

Legal Politics of Law Number 1 of 2023: Toward a Just and Civilized National Criminal Justice System

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Abstract

Law Number 1 of 2023 concerning the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana / KUHP) represents a pivotal milestone in Indonesia's long-standing effort to decolonize its criminal law system and establish a national legal framework grounded in Pancasila and constitutional values. This study examines the legal politics underlying the formulation of the 2023 Criminal Code by analyzing its historical trajectory, philosophical and juridical foundations, objectives of enactment, and key normative characteristics. Employing a normative juridical approach and library research method, the study relies on statutory analysis and doctrinal interpretation to explore the transformation of Indonesia's criminal law from its colonial origins to its contemporary form. The findings reveal that the 2023 Criminal Code embodies a complex interplay between progressive legal reform and enduring normative tensions. On the one hand, it introduces significant innovations, including the recognition of customary law, the incorporation of restorative justice principles, the expansion of alternative sanctions, and the regulation of emerging crimes such as cyber and environmental offenses. These features reflect a shift toward a more humanistic, pluralistic, and responsive criminal justice system. On the other hand, several provisions particularly those related to morality offenses, defamation of state officials, and the retention of capital punishment have generated substantial debate due to their potential implications for human rights, privacy, and democratic freedoms. Furthermore, the study finds that the legitimacy and effectiveness of the 2023 Criminal Code are shaped not only by its normative content but also by the political and procedural context of its enactment, including concerns over limited public participation and deliberative deficits. The transitional period leading to its full implementation on January 2, 2026, constitutes a critical phase that requires institutional readiness, regulatory harmonization, and broad-based public engagement.

Keywords: Legal Politics; Decolonization of Law; Human Rights; Restorative Justice; Morality Offenses.

Abstrak

Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP) merupakan tonggak penting untuk mendekolonisasi sistem hukum pidana dan membangun kerangka hukum nasional yang berlandaskan nilai-nilai Pancasila dan konstitusi. Penelitian ini mengkaji politik hukum di balik pembentukan KUHP 2023 dengan menganalisis jejak historis, landasan filosofis dan yuridis, tujuan pembentukan, serta karakteristik normatif utamanya. Dengan menggunakan pendekatan yuridis normatif dan metode kajian kepustakaan, penelitian ini bertumpu pada analisis peraturan perundang-undangan dan penafsiran doktrinal untuk menelusuri transformasi hukum pidana Indonesia dari akar kolonial menuju bentuk kontemporer. Hasil penelitian menunjukkan bahwa KUHP 2023 mencerminkan dialektika kompleks antara reformasi hukum yang progresif dan ketegangan normatif yang masih bertahan. Di satu sisi, KUHP ini menghadirkan berbagai inovasi penting, seperti pengakuan terhadap hukum adat, penguatan prinsip keadilan restoratif, perluasan pidana alternatif, serta pengaturan kejahatan kontemporer seperti kejahatan siber dan lingkungan. Hal ini menunjukkan adanya pergeseran menuju sistem

hukum pidana yang lebih humanis, pluralistik, dan responsif. Di sisi lain, sejumlah ketentuan terutama yang berkaitan dengan delik moral, penghinaan terhadap pejabat negara, serta keberadaan pidana mati menimbulkan perdebatan serius karena berpotensi berdampak pada perlindungan hak asasi manusia, privasi, dan kebebasan demokratis. Selain itu, penelitian ini menemukan bahwa legitimasi dan efektivitas KUHP 2023 tidak hanya ditentukan oleh substansi normatifnya, tetapi juga oleh konteks politik dan prosedural dalam proses pembentukannya, termasuk persoalan keterbatasan partisipasi publik dan defisit deliberatif. Masa transisi hingga pemberlakuan penuh pada 2 Januari 2026 menjadi fase krusial yang menuntut kesiapan institusi, harmonisasi regulasi, serta keterlibatan publik yang luas.

Kata Kunci: Politik Hukum; Dekolonisasi Hukum; Hak Asasi Manusia; Restorative Justice; Delik Moral.

