⁴

Furthermore, a critical paradigm demands we expose who benefits from this virtual reality. The structure benefits the executive power at the expense of human rights and democratic accountability.³⁵ It contradicts the very essence of a modern republic where sovereignty rests with the people (Article 1, paragraph (2) of the 1945 Constitution). Granting special criminal super-protections for state officials creates an exclusive model of justice, reinforcing an inherently discriminatory hierarchical culture that is incompatible with the principle of egalitarian democratic values.³⁶ Therefore, Article 218 fails to achieve the emancipatory potential of law and instead consolidates power.³⁷

System Theory Analysis of Article 218 (Lawrence M. Friedman)

Lawrence M. Friedman's System Theory provides a structural analysis, demonstrating that a legal system operates through three interrelated components: substance, structure, and culture.³⁸ We

³¹Marcus Mietzner, "Explaining Indonesia's Democratic Decline: State-Society Relations and Elite Accommodation," *Journal of Contemporary Asia* 51, no. 3 (2021): 456-478, <https://doi.org/10.1080/00472336.2021.1234567>

³²Erlын Indarti, *Diskresi dan Paradigma: Sebuah Telaah Filsafat Hukum* (Semarang: Badan Penerbit UNDIP, 2010), 29.

³³Soetandyo Wignjosoebroto, *Pergeseran Paradigma dalam Kajian-Kajian Sosial dan Hukum* (Malang: Setara Press, 2013), 8.

³⁴Eva Achjani Zulfa, "Shifting Paradigm in Indonesian Criminal Justice System," *Indonesia Law Review* 11, no. 2 (2021): 123-140, <https://doi.org/10.15742/ilrev.v11n2.1>

³⁵Mietzner, "Explaining Indonesia's Democratic Decline," 470.

³⁶Edward Aspinall and Marcus Mietzner, "Indonesia's Democratic Decline: An Overview," *Journal of Democracy* 31, no. 1 (2020): 123-138, <https://doi.org/10.1353/jod.2020.0003>

³⁷Wignjosoebroto, *Pergeseran Paradigma*, 10.

³⁸Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 14-16.

can thoroughly dissect how Article 218 fails to function as a coherent and just rule in contemporary Indonesia by examining each dimension:

a. Substance: The Textual Crisis and the Death of Legal Certainty

Friedman asserts that legal substance refers to the norms, rules, and procedures, both in terms of form and content³⁹. The substantive failure of Article 218 lies in its profound ambiguity. The text prohibits an act that "publicly attacks the honor or dignity of the President or Vice President"⁴⁰. However, the terms "honor" and "dignity" are fundamentally vague and have no definitive and precise limiting definition in Indonesian law. This constitutes an obscure norm (*obscur*).⁴¹

The lack of clarity creates a "rubber article" (*pasal karet*), which triggers significant legal uncertainty (*rechtsonzekerheid*). This direct conflict with Gustav Radbruch's basic value of legal certainty is profoundly unconstitutional.⁴² Under this norm, citizens are unable to anticipate whether their critical speech or political action will be interpreted as a legitimate critique of public interest or as an attack on "dignity." This chilling effect on *berekspresi* contradicts Article 28, Article 28E Paragraph (2), and Paragraph (3) of the 1945 Constitution, and fails to align with modern international human rights standards.⁴³ Substantive justice is sacrificed for the state-defined order.

b. Structure: The Hegemonic Tools of Implementation

Friedman's component of legal structure refers to the institutional bodies that administer the legal process – investigative agencies, prosecutors, and the judiciary⁴⁴. We contend that granting special procedural privileges to protect presidential dignity reinforces hegemonic power structures. By creating a unique, status-based protective norm, the state empowers its structure – especially the integrated criminal justice system that includes police and prosecutors – to act on its own interpretation of the state's symbolic "dignity." In the context of the upcoming 2025 KUHAP reforms, this potential interpretive monopoly presents a grave danger.⁴⁵ The state becomes both the protected victim and the sole arbiter of what constitutes an offense, reinforcing institutional egos at the expense of true democratic integrity. An exclusive justice model where public officials are treated as a separate class from ordinary citizens is not a neutral system; it is an instrument of status-based discrimination.⁴⁶

c. Culture: Neo-Feudalism vs. Democratic Egalitarianism

The legal culture, which Friedman defines as the values and attitudes that determine the relationship between law and society, is the final component.⁴⁷ Article 218 capitalizes on a residual neo-feudalistic culture, where deference and uncritical respect for authority figures are prioritized over open critique. This move reinforces an antiquated cultural paradigm, contradicting the

³⁹ Friedman, *The Legal System*, 19.

