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The Legal Standing of Constitutional Court Decisions on the Unconstitutionality of Special Insult Provisions in the Indonesian Criminal Code

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ABSTRACT: This article examines the legal standing of Indonesian Constitutional Court (*Mahkamah Konstitusi*) decisions that declare special insult provisions of the Criminal Code unconstitutional, and the consequences of those decisions for a legislature that later re-enacts similar norms. Using a normative-juridical method with statutory, case and conceptual approaches, it analyses Decision No. 013-022/PUU-IV/2006 (insulting the President and Vice President), Decision No. 6/PUU-V/2007 (hostility towards the government), and Decisions No. 275/PUU-XXIII/2025 and No. 282/PUU-XXIII/2025 on Law No. 1 of 2023. The article argues that such decisions carry three layers of legal effect: a formal effect that removes the annulled article from the legal order *erga omnes*; a material effect, arising from the *ratio decidendi*, that restricts re-enactment of norms with the same substance; and an institutional effect that obliges lawmakers to respect the Court's reading of the Constitution. The 2026 decisions show that the Court now tests substance rather than article numbers, yet they also expose a tension: insult of the President survived as a complaint-based offence, whereas insult of the government and state institutions was annulled in full. The article concludes that a clearer doctrine on the binding force of the *ratio decidendi* is needed.

KEYWORDS: Constitutional Court; Binding Force of Decisions; Special Insult Offences; Criminal Code; Constitutional Disobedience; Freedom of Expression.

I. INTRODUCTION

The Indonesian Criminal Code inherited from the Dutch colonial *Wetboek van Strafrecht* contained, alongside the general defamation offences of Articles 310–321, a group of special insult provisions that protected particular holders of public power: the President and Vice President (Articles 134, 136 *bis* and 137), the government (the *haatzaai* provisions of Articles 154 and 155), and public authorities and bodies (Articles 207 and 208).[1] The Constitutional Court (MK) annulled the first two groups in Decision No. 013-022/PUU-IV/2006 and Decision No. 6/PUU-V/2007.[2]

Law No. 1 of 2023 on the Criminal Code (the 2023 Criminal Code), which took effect on 2 January 2026, nevertheless introduced comparable norms: Articles 218–220 on attacking the honour or dignity of the President and Vice President, and Articles 240–241 on insulting the government and state institutions.[3] The drafters justified the offences by describing the President as a national symbol and the personification of the people, and pointed to the new safeguards of complaint-based prosecution and

[1]Lidya Suryani Widayati, "Tindak Pidana Penghinaan terhadap Presiden atau Wakil Presiden: Perlukah Diatur Kembali dalam KUHP?," *Negara Hukum* 8, no. 2 (2017): 221–222, 231 (Articles 310–321 and 207 as existing protection of personal and official honour); Muhammad Reza Winata et al., "Criminal Legal Policy and Unconstitutionality on Contempt of Ruler or Public Body," *Jurnal Hukum dan Peradilan* 9, no. 1 (2020): 71 (abstract; Articles 207 and 208 as contempt of ruler or public body).

[2]Winata et al. (2020), pp. 85–86 (summary of both decisions); Widayati (2017), pp. 223–224; Stefanus Hendrianto, "The Rise and Fall of Historic Chief Justices: Constitutional Politics and Judicial Leadership in Indonesia," *Washington International Law Journal* 25, no. 3 (2016): 516–517 (lèse-majesté and spreading-hatred decisions).

[3]Law No. 1 of 2023 on the Criminal Code, Articles 218–220 and 240–241. On the effective date of 2 January 2026, see Constitutional Court Decision No. 7/PUU-XXI/2023 (28 February 2023), as reported in "MK Kandaskan Pengujian Pasal Penghinaan Presiden dalam KUHP Baru," *Hukumonline*, 28 February 2023, https://www.hukumonline.com/berita/a/mk-kandaskan-pengujian-pasal-penghinaan-presiden-dalam-kuhp-baru-lt63fdc78437284/ (web article, no pagination).

exceptions for the public interest and self-defence.[4] Critics argued that the re-enactment disregarded the 2006 ruling and invited renewed judicial review.[5]