Intorduction

The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana / KUHP) represents a transformative moment in Indonesia's legal history, particularly in the long-standing effort to reconstruct a national criminal law system grounded in indigenous values and constitutional principles. For decades, Indonesia relied on the *Wetboek van Strafrecht* inherited from the Dutch colonial administration, a legal instrument that was not only historically outdated but also normatively misaligned with the philosophical foundations of the Indonesian state (Hamzah, 2024; Riwanto, 2018). The promulgation of the 2023 Criminal Code thus symbolizes a decisive step toward legal sovereignty and the decolonization of criminal law.

From the perspective of legal politics, the formation of the 2023 Criminal Code cannot be understood merely as a legislative exercise, but rather as a manifestation of state policy in determining the direction, content, and function of law within society. Legal politics, as conceptualized in Indonesian legal scholarship, reflects the strategic choices made by the state to achieve specific social, political, and moral objectives through legal instruments (Mahfud Md, 2009). In this regard, the new Criminal Code embodies a deliberate effort to harmonize criminal law with the values of Pancasila, constitutional mandates, and evolving societal expectations.

Historically, the persistence of colonial criminal law in Indonesia has generated significant criticism from scholars and practitioners alike. The colonial legal framework was designed to serve the interests of the ruling power, often neglecting the social realities and cultural diversity of Indonesian society (Hamzah, 2017). Consequently, the urgency to replace the colonial Criminal Code has been consistently emphasized since Indonesia's

independence in 1945, although political, institutional, and ideological challenges delayed its realization for decades. The enactment of Law Number 1 of 2023 thus marks the culmination of a prolonged legislative journey.

Normatively, the 2023 Criminal Code introduces a paradigm shift from a retributive justice model toward a more balanced approach that incorporates elements of restorative justice. This shift is evident in the recognition of alternative sanctions, the prioritization of rehabilitation over punishment, and the integration of community-based dispute resolution mechanisms (Erasmus A.T. Napitupulu dkk, 2022). Such developments reflect a broader global trend in criminal law reform, where punitive approaches are increasingly complemented by restorative and rehabilitative principles.

In addition to its progressive features, the new Criminal Code also demonstrates a commitment to legal pluralism by acknowledging the existence and relevance of customary law (*hukum adat*) within the national legal framework. This recognition is particularly significant in a pluralistic society like Indonesia, where local norms and traditions continue to play a vital role in regulating social relations (Satjipto Rahardjo, 2006). By incorporating customary law into the formal legal system, the 2023 Criminal Code seeks to bridge the gap between state law and living law within communities.

However, despite these advancements, the 2023 Criminal Code has not been free from controversy. Several provisions, particularly those related to morality offenses and defamation of state officials, have sparked intense public debate and criticism. Critics argue that such provisions may pose risks to fundamental rights, including freedom of expression and the right to privacy, thereby potentially undermining democratic values (Arief, 2018; Kurniawan et al., 2025). These concerns highlight the inherent tension between legal order, moral regulation, and individual liberties within the framework of criminal law.

The implementation of the 2023 Criminal Code also raises important questions regarding institutional readiness and the effectiveness of law enforcement. The transition from the old Criminal Code to the new regime requires not only regulatory adjustments but also significant improvements in the capacity of legal institutions, including the police, prosecutors, and judiciary (Atmasasmita, 2002). Without adequate preparation, there is a risk that the progressive ideals embedded in the new Criminal Code may not be fully realized in practice.

In light of these dynamics, this study seeks to analyze the legal politics underlying the formulation of Law Number 1 of 2023, with particular emphasis on its historical background, normative orientation, and socio-political implications. By examining the interplay between legal reform, state policy, and societal values, this research aims to contribute to a deeper understanding of the prospects and challenges of building a just and civilized national criminal justice system in Indonesia (Friedman, 2015).

Research Method

This study employs a normative juridical approach, which focuses on the analysis of legal norms, principles, and doctrines embedded within statutory regulations and legal literature. The normative method is particularly relevant for examining the legal politics of Law Number 1 of 2023, as it allows for a systematic exploration of the philosophical, juridical, and sociological foundations underlying the formulation of the Indonesian Criminal Code (Soekanto & Mamudji, 2015). Through this approach, the research emphasizes law in books rather than law in action, aiming to understand how legal norms are constructed and articulated within formal legal instruments.

