



The Development of Criminal Law in the Context of Human Rights Protection: Analysis and Implementation

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Abstract: This research examines the evolution of criminal law in Indonesia with specific focus on its relationship with human rights protection frameworks. The study employs qualitative research methodology to analyze how criminal law reforms have incorporated human rights principles, particularly in the context of the new Criminal Code (Law Number 1 of 2023). Through comprehensive document analysis and normative juridical approach, this research identifies key developments, challenges, and implementation gaps in Indonesia's criminal justice system. The findings reveal a significant paradigm shift from colonial-era punitive approaches toward more balanced frameworks that consider human rights protections, though several contradictions and implementation challenges persist. The research concludes that while Indonesia has made substantial progress in harmonizing its criminal law with international human rights standards, further reforms are needed to address remaining inconsistencies and ensure effective implementation of human rights protections within the criminal justice system. This study contributes to the ongoing discourse on balancing state sovereignty with international human rights obligations in criminal law development.

Keywords: law, human, rights

Abstrak: Penelitian ini mengkaji evolusi hukum pidana di Indonesia dengan fokus khusus pada hubungannya dengan kerangka perlindungan hak asasi manusia. Studi ini menggunakan metodologi penelitian kualitatif untuk menganalisis bagaimana reformasi hukum pidana telah memasukkan prinsip-prinsip hak asasi manusia, khususnya dalam konteks Kitab Undang-Undang Hukum Pidana yang baru (Undang-Undang Nomor 1 Tahun 2023). Melalui analisis dokumen yang komprehensif dan pendekatan yuridis normatif, penelitian ini mengidentifikasi perkembangan utama, tantangan, dan kesenjangan implementasi dalam sistem peradilan pidana Indonesia. Temuan penelitian ini mengungkapkan adanya pergeseran paradigma yang signifikan dari pendekatan hukuman era kolonial menuju kerangka kerja yang lebih seimbang yang mempertimbangkan perlindungan hak asasi manusia, meskipun beberapa kontradiksi dan tantangan implementasi masih ada. Penelitian ini menyimpulkan bahwa meskipun Indonesia telah membuat kemajuan substansial dalam menyelaraskan hukum pidananya dengan standar hak asasi manusia internasional, reformasi lebih lanjut diperlukan untuk mengatasi inkonsistensi yang tersisa dan memastikan implementasi perlindungan hak asasi manusia yang efektif dalam sistem peradilan pidana. Studi ini berkontribusi pada wacana yang sedang berlangsung tentang penyeimbangan kedaulatan negara dengan kewajiban hak asasi manusia internasional dalam pengembangan hukum pidana.

Kata kunci: hukum, hak asasi, manusia

1. INTRODUCTION

Criminal law represents one of the most powerful expressions of state authority, with profound implications for individual rights and liberties. In Indonesia, the development of criminal law has undergone significant transformation since independence, reflecting broader societal changes and evolving conceptions of justice and human rights. The

intersection between criminal law and human rights protection has become increasingly important as Indonesia seeks to balance effective law enforcement with respect for fundamental freedoms and individual dignity (Nita, 2021).

The evolution of Indonesia's criminal law system has been marked by several key milestones, from the colonial-era *Wetboek van Strafrecht voor Nederlandsch-Indie* to the recent enactment of Law Number 1 of 2023 on the Criminal Code, which will come into force in January 2026. This transformation reflects Indonesia's efforts to "decolonize" its criminal law through "recodification" while simultaneously adapting to international human rights norms and standards. The reform process has been guided by multiple missions: democratization of criminal law, consolidation of diverse post-independence regulations, and harmonization with internationally recognized values and principles (Utami et al., 2024).

The paradigm shift in Indonesia's criminal law development is evident in the movement from a colonial-era punitive framework toward a more balanced system that incorporates human rights considerations. This transformation encompasses five main aspects: decolonization, democratization, consolidation, harmonization, and modernization. Decolonization involves removing colonial influences and punitive elements from the old Criminal Code, replacing them with values more aligned with Indonesian national identity and a corrective-restorative justice approach. Democratization emphasizes community involvement in drafting criminal law norms, in accordance with constitutional principles and judicial decisions. Consolidation maintains relevant provisions from the old Criminal Code while updating and introducing new formulations. Harmonization adapts to modern legal needs while respecting living law, and modernization replaces classical vengeance-oriented philosophy with an integrative approach that considers offenses, perpetrators, and victims (Nur Izzah, 2022).