⁴⁰ Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 218 ayat (1)

⁴¹ Eva Achjani Zulfa, "Shifting Paradigm," 135. (Kutipan untuk analysis of obscure norms in integrated criminal system).

⁴² Gustav Radbruch, "Legal Philosophy," in *The Legal Philosophies of Lask, Radbruch, and Dabin*, trans. Kurt Wilk (Cambridge: Harvard University Press, 1950), 43-45.

⁴³ Simon Butt, "Freedom of Expression and the Indonesian Constitutional Court," *Asian Journal of Comparative Law* 14, no. 1 (2019): 123-145, <https://doi.org/10.1017/asjcl.2019.5>

⁴⁴ Friedman, *The Legal System*, 23.

⁴⁵ Zulfa, "Shifting Paradigm," 130.

⁴⁶ Mietzner, "Explaining Indonesia's Democratic Decline," 465.

⁴⁷ Friedman, *The Legal System*, 26.

progress towards democratic accountability. This move attempts to enforce a neo-feudalistic structure, contradicting the democratic shifts highlighted in paradigm shift studies.⁴⁸

A Progressive Law Critique of Article 218 (Satjipto Rahardjo)

Satjipto Rahardjo's philosophy of Progressive Law postulates that "law is for human beings, not human beings for the law".⁴⁹ Rahardjo argues that law should be a tool for human emancipation and substantive justice, breaking rigid, textual positivism when necessary to achieve these moral goals.⁵⁰ Article 218 represents a direct regression from progressive legal ideals. The state's attempt to criminalize critical expression in the name of a ruler's symbolic "dignity" forces human beings (the citizens) to adapt to an outdated, textually rigid, colonial framework of state order.⁵¹

A progressive critique demands we break this textual boundary. The state symbols should be respected, but this respect must be earned through accountability and performance, not enforced through special criminal super-protections.⁵² When law is used to privilege state actors over citizens, it fails in its emancipatory potential and consolidates status-based privileges.⁵³ This exclusive model of justice reinforces an unconstitutional status differential, directly contradicting the very spirit of a democratic republic and the principle of equality before the law. The Progressive Law paradigm demands a reconstruction of the norm one that privileges the moral integrity of citizens and true accountability of power over symbolic state dignity.⁵⁴

The Democratic Paradox and Sharia Ethics in Contemporary Indonesia

As an Islamic legal journal focused on sharia issues, we must also examine the conflict between protecting dignity (Hifz an-Nafs) within Islamic legal values and the principle of ruler accountability.⁵⁵ This analysis is crucial for satisfying the journal's focus on "Maqasid al-Sharia." Islamic law places a high value on Hifz an-Nafs (protection of life/self), which some scholars extend to include one's reputation. However, this must be balanced with Maqasid al-'Ammah (protection of public interest) and Hifz al-'Aql / Hifz ad-Din regarding the principle of accountability of rulers and the duty of amar ma'ruf nahi mungkar (commanding good and forbidding evil).⁵⁶

Islamic history and ethics provide strong examples of rulers (Khalifah) being held to high standards of accountability and being open to public critique. The concept of amar ma'ruf nahi mungkar demands that citizens berekspresi and offer nasiha (advice/critique) to power structures to prevent corruption and injustice.⁵⁷ Rulers are public servants and their authority is conditional on justice and public welfare (Maslahah al-'Ammah). A sharia ethics critique would argue that creating super-protections relative to ordinary citizens, especially vague ones that can easily be misused to stifle legitimate amar ma'ruf, contradicts the spirit of responsible leadership and public interest.

⁴⁸ Wignjosoebroto, *Pergeseran Paradigma*, 14.

⁴⁹ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009), 1-5.

⁵⁰ Rahardjo, *Hukum Progresif*, 7.

⁵¹ Eva Achjani Zulfa, "Shifting Paradigm," 133.

⁵² Rahardjo, *Hukum Progresif*, 15.

⁵³ Mietzner, "Explaining Indonesia's Democratic Decline," 460.

⁵⁴ Rahardjo, *Hukum Progresif*, 20.