In August 2026 the Court answered that invitation in Decision No. 275/PUU-XXIII/2025 (12 August 2026) and Decision No. 282/PUU-XXIII/2025 (28 August 2026). These decisions give the debate a concrete judicial answer but also raise a doctrinal question: what is the legal standing (*kedudukan*) of a Constitutional Court decision that annuls a norm? Does it bind only the annulled article, or also the reasoning that led to annulment, and may the legislature enact a reworded version of the same norm? This article addresses three questions: (1) what the Court has decided on the special insult provisions; (2) what legal effect those decisions have on the legal order and on lawmakers; and (3) how the 2026 decisions refine the doctrine of constitutional disobedience by the legislature.

II. RESEARCH METHOD

This study uses a normative-juridical method with a statutory approach (the 1945 Constitution, the Constitutional Court Law and the 2023 Criminal Code), a case approach (six decisions of the Court, listed in Table I) and a conceptual approach (final and binding force, *erga omnes* effect, *ratio decidendi*, and constitutional disobedience). Primary legal materials are the Court's decisions. Secondary materials are peer-reviewed journal articles and, for the August 2026 decisions, reports and commentaries published by reputable legal and news outlets.[6] A limitation must be stated: the full official text of the 2026 decisions was only partly accessible to the author. The reasoning of those decisions is therefore described as the Court's reasoning *as reported*, and pinpoint citations are given only where the page or paragraph could be verified. Page numbers are given for journal sources throughout.

III. THE COURT'S DECISIONS ON SPECIAL INSULT OFFENCES

A. Decision No. 013-022/PUU-IV/2006: Insulting the President and Vice President

The petitions joined in this decision challenged Articles 134, 136 *bis* and 137 of the Criminal Code; one of the petitioners was the activist Eggi Sudjana.[7] The decision was pronounced in open plenary on 6 December 2006. The Court declared the three articles contrary to the 1945 Constitution and without binding legal force, and ordered publication of the decision in the State Gazette; four of the nine justices (Palguna, Soedarsono, Natabaya and Roestandi) dissented.[8]

The reasoning of the majority, as described in the literature, rests on four points. First, the articles negated equality before the law by giving the President and Vice President a discriminatory legal privilege.[9] Second, they could cause legal uncertainty because criticism and insult were not clearly separated. Third, they could hinder communication, the acquisition of information and freedom of expression under Articles 28, 28E and 28F of the Constitution.[10] Fourth, the provisions were transplanted from a colonial text that protected the dignity of the Dutch Crown and were out of step with a democratic state governed by law. The Court considered that insult of the President should be handled under the general defamation provisions of Articles 310–321, and that it was "no longer relevant" for the Criminal Code to retain provisions such as Articles 134, 136 *bis* and 137.[11] Commentators further read the decision as directing that the draft Criminal Code must not again contain provisions of the same or similar substance.[12]

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[4]Nuzul Shinta Nur Rahmasari and Hari Soeskandi, "Penghidupan Kembali Pasal terhadap Penghinaan Presiden dan Wakil Presiden dalam Rancangan Kitab Undang-Undang Hukum Pidana," *Mimbar Keadilan* 15, no. 1 (2022): 41; Ajie Ramdan, "Kontroversi Delik Penghinaan Presiden/Wakil Presiden dalam RKUHP: Kajian Putusan Mahkamah Konstitusi Nomor 013-022/PUU-IV/2006," *Jurnal Yudisial* 13, no. 2 (2020): 257–258.

[5]Ramdan (2020), pp. 260, 264; Wemby Adhiatma Satrio Prayogo, "Tinjauan Kebijakan Pidana terhadap Martabat Presiden dan/atau Wakil Presiden dalam RKUHP," *Pandecta* 15, no. 2 (2020): 209–210, 216.

[6]Decisions 013-022/PUU-IV/2006 and 6/PUU-V/2007 were read as published at https://pasal.id/peraturan/putusan-mk/puu-mk-13-2006 and https://pasal.id/peraturan/putusan-mk/puu-mk-6-2007 (citations by paragraph number), and through the page citations given by Winata et al. (2020). The official text of Decision 282/PUU-XXIII/2025 is at https://s.mkri.id/public/content/persidangan/putusan/putusan_mkri_14867_1787904875.pdf (only the opening part, up to printed page 39, could be read).