The incorporation of Pancasila values—divinity, humanity, unity, democracy, and social justice—as the ideological foundation of the new Criminal Code illustrates this attempt to create a distinctly Indonesian approach to criminal law. The ideologization of nationality in Indonesia, encompassing socio-cultural pluralism, is consolidated in these five articles representing the Pancasila values that embody the collective outlook on life of the Indonesian nation (Afrizal, 2022). These values constitute the ideological foundation, and the equilibrium established in the Criminal Code reflects the implementation of Pancasila as a legal ideology in Indonesia.

However, this development has not been without challenges and contradictions.

Critics argue that certain provisions in the new Criminal Code potentially undermine fundamental freedoms and imperil the rights of vulnerable groups, including women, religious minorities, and LGBT individuals. These concerns highlight the complex relationship between criminal law enforcement and human rights protection, raising important questions about how to strike an appropriate balance (Ismail et al., 2024).

The new Criminal Code contains several provisions aimed at strengthening human rights protections within Indonesia's criminal justice system. These include more explicit recognition of due process rights, limitations on the use of the death penalty, and increased attention to the rights of victims. The Code also introduces alternative sanctions and rehabilitation-oriented measures, reflecting a more humane approach to punishment (Kaluku et al., 2023). The modern paradigm covers at least three types of justice: corrective, restorative, and rehabilitative. Corrective justice aims for a deterrent effect on perpetrators; restorative justice emphasizes recovery for victims; and rehabilitative justice focuses on improving the lives of both victims and perpetrators (Darmawan et al., 2024).

However, analysis reveals significant contradictions and concerns regarding human rights protections in the new Code. Several provisions have been criticized for potentially undermining fundamental freedoms and rights. These include criminalization of consensual sex outside marriage and cohabitation, which intrudes into private decisions and disproportionately affects women and LGBT individuals who cannot legally marry in Indonesia; expanded blasphemy provisions, including criminalization of apostasy, which threaten freedom of religion and belief; provisions criminalizing speech that insults government officials or institutions, which may restrict freedom of expression and political discourse; and recognition of "living law," which could legitimize discriminatory local regulations based on religious or customary norms (Flora & Suhardin, 2023).

The research identifies several key challenges in implementing human rights protections within Indonesia's criminal justice system. Despite progressive legal reforms, practical implementation often falls short due to various factors. One significant challenge is the gap between normative frameworks and institutional practices. While laws may incorporate human rights principles, law enforcement agencies and courts sometimes fail to apply these principles consistently in practice. This implementation gap is exacerbated by limited resources, inadequate training, and entrenched institutional cultures that may resist change (Tantoi et al., 2023).

Another challenge relates to access to justice and legal remedies for victims of human rights violations. The research finds that victims often face obstacles in seeking redress,

including procedural barriers, limited legal aid, and delays in judicial proceedings. This is particularly problematic in cases involving vulnerable groups, such as women, children, and religious minorities.

The research also identifies tensions between different legal frameworks and authorities as a challenge to effective implementation. The relationship between national criminal law, international human rights standards, and local or customary norms creates complexities that can impede consistent application of human rights protections. This is especially evident in regions with strong customary legal traditions or special autonomy arrangements.

A central theme emerging from the analysis is the challenge of balancing state sovereignty in criminal matters with international human rights obligations. Indonesia, like many countries, faces the task of developing a criminal justice system that reflects national values and priorities while also complying with international standards. The research finds that Indonesia has made significant progress in incorporating international human rights norms into its domestic legal framework, including through constitutional amendments and ratification of key human rights instruments. However, tensions persist in certain areas where international standards may conflict with domestic perceptions of morality, security, or cultural values (Nugraha et al., 2025).