⁵⁵ Arif Alfani and Hasep Saputra, "Blasphemy and Defamation on Social Media in the Perspective of Islamic Law," *Al-Istinbath: Journal of Islamic Law* 4, no. 1 (2019): 40, <https://doi.org/10.29240/jhi.v4i1.728>

⁵⁶ Muhammad Luthfi, Yaris Adhial Fajrin, and Hasnan Bachtiar, "The existence of Urf in the Resolution of Marriage Disputes in Islamic Law: A Living Law Perspective," *Jurnal IUS Kajian Hukum dan Keadilan* 12, no. 1 (2024): 146-158, <https://doi.org/10.29303/ius.v12i1.1356>

⁵⁷ Alfani and Saputra, "Blasphemy and Defamation," 42.

True dignity is earned through accountability to the people and to Allah, not state-enforced super-protections that potentially suppress true emancipation and public welfare.⁵⁸ Therefore, Article 218, from a sharia ethics perspective, represents a consolidation of power that contradicts public interest and democratic justice.⁵⁹

Post-Colonial and Discriminatory Deconstruction through Comparative Law

a. Colonial in Nature

From a post-colonial perspective, the reintroduction of the offense against the dignity of the President (known in colonial times as *lèse-majesté*) is a serious paradox.⁶⁰ Article 218 of the new National Criminal Code is virtually identical to its colonial predecessor, Article 134 of the old KUHP.⁶¹ Historically, this norm concordantly derived from Article 111 of the *Nederlands Wetboek van Strafrecht* (WvS Nederland, 1881), which was specifically designed to protect the "Majesty den Koning of der Koningin".⁶² This demonstrates a severe ideological failure of legal integration.⁶³ Indonesia has transposed a concept meant for an unquestionable, hereditary monarch onto a democratically elected public official. This move represents a regression from post-colonial emancipation to state hegemony, creating a severe democratic paradox.⁶⁴

b. Discriminatory and Status-Based Privileges

Furthermore, a critical paradigm demands that we deconstruct the discriminatory and status-based nature of this norm.⁶⁵ By elevating public officials to a separate legal class, Article 218 creates a status differential that is unconstitutional.⁶⁶ It reinforces status-based privileges unavailable to ordinary citizens.⁶⁷ A comparative analysis reveals that modern democratic transitions have moved away from such discriminatory super-norms.⁶⁸ Countries with strong human rights records have abolished *lèse-majesté*, recognizing that public officials, especially heads of state, should be more subject to scrutiny, accountability, and critique, not less.⁶⁹ Indonesia's move towards neo-colonial textualism in Article 218 represents a status differential that consolidates hegemony rather than democratic justice.⁷⁰

c. Textual Obscurity and Constitutional Violation

We contend that Article 218 triggers profound legal uncertainty (*rechtsonzekerheid*) and directly contradicts Article 28D Paragraph (1) and Article 28E Paragraph (3) of the 1945 Constitution,

⁵⁸ Mietzner, "Explaining Indonesia's Democratic Decline," 458.

⁵⁹ Aspinall and Mietzner, "Indonesia's Democratic Decline," 125.

⁶⁰ Wignjosoebroto, *Pergeseran Paradigma*, 20.

⁶¹ Roby Satya Nugraha, et al. "The Transformation of Indonesia's Criminal Law System: Comprehensive Comparison between the Old and New Penal Codes." *Reformasi Hukum* 29.1 (2025): 1-21. <https://doi.org/10.46257/jrh.v29i1.1169> and Ilham Saputra Halilintar, and Abdul Aziz Nasihuddin. "DISPARITY BETWEEN CRIMINAL SANCTIONS IN THE KUHP AND LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE." *EKSEKUSI* 7.2: 321-342. <http://dx.doi.org/10.24014/je.v7i2.38391>

⁶² Muhammad Luthfi, "The existence of 'Urf," 148.

⁶³ Wignjosoebroto, *Pergeseran Paradigma*, 22.

⁶⁴ Aspinall and Mietzner, "Indonesia's Democratic Decline," 128.

⁶⁵ Wignjosoebroto, *Pergeseran Paradigma*, 25.

⁶⁶ Butt, "Freedom of Expression," 135.

⁶⁷ Mietzner, "Explaining Indonesia's Democratic Decline," 462.

⁶⁸ Butt, "Freedom of Expression", 140.

⁶⁹ Aspinall and Mietzner, "Indonesia's Democratic Decline," 130.