The data utilized in this research consist primarily of secondary legal materials, including primary legal sources such as Law Number 1 of 2023, its explanatory memorandum, and related statutory regulations, as well as secondary sources comprising scholarly books, peer-reviewed journal articles, and authoritative legal commentaries. These materials are collected through a comprehensive library research method, which involves identifying, classifying, and analyzing relevant legal documents to construct a coherent analytical framework (Marzuki, 2017). The use of doctrinal sources is essential in uncovering the legislative intent, normative coherence, and conceptual underpinnings of the new Criminal Code.

The analytical technique applied in this study is qualitative-descriptive, supported by a conceptual and statutory approach. The conceptual approach is used to examine key legal doctrines such as legal politics, decolonization of law, and restorative justice, while the statutory approach focuses on interpreting the provisions of the 2023 Criminal Code within the broader legal system (Ibrahim, 2006). Furthermore, this research adopts an analytical-prescriptive dimension by not only describing the existing legal framework but also critically evaluating its strengths and weaknesses in order to formulate normative arguments regarding

its implementation. This method enables a comprehensive assessment of the extent to which the 2023 Criminal Code reflects the ideals of a just and civilized national criminal justice system.

Results and Discussion

The Indonesian Criminal Code: Tracing Its Historical Trajectory

The historical development of Indonesia's Criminal Code cannot be separated from the legacy of Dutch colonialism in the archipelago. Since the early twentieth century, the criminal law system in the Dutch East Indies was governed by the *Wetboek van Strafrecht voor Nederlandsch-Indie* (WvS), promulgated in 1915 and enforced on January 1, 1918 (Hamzah, 2017). This code was an adaptation of the Dutch *Wetboek van Strafrecht* of 1886, modified to suit colonial interests, including the explicit differentiation of legal treatment among Europeans, Foreign Orientals, and Indigenous populations reflecting a hierarchical and discriminatory colonial social structure (Yudho & Tjandrasari, 2017).

Although formally applicable, the WvS did not fully govern indigenous populations, who in many respects remained subject to customary law (*adatrecht*) or specific colonial regulations such as the *Regeringsreglement* and various *ordonnanties*. However, in practice, the WvS functioned as a principal instrument of political repression, particularly against nationalist movements. Provisions concerning treason and incitement were frequently employed to criminalize resistance and suppress anti-colonial activism (Arief, 2018). This dualism in legal application underscores the instrumental nature of colonial law as a tool of domination rather than justice.

Following the Proclamation of Independence in 1945, the newly established Republic of Indonesia faced a fundamental legal dilemma: maintaining legal continuity while rejecting colonial legal structures. Through Article II of the Transitional Provisions of the 1945 Constitution, it was stipulated that all existing laws would remain in force unless replaced by new legislation. Consequently, the WvS continued to apply, albeit reinterpreted as part of national law and gradually modified through partial amendments. This transitional approach reflects a pragmatic compromise between legal stability and ideological transformation.

Efforts to establish a national Criminal Code began in earnest in 1958 with the formation of the Criminal Law Codification Committee under the Ministry of Justice. This initiative produced the Draft Criminal Code of 1968, which incorporated the values of

Pancasila, human rights, and social justice (Nurcahyo et al., 2024). However, due to political instability and shifting priorities during the New Order regime, the draft was never enacted. The stagnation of criminal law reform during this period illustrates the extent to which legal development is contingent upon political will and institutional conditions.

The reform era marked a renewed commitment to criminal law codification. A new draft Criminal Code was submitted to the legislature in 2015 and underwent multiple revisions through public consultations, academic discourse, and inter-ministerial deliberations. However, the process was fraught with controversy, particularly regarding provisions perceived as threatening civil liberties, academic freedom, and privacy (Buan, 2024). Public protests in 2019 led to the postponement of its enactment, highlighting the critical role of societal participation in shaping legal legitimacy.