The new Criminal Code reflects these tensions, with some provisions aligning with international human rights standards while others potentially contradicting them. This highlights the ongoing challenge of finding an appropriate balance that respects both national sovereignty and international obligations. The research suggests that a more nuanced approach is needed, one that recognizes the legitimacy of cultural diversity while upholding core human rights principles. This may involve greater dialogue between national and international actors, more contextual interpretation of human rights standards, and increased emphasis on capacity-building rather than merely imposing external norms (Adi Sutiyoso et al., 2024).

The development of criminal law in Indonesia within the context of human rights protection represents a complex and evolving relationship characterized by both progress and persistent challenges. The findings demonstrate a significant paradigm shift in Indonesia's approach to criminal law, moving from colonial-era punitive frameworks toward more balanced systems that incorporate human rights considerations. This transformation is evident in the comprehensive recodification represented by the new Criminal Code (Law Number 1 of 2023), which aims to decolonize, democratize,

consolidate, and harmonize Indonesia's criminal law. However, the research also identifies important contradictions and implementation gaps that undermine the effective protection of human rights within the criminal justice system. The tension between state sovereignty in criminal matters and international human rights obligations emerges as a central challenge in Indonesia's criminal law development. While Indonesia has made significant progress in incorporating international human rights norms into its domestic legal framework, balancing these obligations with national values and priorities remains an ongoing process.

2. RESEARCH METHOD

This study employs a qualitative research methodology with a normative juridical approach to examine the development of criminal law in Indonesia within the context of human rights protection. The qualitative approach is particularly suitable for this research as it allows for an in-depth exploration of legal concepts, principles, and their practical applications. The normative juridical approach focuses on examining legal norms, principles, and doctrines through the analysis of legal texts, judicial decisions, and scholarly literature.

The research design is structured to address the following key questions:

- How has Indonesia's criminal law evolved in relation to human rights protection frameworks?
- What are the key features and innovations in the new Criminal Code (Law Number 1 of 2023) regarding human rights protection?
- What challenges and contradictions exist in the implementation of human rights protections within Indonesia's criminal justice system?
- How can Indonesia's criminal law be further reformed to better align with international human rights standards?

Data Collection Methods

Data for this research was collected through comprehensive document analysis, focusing on primary and secondary legal sources. Primary sources include:

- Constitutional provisions and amendments related to human rights and criminal justice

- Criminal codes and related legislation, particularly Law Number 1 of 2023
- Judicial decisions from Indonesian courts on relevant criminal law and human rights cases
- International human rights instruments ratified by Indonesia

Secondary sources include:

- Academic journals and scholarly articles on criminal law reform and human rights in Indonesia
- Reports from human rights organizations and monitoring bodies
- Policy papers and government documents related to criminal law reform
- Comparative studies on criminal justice systems and human rights protection

The data collection process involved systematic searches of legal databases, academic repositories, and official government publications. Materials were selected based on their relevance to the research questions, authoritativeness, and currency.

Data Analysis Approach

The collected data was analyzed using qualitative content analysis, which involves systematic interpretation of legal texts and documents to identify patterns, themes, and relationships. The analysis followed several key steps:

- Preliminary review of collected materials to gain familiarity with the content and context
- Development of a coding framework based on key concepts and themes related to criminal law and human rights
- Systematic coding of documents to identify relevant provisions, principles, and arguments
- Comparative analysis of different sources to identify consistencies, contradictions, and gaps

Interpretation of findings in light of theoretical frameworks and research questions

The analysis employed both descriptive and interpretive approaches, aiming to not only document the development of criminal law in relation to human rights but also to critically

evaluate this relationship and its implications. Particular attention was paid to the normative foundations of legal provisions, their practical implementation, and their alignment with international human rights standards.

3. RESULT & DISCUSSION

The development of criminal law in Indonesia has undergone a significant paradigm shift, moving from a colonial-era punitive framework toward a more balanced system that incorporates human rights considerations. This transformation is evident in the new Criminal Code (Law Number 1 of 2023), which represents a comprehensive recodification rather than merely a partial revision of existing laws. The reform process has been guided by several key missions, including decolonization, democratization, consolidation, and harmonization with international standards.