[7]Prayogo (2020), p. 208; Hendrianto (2016), p. 516 (two activists charged with insulting President Yudhoyono). Decision 013-022/PUU-IV/2006 at https://pasal.id/peraturan/putusan-mk/puu-mk-13-2006 (identity of the petitioners; the spelling of the second petitioner's name differs across sources).

[8]Constitutional Court Decision No. 013-022/PUU-IV/2006, pronounced 6 December 2006, operative part (*amar*) and dissenting opinions, at https://pasal.id/peraturan/putusan-mk/puu-mk-13-2006 (paragraph references only; the page numbers of the printed decision are not shown). On the dissent as the origin of the later "complaint-offence" solution, see Ahwan and R. Fahmi Natigor Daulay, "Perisai 'Kebenaran Informasi' dalam Delik Penghinaan Presiden dan Wakil Presiden menurut KUHP," *Jurnal Kompilasi Hukum* 11, no. 1 (2026): 97 n. 1 (citing Decision p. 73).

[9]Winata et al. (2020), p. 85; Ramdan (2020), p. 260 (the Court holding that the President and Vice President "tidaklah boleh mendapatkan perlakuan privilege hukum secara diskriminatif").

[10]Winata et al. (2020), p. 85; Rahmani, Prija Djatmika and Abdul Madjid, "Implikasi Yuridis Kekaburan Norma Tindak Pidana Penghinaan Presiden dan/atau Wakil Presiden," *Klausula* 3, no. 1 (2024): 3–4.

[11]Winata et al. (2020), p. 85 n. 26 (general defamation Articles 310–321, citing Decision pp. 59–61); Widayati (2017), p. 218 ("tidak relevan lagi jika dalam KUHP-nya masih memuat pasal-pasal"); Ramdan (2020), p. 248. The Court quotes the same passage in Decision 282/PUU-XXIII/2025, para. [3.13], at https://pasal.id/peraturan/putusan-mk/puu-mk-282-2025.

[12]Widayati (2017), p. 218 ("dalam RUU KUHP juga harus tidak lagi memuat pasal-pasal yang isinya sama atau mirip"); Ramdan (2020), pp. 245, 247. This reading was contested: see Section IV.C below.

B. Decision No. 6/PUU-V/2007: Hostility towards the Government

On 17 July 2007 the Court partly granted a petition against Articles 154 and 155 of the Criminal Code, declared both articles contrary to the Constitution and without binding legal force, and held the remainder of the petition inadmissible (*niet ontvankelijk*).[13] The Court found that the articles were formal offences that tended towards abuse of power because they could be interpreted "menurut selera penguasa" (according to the taste of those in power), that they had been intended to ensnare leaders of the independence movement in the Dutch East Indies, that it was irrational for a citizen to be hostile to his own sovereign state, and that they failed to guarantee legal certainty under Article 28D(1).[14] The Court did not reach Articles 107, 160, 161, 207 and 208, because the petitioner lacked standing as to those provisions. The constitutionality of Articles 207 and 208 therefore remained untested.[15]

C. The 2023 Criminal Code before the Court

The first challenge to the 2023 provisions, against Articles 218, 219, 240 and 241, failed on admissibility. In Decision No. 7/PUU-XXI/2023 (28 February 2023) the Court held that, because the Code would take effect only on 2 January 2026, the petitioners had not shown actual or potential constitutional harm.[16] After the Code took effect, new petitions were filed at the end of 2025 and heard together; Decisions 275 and 282 were pronounced as separate decisions in August 2026.[17]

Decision No. 275/PUU-XXIII/2025 (insult of the President and Vice President). The Court partly granted the petition. It kept Articles 218 and 219 in force but declared Article 220(1) conditionally unconstitutional unless read to mean that the offences in Articles 218 and 219 may be prosecuted only on a complaint by the President and/or Vice President, filed directly or through a lawyer holding a special power of attorney.[18] According to the reasoning read by Justice M. Guntur Hamzah, Article 218(1) does not protect only the personal interests of the President and Vice President but also the dignity and authority of the presidency in the conduct of state affairs, while Article 218(2) acts as a safeguard against over-application that could restrict freedom of expression under Article 28E(2).[19] The petitioners had argued that Article 218 revived the norms annulled in 2006.[20]