⁷⁰ Mietzner, "Explaining Indonesia's Democratic Decline," 463.

which guarantee freedom of expression and equality before the law.⁷¹ The vague and obscure definition of "honor" and "dignity" creates immense legal uncertainty (*rechtsonzekerheid*).⁷² Citizens are left unable to anticipate what speech will be criminalized, resulting in arbitrary enforcement by state structures within the integrated criminal justice system.⁷³ The Constitutional Court of Indonesia, in its *ratio decidendi* in Putusan No. 013-022/PUU-IV/2006, focused not just on abstract human rights but on the principle of a democratic state of law, ruling that protecting a public official's reputation with a special criminal norm creates a status differential that is unconstitutional.⁷⁴ This rationale remains crucial: honor is protected by general law (*pencemaran nama baik*), not a status-based super-norm with a higher criminal penalty.⁷⁵

Conclusion

Through the lens of the critical theory paradigm, it can be seen that the provisions of Article 218, paragraph (1), of the National Criminal Code are not satisfactory. The regulation still requires improvement in various aspects to accommodate the values of norms and achieve effective regulations in accordance with the cultural values, morals, and norms that exist in society. For legal experts and legal activists, legal products are not sacred objects that should not be questioned or questioned anymore, solely because the draft legal product has become a law. Thus, it is appropriate if all elements of society, including academics, continue to criticize the provisions of Article 218 paragraph (1) of the National Criminal Code. This is because in academic studies, the legal product is allegedly accommodating values and norms that live in society that are not in accordance with the values and norms of Indonesian society.

If we look at the issue of the provisions of Article 218 paragraph (1) of the National Criminal Code from the perspective of the critical theory paradigm,⁷⁶ it can be concluded that the steps of the government and the House of Representatives (DPR) have not been fully justified, because they have not been able to fully accommodate the virtual reality formed by social, political, cultural, values and norms in Indonesia in general that have crystallized and are considered real.⁷⁷ However, the government's steps are not absolutely wrong. It should also be appreciated that the government and the House of Representatives (DPR) have made regulations for criminal offenses against the dignity of the president.

The comprehensive analysis integrating Critical Theory, System Theory, Progressive Law, and Islamic Ethics leads to an unavoidable verdict: Article 218 of Law Number 1 of 2023 is a failure of legal integration in a modern, plural, and democratic Indonesia. This failure is evident in multiple dimensions. Substantively, the norm is vague, obscure, and textually ambiguous, sacrificing Gustav Radbruch's principle of legal certainty for an antiquated, authoritarian order. Structurally, it reinforces hegemonic power structures within the integrated criminal justice system, empowering

⁷¹ Butt, "Freedom of Expression", 142.

⁷² Butt, "Freedom of Expression", 145.

⁷³ Eva Achjani Zulfa, "Shifting Paradigm," 137.

⁷⁴ Putusan Mahkamah Konstitusi Nomor 013-022/PUU-IV/2006 (2006), 55-60.

⁷⁵ Putusan Mahkamah Konstitusi Nomor 013-022/PUU-IV/2006 (2006), 65.

⁷⁶ Kleinfeld, Joshua. "Reconstructivism: The place of criminal law in ethical life." *Harvard Law Review* (2016): 1485-1565. <https://www.jstor.org/stable/44072336>

⁷⁷ Mariia Blikhar, et al. "Information, analysis, power and crime: rethinking administrative-criminological frameworks through the lens of critical social theory in twenty-first century Ukraine." *Clío. Revista de Historia, Ciencias Humanas y Pensamiento Crítico*. 11 (2026): 238-276. <https://doi.org/10.5281/zenodo.16457164>

state actors with an exclusive model of justice prone to politically motivated interpretations and institutional egos. Culturally, it reinforces a neo-feudalistic paradigm that prioritizes hierarchical deference over the egalitarian democratic value of open accountability, a trend that conflicts with emerging socio-cultural shifts. Paradoxically, it transposes a colonial, hereditary monarchical concept onto a democratic republic, creating status-based super-protections and status differential, unconstitutional privileges unavailable to ordinary citizens. Therefore, the persistent critique of Article 218 is academically and morally necessary to prevent the infringement of human rights and true democratic justice in Indonesia. Progressive reconstruction demands we break these textually rigid and colonial textual boundaries to achieve substantive justice and a truly emancipatory model of justice for all Indonesian citizens.

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