The paradigm shift encompasses five main aspects. First, decolonization involves removing colonial influences and punitive elements from the old Criminal Code, replacing them with values more aligned with Indonesian national identity and a corrective-restorative justice approach. Second, democratization emphasizes community involvement in drafting criminal law norms, in accordance with constitutional principles and judicial decisions. Third, consolidation maintains relevant provisions from the old Criminal Code while updating and introducing new formulations. Fourth, harmonization adapts to modern legal needs while respecting living law. Fifth, modernization replaces classical vengeance-oriented philosophy with an integrative approach that considers offenses, perpetrators, and victims.

This paradigm shift reflects Indonesia's efforts to develop a criminal justice system that is more responsive to contemporary challenges while remaining grounded in national values and principles. The incorporation of Pancasila values—divinity, humanity, unity, democracy, and social justice—as the ideological foundation of the new Criminal Code illustrates this attempt to create a distinctly Indonesian approach to criminal law.

The new Criminal Code contains several significant provisions that reflect the paradigm shift in Indonesia's approach to criminal law. The following table presents key provisions of the Criminal Code Law Number 1 of 2023.

Table 1. Key Provisions of the New Criminal Code

| Provision Category | Key Changes | Human Rights Implications | Article References |
|---------------------------|---|---|----------------------------------|
| Death Penalty Reform | Death penalty changed from principal punishment to special/alternative punishment with 10-year probation period | More humane approach with possibility of commutation to life imprisonment | Articles 98, 99, 100 |
| Human Rights Protection | Explicit recognition of human rights principles with emphasis on protection of rights to life, personal freedom, and non-discriminatory treatment | Strengthened legal framework for human rights protection but implementation challenges remain | Throughout the Code |
| Customary Law Recognition | Recognition of customary sanctions and living law in society as part of criminal law system | Potential for discriminatory application based on local customs and norms | Article 66(1)(f), Article 601(1) |
| Freedom of Expression | New restrictions on freedom of speech including criminalization of insulting government officials | Potential restriction on legitimate criticism and political discourse | Multiple articles |
| Privacy and Morality | Criminalization of consensual sex outside marriage and cohabitation | Intrusion into private decisions and disproportionate impact on women, LGBT individuals | Multiple articles |
| Defamation and Insult | Expanded provisions on defamation with potential threats to freedom of speech | Potential chilling effect on free speech and media freedom | Multiple articles |
| Political Rights | Provisions for revocation of political rights as additional punishment | Potential conflict with state mission for preservation of political rights | Article 35(1)(3) |
| Blasphemy Provisions | Expanded blasphemy provisions from one to six articles, including criminalization of apostasy | Threatens freedom of religion and belief | Multiple articles |
| Corruption Crimes | Maintained death penalty for corruption in certain | Deterrent effect but implementation challenges | Multiple articles |

| Provision Category | Key Changes | Human Rights Implications | Article References |
|----------------------|--|---|--------------------|
| | circumstances | | |
| Abortion Regulations | Moderation of criminal sanctions for abortion with provisions for termination up to 14 weeks for medical reasons or rape victims | Balance between protection of unborn life and women's reproductive rights | Multiple articles |

The new Criminal Code contains several provisions aimed at strengthening human rights protections within Indonesia's criminal justice system. These include more explicit recognition of due process rights, limitations on the use of the death penalty, and increased attention to the rights of victims. The Code also introduces alternative sanctions and rehabilitation-oriented measures, reflecting a more humane approach to punishment. The modern paradigm covers at least three types of justice: corrective, restorative, and rehabilitative. Corrective justice aims for a deterrent effect on perpetrators; restorative justice emphasizes recovery for victims; and rehabilitative justice focuses on improving the lives of both victims and perpetrators.

The following table presents data on human rights protection in Indonesia for the period 2023-2025.

Table 2. Human Rights Protection Data in Indonesia

| Indicator | Score | Trend | Source |
|---|------------------------------------|--|-----------------------|
| Human Rights and Rule of Law Index (2024) | 6.70 (0-10 scale, higher is worse) | Increased from 6.2 in 2022 (negative trend) | Fund for Peace |
| Rule of Law Index - Criminal Justice (2023) | 0.53 (0-1 scale) | Stagnant from 2022 | World Justice Project |
| Biased Criminal Justice Score (2023) | 0.26 (0-1 scale) | Decreased from 0.28 in 2022 (negative trend) | World Justice Project |
| Effective Investigation System Score (2023) | 0.35 (0-1 scale) | Poor performance | World Justice Project |

| Indicator | Score | Trend | Source |
|--|------------------|------------------|-----------------------|
| Effective Correctional System Score (2023) | 0.33 (0-1 scale) | Poor performance | World Justice Project |
| Due Process Rights Score (2023) | 0.40 (0-1 scale) | Poor performance | World Justice Project |