Decision No. 282/PUU-XXIII/2025 (insult of the government and state institutions). The Court granted the petition in full and declared Article 240, together with its Elucidation, and Article 241 of the 2023 Criminal Code contrary to the Constitution and without binding legal force.[21] As reported, the Court reasoned that state institutions are legal subjects without feelings of being praised, criticised or insulted and therefore should not be protected objects of insult offences; that the word "menghina" could become a "pasal karet" (rubber article) in enforcement; and that the government, whose legitimacy rests on popular sovereignty, must remain open to oversight and criticism.[22] The Court acknowledged that the new provisions differed from the old ones, being complaint offences with narrower objects and an exception for the public interest, but commentators report that these differences were held not to cure the central defect, namely that institutions remained holders of a criminally protected honour.[23] In its

[13]Constitutional Court Decision No. 6/PUU-V/2007, pronounced 17 July 2007, operative part, paras. [5.1]–[5.5], at https://pasal.id/peraturan/putusan-mk/puu-mk-6-2007.

[14]Decision 6/PUU-V/2007, paras. [3.18.5]–[3.18.7] and [4.1] (https://pasal.id/peraturan/putusan-mk/puu-mk-6-2007); Winata et al. (2020), p. 86 n. 28 (citing Decision pp. 75–79); Widayati (2017), pp. 223–224; Hendrianto (2016), pp. 516–517 ("the potential for the abuse of power through these articles is flagrant").

[15]Decision 6/PUU-V/2007 (scope of standing), at https://pasal.id/peraturan/putusan-mk/puu-mk-6-2007; Winata et al. (2020), p. 82 n. 21 (the Court "has never reviewed" Articles 207 and 208, citing Decision p. 70).

[16]"MK Kandaskan Pengujian Pasal Penghinaan Presiden dalam KUHP Baru," *Hukumonline*, 28 February 2023 (applying the harm criteria of Decisions 006/PUU-III/2005 and 11/PUU-V/2007).

[17]Decision 282/PUU-XXIII/2025, paras. [2.1] and [3.11] (petition filed 30 December 2025; joinder with Cases 275, 280, 26, 27 and 29), at https://pasal.id/peraturan/putusan-mk/puu-mk-282-2025; "Norm on Defamation Against President under Criminal Code Challenged," Constitutional Court of Indonesia, 13 January 2026, https://en.mkri.id/news/details/2026-01-13/Norm_on_Defamation_Against_President_Under_Criminal_Code_Challenged (preliminary hearing in Case 275).

[18]"Putuskan UU KUHP, MK: Penghinaan Presiden Hanya Dapat Dituntut Berdasarkan Aduan Presiden-Wapres," *NU Online*, 13 August 2026, https://www.nu.or.id/nasional/putuskan-uu-kuhp-mk-penghinaan-presiden-hanya-dapat-dituntut-berdasarkan-aduan-presiden-wapres-mQcXg (web article, no pagination); Gerry Geovant Supranata Kaban, "Konstruksi Hukum Delik Lese-Majeste dalam KUHP Nasional Pasca Putusan MK 275/2025," *Dandapala*, 24 August 2026, https://dandapala.com/opini/detail/konstruksi-hukum-delik-lese-majeste-dalam-kuhp-nasional-pasca-putusan-mk-2752025.

[19]NU Online, 13 August 2026 (reasoning of Justice M. Guntur Hamzah). Neither source consulted reports a dissenting or concurring opinion.

[20]Constitutional Court of Indonesia, 13 January 2026 (arguments of the petitioners in Case 275).

[21]Decision 282/PUU-XXIII/2025, pronounced 28 August 2026, operative part, at https://pasal.id/peraturan/putusan-mk/puu-mk-282-2025; "MK Hapus Pasal Penghinaan Pemerintah & Lembaga Negara di KUHP," *Tirto*, 29 August 2026 (Antara), https://tirto.id/mk-hapus-pasal-penghinaan-pemerintah-lembaga-negara-di-kuhp-hB2H.