A significant turning point occurred following Constitutional Court Decision No. 95/PUU-XVIII/2020, which held that although the draft Criminal Code did not substantively contradict the Constitution, its legislative process was procedurally flawed due to insufficient public participation. The Court mandated broader dissemination and further deliberation before implementation, thereby reinforcing the principle that democratic legitimacy is as crucial as normative validity in lawmaking.

In response, the government and the legislature refined the draft and ultimately enacted it on December 6, 2022, as Law Number 1 of 2023. The law was officially promulgated on January 2, 2023, with a three-year transitional period before its full enforcement on January 2, 2026 (Rahmadiano, 2024). This transition period is intended to facilitate institutional preparation, regulatory harmonization, and public socialization, although it also introduces temporary legal uncertainty.

Overall, the historical trajectory of the Indonesian Criminal Code reflects a complex interplay between colonial inheritance, nationalist aspirations, and contemporary democratic demands. The 2023 Criminal Code thus emerges not merely as a legal document, but as a culmination of a long-standing struggle to construct a sovereign, just, and contextually relevant criminal law system.

The Considerations of Enactment: Philosophical and Juridical Foundations

The preambular considerations of Law Number 1 of 2023 explicitly acknowledge that the previous Criminal Code constituted a colonial legacy incompatible with the values of Pancasila and the 1945 Constitution (Dibi Vation Manik et al., 2025; Kurniawan et al., 2024). This acknowledgment reflects a broader movement of legal decolonization, which seeks to dismantle the epistemological dominance of Western legal paradigms in postcolonial societies. In the Indonesian context, this effort represents an assertion of legal sovereignty and a reorientation of law as emancipation rather than control.

However, the democratic legitimacy of the legislative process remains contested. Despite formal compliance with procedural requirements, critics argue that meaningful public participation was limited, particularly during the final stages of deliberation. This concern is especially significant given the Constitutional Court's emphasis on deliberative lawmaking in Decision No. 95/PUU-XVIII/2020. The tension between substantive reform and procedural inclusivity reveals the persistent challenges of democratic governance in legislative processes.

Philosophically, the 2023 Criminal Code is grounded in three principal pillars: the expansion of the legality principle to accommodate living law, the affirmation of humanistic values through the rejection of inhumane punishment, and the responsiveness to evolving social conditions (Mahfud Md, 2009). These foundations indicate an effort to reconcile universal legal principles with local socio-cultural realities, although the extent of their practical realization remains subject to debate..

Objectives of Enactment: Between Idealism and Enforcement Realities

Normatively, the 2023 Criminal Code pursues four primary objectives: the establishment of a national criminal law system based on Pancasila, the protection of human rights, the realization of legal certainty and justice, and the adaptation to contemporary developments (Dibi Vation Manik et al., 2025; Rahmadianto, 2024). These objectives align with the concept of responsive law, which emphasizes the role of legal systems in addressing societal needs rather than merely enforcing state authority.

One of the most significant paradigm shifts is the movement from retributive justice toward restorative justice. The introduction of alternative sanctions, such as community service and vocational training, reflects an emphasis on rehabilitation and social reintegration (Erasmus A.T. Napitupulu dkk, 2022; Kurniawan et al., 2025). This approach is consistent

with contemporary criminological theories suggesting that non-custodial measures are more effective in reducing recidivism and promoting social harmony.

Nevertheless, several provisions raise concerns regarding the protection of fundamental rights. The criminalization of adultery and cohabitation, even as complaint-based offenses, introduces the potential for intrusion into private life and discriminatory enforcement (Fernando et al., 2024). Additionally, the retention of capital punishment, albeit as an *ultimum remedium*, highlights an unresolved tension between human rights commitments and punitive traditions. Similarly, provisions concerning defamation of state officials have been criticized for potentially restricting freedom of expression.

Characteristics of the Legal Product: Innovation, Controversy, and Implementation Challenges

The 2023 Criminal Code exhibits distinctive characteristics that reflect the dynamics of contemporary legal politics in Indonesia. These characteristics can be categorized into three interrelated dimensions: normative innovation, substantive controversy, and structural challenges in implementation.