[22]"MK Batalkan Pasal Penghinaan Pemerintah, Ada Pembeda antara Kritik dan Serangan Personal," *Hukumonline*, 2 October 2026, https://www.hukumonline.com/berita/a/mk-batalkan-pasal-penghinaan-pemerintah--ada-pembeda-antara-kritik-dan-serangan-personal-lt6abfa0d6577d8/; *Tirto*, 29 August 2026 ("berpotensi menjadi pasal karet dalam proses penegakan hukum"); Erna Ratnaningsih, "Kehormatan Personal dan Kedudukan Institusional dalam Delik Penghinaan," *BINUS Business Law*, 8 September 2026, https://business-law.binus.ac.id/2026/09/08/kehormatan-personal-dan-kedudukan-institusional-dalam-delik-penghinaan-analisis-yuridis-putusan-mk-no-282-puu-xxiii-2025-dan-nomor-275-puu-xxiii-2025/.

[23]Fajar Laksono Suroso, "Menebas Pasal Zombi," *Hukumonline*, 7 September 2026, https://www.hukumonline.com/berita/a/menebas-pasal-zombi-lt6a9e2d8cf04b7/ (opinion piece; describes Decision 282 as confirming that an annulled norm cannot be revived merely by changing its form); Gerry Geovant Supranata Kaban, "Sirnanya Delik Penghinaan Pemerintah dalam KUHP Nasional Pasca Putusan MK 282/2025," *Dandapala*, 31 August 2026, https://www.dandapala.com/article/detail/sirnanya-delik-penghinaan-pemerintah-dalam-kuhp-nasional-pasca-putusan-mk-2822025.

considerations the Court again quoted Decision 013-022/PUU-IV/2006, including the statement that insult of the President should properly be dealt with under Articles 310–321 of the Criminal Code.[24]

D. A Related Line: Decision No. 105/PUU-XXII/2024

Decision No. 105/PUU-XXII/2024, pronounced on 29 April 2025, concerned Article 27A of the Electronic Information and Transactions Law. The Court read "another person" as a natural person, so that the article does not cover defamation of government agencies, institutions, corporations, professions or positions, and held that the offence is a complaint offence that only the individual concerned can report.[25] The same logic, that honour belongs to persons and not to institutions, reappears in Decision 282 and supplies its conceptual bridge. Table I summarises the decisions discussed.[26]

TABLE I. DECISIONS OF THE CONSTITUTIONAL COURT ON SPECIAL INSULT PROVISIONS

Decision (date)	Provision	Outcome	Core reasoning (as described in the sources cited in Section III)
013-022/PUU-IV/2006 (6 Dec 2006)	Criminal Code Arts. 134, 136 *bis*, 137	Granted in full; no binding force; four justices dissenting	Unequal privilege for the President; legal uncertainty; restriction of expression and information; colonial origin; Arts. 310–321 suffice
6/PUU-V/2007 (17 Jul 2007)	Criminal Code Arts. 154, 155	Granted in part; no binding force	Formal offences open to abuse of power; colonial purpose; lack of legal certainty (Art. 28D(1))
7/PUU-XXI/2023 (28 Feb 2023)	2023 Criminal Code Arts. 218, 219, 240, 241	Not admissible	No actual or potential constitutional harm before the Code takes effect
105/PUU-XXII/2024 (29 Apr 2025)	ITE Law Art. 27A	Granted in part (conditional reading)	Victim must be a natural person; institutions cannot be victims or complainants
275/PUU-XXIII/2025 (12 Aug 2026)	2023 Criminal Code Arts. 218–220	Granted in part; Art. 220(1) conditionally unconstitutional	Dignity of the person and authority of the presidency; prosecution only on complaint by the President or Vice President
282/PUU-XXIII/2025 (28 Aug 2026)	2023 Criminal Code Art. 240 (with Elucidation), Art. 241	Granted in full; no binding force	Institutions have no personal honour; "menghina" is subjective; popular sovereignty requires openness to criticism

IV. LEGAL STANDING OF THE DECISIONS

A. Final and Binding Force with an Erga Omnes Effect

The starting point is the Constitution: Article 24C(1) gives the Constitutional Court the power to review statutes against the Constitution in a first and final instance. The Constitutional Court Law adds that decisions obtain permanent legal force from the moment they are pronounced (Article 47), are final and binding (Article 10(1)), and, where a statutory content, article or part is found contrary to the Constitution, that content, article or part "has no binding legal force" (Article 57).[27] The literature accordingly treats such decisions as binding on all state components, citizens and institutions alike (*erga omnes*), not only on the parties.[28]

A decision that simply annuls an article is, in Triyadi's terms, largely self-executing: no further legislative act is needed for the article to cease to apply, although many decisions require legislative follow-up and are therefore non-self-executing.[29] Decisions

[24]Decision 282/PUU-XXIII/2025, para. [3.13], at https://pasal.id/peraturan/putusan-mk/puu-mk-282-2025. The expert testimony of Bivitri Susanti, recorded in the same decision, also invokes Decision 013-022/PUU-IV/2006 (official text, printed pp. 37–38; the page numerals in the converted text may be offset by one page), at https://s.mkri.id/public/content/persidangan/putusan/putusan_mkri_14867_1787904875.pdf.

[25]Sri Pujianti, "MK Mempertegas Pemaknaan Unsur-Unsur Pencemaran Nama Baik dalam UU ITE," Constitutional Court of Indonesia, 29 April 2025, https://www.mkri.id/berita/mk-mempertegas-pemaknaan-unsur-unsur-pencemaran-nama-baik-dalam-uu-ite--23133 (web article, no pagination).

[26]Decision 282/PUU-XXIII/2025, para. [3.7] (petitioners' reliance on Decision 105/PUU-XXII/2024), at https://pasal.id/peraturan/putusan-mk/puu-mk-282-2025; *Tirto*, 29 August 2026 (the Court citing Decision 105/PUU-XXII/2024 for the point that legal entities cannot file defamation complaints).

[27]Constitution of the Republic of Indonesia 1945, Article 24C(1); Law No. 24 of 2003 on the Constitutional Court, as amended, Articles 10(1), 47 and 57(1)–(2); Rahmasari and Soeskandi (2022), p. 46 (Article 10(1)); Siti Romlah, "Penghidupan Kembali Aturan yang Telah Dibatalkan Sebelumnya oleh Mahkamah Konstitusi," *Adalah: Buletin Hukum dan Keadilan* 1, no. 5d (2017): 48 (Article 57(1)–(2)).

[28]Wahyu Indra Triyadi, "Constitutional Disobedience oleh Pembentuk Undang-Undang dan Penegakan Judicial Order," *Journal of Legal Research* 7, no. 2 (2025): 224 ("mengikat seluruh komponen negara, baik warga negara maupun lembaga negara (erga omnes)").

[29]Triyadi (2025), p. 226.

013-022/PUU-IV/2006 and 6/PUU-V/2007 are of the first kind. From the moment they were pronounced, Articles 134, 136 *bis*, 137, 154 and 155 could no longer be a basis for prosecution. The same consequence is reported for Decision 282/PUU-XXIII/2025: proceedings that rest solely on Articles 240 or 241 cannot continue and must be ended through the procedural mechanism fitting their stage.[30]

B. The Binding Force of the Ratio Decidendi

The harder question is whether the Court's reasoning binds. Some scholars hold that the reasoning of a decision forms an integral whole with its operative part.[31] Two features of the practice support a material effect. First, in 2006 the Court did not merely annul three articles; it stated that a Criminal Code retaining such provisions was no longer relevant and, as read by commentators, that the draft Code should not repeat them.[32] Second, the Court itself has later relied on that reasoning: in Decision 282 it quoted the 2006 passage as a premise for annulling the 2023 provisions.[33]

The limit of the material effect is visible in the history of Articles 207 and 208. Because the Court had never examined them, the 2006 and 2007 decisions did not formally bind those articles even though the same conduct could still be prosecuted under them. Winata and colleagues argue that this practice weakened the earlier decisions and that Articles 207 and 208 should themselves be declared unconstitutional on the same reasoning.[34] Decision 282 resolved part of this gap by annulling Article 240, the successor of Article 207 in the 2023 Criminal Code, although the Court's full reasoning on the relationship between the old and the new provisions could not be verified for this article.