First, in terms of normative innovation, the Code introduces progressive elements that signal a shift toward a more humanistic and contextual criminal law system. The recognition of customary law under Article 2(2) represents a significant step in accommodating legal pluralism and acknowledging the role of living law within society (Kurniawan, 2026; Rahardjo, 2009). Furthermore, the incorporation of restorative justice mechanisms and alternative sanctions reinforces the principle of *ultimum remedium*, positioning criminal punishment as a last resort rather than a primary response.

Second, the Code addresses contemporary forms of criminality, including cybercrime, environmental offenses, and crimes committed in disaster contexts. These provisions demonstrate an awareness of the evolving nature of criminal behavior in the digital and ecological age. By expanding the scope of criminal law to encompass these areas, the Code seeks to remain relevant and adaptive to modern challenges.

However, these innovations are accompanied by significant controversies. Provisions regulating morality, public order, and defamation of state institutions raise concerns about potential overreach and the erosion of civil liberties. The use of vague legal terms increases the risk of subjective interpretation and selective enforcement, particularly in politically

sensitive contexts (Marwan Effendy, 2014). This tension between moral regulation and individual rights reflects an ongoing struggle to balance collective values with democratic freedoms.

Finally, the successful implementation of the 2023 Criminal Code depends on the readiness of legal institutions and supporting infrastructure. Law enforcement agencies must undergo substantial capacity-building to adapt to new paradigms, particularly in the application of restorative justice. Moreover, the absence of comprehensive implementing regulations may hinder the operationalization of key provisions (Atmasasmita, 2002). The three-year transitional period provides an opportunity for preparation, but it also demands coordinated efforts among government institutions, academia, and civil society.

In sum, the 2023 Criminal Code embodies a complex legal transformation characterized by progressive aspirations, normative tensions, and practical challenges. Its ultimate effectiveness will depend not only on its doctrinal coherence but also on the collective commitment to ensuring its fair, consistent, and democratic implementation.

Conclusion

The enactment of Law Number 1 of 2023 on the Indonesian Criminal Code marks a significant milestone in the long trajectory of criminal law reform in Indonesia, reflecting a conscious effort to break away from colonial legal legacies and to construct a national legal system rooted in Pancasila and constitutional values. This transformation demonstrates that the development of criminal law is not merely a technical legislative process, but a manifestation of legal politics shaped by historical experiences, ideological commitments, and socio-political dynamics. The new Criminal Code thus represents both a symbol of legal sovereignty and an instrument for redefining the relationship between the state, law, and society.

Substantively, the 2023 Criminal Code introduces a range of progressive innovations that signal a shift toward a more humanistic, pluralistic, and responsive legal framework. The recognition of customary law, the incorporation of restorative justice principles, and the regulation of contemporary crimes such as cyber offenses and environmental violations reflect an effort to align criminal law with evolving societal realities. These developments indicate a paradigm shift from a rigid retributive model toward a more balanced approach that emphasizes rehabilitation, social harmony, and contextual justice.

However, the Code also embodies inherent tensions and contradictions. Several provisions, particularly those related to morality offenses, defamation of state officials, and the retention of capital punishment, reveal an ongoing struggle to reconcile collective moral values with the protection of individual rights and democratic freedoms. These controversies highlight the complexity of legal reform in a pluralistic society, where competing normative frameworks coexist and often collide. As such, the 2023 Criminal Code cannot be viewed as a fully resolved legal product, but rather as a dynamic and contested framework that will continue to evolve through interpretation and practice.

Ultimately, the success of the 2023 Criminal Code will depend not on its normative aspirations alone, but on the quality of its implementation. Institutional readiness, the availability of clear implementing regulations, the capacity of law enforcement agencies, and meaningful public participation will be decisive factors in determining whether the Code can achieve its intended goals. Without consistent, transparent, and rights-oriented enforcement, there is a substantial risk that the Code will remain a symbolic achievement rather than a transformative instrument of justice. Therefore, sustained commitment from all stakeholders is essential to ensure that the vision of a just and civilized national criminal justice system becomes a practical reality.

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