C. Re-enactment by the Legislature: Constitutional Disobedience

Whether the legislature may re-enact a norm the Court has annulled has long been disputed. Jimly Asshiddiqie argued that re-including the offence was unnecessary because the Court had already annulled it, and Mahfud MD argued that annulment does not bar re-enactment because the Court's concern was the absence of a clear definition of "insult", which a revised provision could supply through limits such as the public-interest and self-defence exceptions.[35] A third position, attributed to M. Husnu Abadi, holds that a re-enacted norm applies like any other statute until challenged, after which the Court may annul it again (as it did in Decision 1-2/PUU-XII/2014, which concerned a norm previously annulled in Decision 005/PUU-IV/2006) or uphold it (as in Decision 23-26/PUU-VIII/2010).[36]

Triyadi observes that the legal framework contains no explicit prohibition on reviving provisions declared unconstitutional and no sanction against legislators who do so, which explains the label "constitutional disobedience".[37] Empirically, the risk is real: one study reports that only about half of the Court's decisions in 2013–2018 were fully implemented, and the authors of that study argue that legislative reintroduction of the presidential insult offence undermines judicial review.[38] The government's own account of the 2023 provisions was that complaint-based prosecution, narrower objects and explicit exceptions meant that they were no longer the annulled norms.[39]

The 2026 decisions suggest that the Court rejects a purely formal view. Commentators point to the Court's earlier practice of treating a provision that "clearly and plainly" revives an annulled norm as open to annulment again, and read Decision 282 as confirming that unconstitutionality attaches to the substance of the norm and not to its article number.[40] Even so, Decision 275 shows that the substance test is not mechanical: it allowed an insult offence to protect the President after reshaping it as a complaint offence tied to the officeholder.

[30]Nadiyas Utami Pratiwi, "MK Batalkan Pasal Penghinaan Pemerintah, Perkara yang Masih Berjalan Harus Dihentikan?," *VIVA*, 5 October 2026, https://www.viva.co.id/berita/nasional/1933200-mk-batalkan-pasal-penghinaan-pemerintah-perkara-yang-masih-berjalan-harus-dihentikan (web article; the report does not specify the instruments to be used).

[31]Winata et al. (2020), p. 81 n. 19 (citing Laksono, pp. 655–656). The authors report this view without taking a firm position.

[32]Widayati (2017), pp. 218, 229–230 (the decision "tetap berlaku dan mengikat seluruh warga negara" and applies to the draft Code); Ramdan (2020), p. 257.

[33]Decision 282/PUU-XXIII/2025, para. [3.13], at https://pasal.id/peraturan/putusan-mk/puu-mk-282-2025.

[34]Winata et al. (2020), pp. 82, 91–92, 94.

[35]Romlah (2017), pp. 47–48; Ramdan (2020), p. 258 (Asshiddiqie: "pasal tersebut jelas-jelas sudah dibatalkan Mahkamah Konstitusi").

[36]Romlah (2017), p. 48 (citing Abadi, pp. 113–119).

[37]Triyadi (2025), pp. 228, 241. At p. 246 the author cites Decision 105/PUU-XIV/2016, which treats continued use of a norm already declared unconstitutional as unlawful conduct.

[38]An Nisaa Athirah, Muhamad Dzikra Dandiansyah and Muhammad Keenan Abiyyu, "The Rebirth of the Long-Repealed Articles on Insult against President in Indonesia's New Criminal Code" (2025), pp. 39–42, https://ojs.uajy.ac.id/index.php/DLC/article/view/9927 (the study is the source of the figure at p. 41; journal volume and issue were not stated in the text consulted).

[39]Rahmasari and Soeskandi (2022), p. 41; Ramdan (2020), pp. 256–258.

[40]Suroso, "Menebas Pasal Zombi," *Hukumonline*, 7 September 2026 (citing Decisions 53/PUU-XV/2017 and 105/PUU-XIV/2016; opinion piece, no pagination).

V. ANALYSIS: PERSON, OFFICE AND INSTITUTION

A. A Substance-over-Form Test

Read together, the decisions yield a workable test for assessing a re-enacted insult provision. The first step asks who the protected legal interest belongs to: a natural person, a person in an office, or an institution. The second asks whether the new text still allows criminal law to be set in motion by the powerful against critics, whatever its label. The third asks whether the new text remedies the specific defects found earlier (inequality, vagueness, and a chilling effect on expression). The rules adopted in 2023 – complaint-based prosecution, public-interest exceptions and narrower objects – address the second and third steps only partly, which is why Decision 282 treated them as insufficient for institutions.[41]

B. The Presidential Compromise

Decision 275 is harder to reconcile with Decision 013-022. In 2006 the Court said that the President must not enjoy a discriminatory legal privilege and pointed to the general defamation provisions; in 2026 it upheld a special offence for the President but confined its initiation to the President or Vice President personally. Commentators describe the logic as a distinction between a natural person holding office, whose dignity can be injured, and an institution, which has no personal honour.[42] This distinction has a firm doctrinal basis in Decision 105/PUU-XXII/2024 and in the principle of popular sovereignty. Yet it leaves open a point already made by the petitioners and by commentators: limiting who may complain answers the question of who may start a case, but not the question of what counts as an attack on honour or dignity, so the *lex certa* and chilling-effect concerns remain.[43] Earlier commentary made the same point about the 2019 draft: the constitution protects the person, not the office, and a complaint requirement does not cure the vagueness of the offence.[44]

C. Remaining Tensions and the Role of a Judicial Order

Three issues remain. First, the Court has not yet been asked to rule directly on Articles 207 and 208 of the old Code or on how their 2023 counterparts operate for conduct committed before 2026. Second, the treatment of pending cases depends on procedural mechanisms that the reports consulted do not specify. Third, the disobedience problem is not solved by individual decisions: Triyadi proposes that the Court, following the practice of the German Federal Constitutional Court, set deadlines for legislative follow-up after which its decision takes effect automatically, and Suroso suggests that academic papers for new bills should map the relevant decisions of the Court.[45]

VI. CONCLUSIONS

First, the Court's decisions annulling special insult provisions have a formal effect: the annulled article loses binding force for everyone from the moment of pronouncement, as provided by Articles 24C(1) of the Constitution and 47 and 57 of the Constitutional Court Law. Second, the reasoning of the decisions has a material effect that limits, but does not mechanically prohibit, re-enactment: lawmakers may not revive the same substance under another number or in softer wording, and the Court may annul such a revival, as Decision 282/PUU-XXIII/2025 did for Articles 240 and 241. Third, Decision 275/PUU-XXIII/2025 shows that the material effect is not absolute: an insult offence protecting a natural-person President survived as a complaint offence, leaving a tension with the 2006 reasoning and with the problem of vague wording. The article recommends that the legislature record the relevant decisions in academic papers and drafting, that the Court state more explicitly in its operative parts or considerations whether the reasoning bars norms of the same substance, and that further research examine the full official texts of the 2026 decisions, including any separate opinions, and the application of the decisions by courts.

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[41]Suroso, "Menebas Pasal Zombi," 7 September 2026; Kaban, "Sirnanya Delik Penghinaan Pemerintah," *Dandapala*, 31 August 2026; Rahmasari and Soeskandi (2022), p. 44 (complaint-based prosecution does not solve the confusion between criticism and insult).

[42]Ratnaningsih, *BINUS Business Law*, 8 September 2026 (comparison of Decisions 275 and 282); Kaban, "Konstruksi Hukum Delik Lese-Majeste," *Dandapala*, 24 August 2026.

[43]Ratnaningsih, *BINUS Business Law*, 8 September 2026; Constitutional Court of Indonesia, 13 January 2026 (petitioners' arguments on the abstract and subjective wording of Article 218); Rahmani et al. (2024), pp. 6–9 (vagueness of the Elucidation of Article 218).

[44]Rahmasari and Soeskandi (2022), pp. 36, 44.

[45]Triyadi (2025), pp. 243–245 (judicial order and deadlines); Suroso, "Menebas Pasal Zombi," 7 September 2026 (academic papers mapping the Court's decisions); Viva, 5 October 2026 (pending cases).

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5) Constitutional Court Decision No. 6/PUU-V/2007 (17 July 2007). https://pasal.id/peraturan/putusan-mk/puu-mk-6-2007
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