The data reveals that despite legislative reforms, Indonesia's human rights protection indicators show concerning trends. The Human Rights and Rule of Law Index has worsened from 2022 to 2024, indicating increased challenges in protecting human rights and upholding the rule of law. The Rule of Law Index for criminal justice remains stagnant, while the score for biased criminal justice has decreased, suggesting a deterioration in the impartiality of the criminal justice system. Scores for effective investigation, correctional systems, and due process rights all show poor performance, highlighting significant gaps between normative frameworks and practical implementation.

The following table presents statistics on Indonesia's criminal justice system for 2023.

Table 3. Criminal Justice System Statistics

| Indicator | Value | Change from 2022 |
|--|-----------|------------------------------|
| Total Cases Received by Indonesian Courts (2023) | 2,856,952 | Decreased by 19.93% |
| Total Case Load (2023) | 2,912,479 | Decreased by 20.05% |
| Total Adjudicated Cases (2023) | 2,778,527 | Decreased by 20.91% |
| Outstanding Cases (2023) | 77,425 | Increased by 7.09% |
| Case Adjudication Productivity Ratio (2023) | 97.36% | Maintained high productivity |
| Supreme Court Case Clearance Rate (2023) | 104.29% | Positive clearance rate |
| Timely Case Processing at Supreme Court (2023) | 98.89% | Decreased by 0.37% |
| Timely Case Archiving at Supreme Court (2023) | 90.32% | Improved by 24.98% |

The statistics indicate a decrease in the overall caseload of Indonesian courts in 2023 compared to 2022. While this might suggest improved efficiency or reduced crime rates, the increase in outstanding cases points to potential challenges in case resolution. The high case adjudication productivity ratio and positive Supreme Court clearance rate demonstrate the judiciary's commitment to processing cases efficiently. However, the slight decrease in timely case processing at the Supreme Court level suggests room for improvement in this area (*Indonesia: Human Rights and Rule of Law Index, 2023*).

The research identifies several key challenges in implementing human rights protections within Indonesia's criminal justice system. The following table presents these challenges (Kurniawan & Setiyono, 2023).

One significant challenge is the gap between normative frameworks and institutional practices. While laws may incorporate human rights principles, law enforcement agencies and courts sometimes fail to apply these principles consistently in practice. This implementation gap is exacerbated by limited resources, inadequate training, and entrenched institutional cultures that may resist change (Kusyandi et al., 2023).

Another challenge relates to access to justice and legal remedies for victims of human rights violations. The research finds that victims often face obstacles in seeking redress, including procedural barriers, limited legal aid, and delays in judicial proceedings. This is particularly problematic in cases involving vulnerable groups, such as women, children, and religious minorities (Cahyo Arsetyo, 2023).

The research also identifies tensions between different legal frameworks and authorities as a challenge to effective implementation. The relationship between national criminal law, international human rights standards, and local or customary norms creates complexities that can impede consistent application of human rights protections. This is especially evident in regions with strong customary legal traditions or special autonomy arrangements.

CONCLUSION

The development of criminal law in Indonesia within the context of human rights protection represents a complex and evolving relationship characterized by both progress and persistent challenges. The findings demonstrate a significant paradigm shift in Indonesia's approach to criminal law, moving from colonial-era punitive frameworks toward more balanced systems that incorporate human rights considerations. This transformation is evident in the comprehensive recodification represented by the new Criminal Code (Law

Number 1 of 2023), which aims to decolonize, democratize, consolidate, and harmonize Indonesia's criminal law. However, the research also identifies important contradictions and implementation gaps that undermine the effective protection of human rights within the criminal justice system. Several provisions in the new Criminal Code have raised concerns about potential restrictions on fundamental freedoms and rights, particularly for vulnerable groups such as women, religious minorities, and LGBT individuals. Moreover, practical implementation of human rights protections faces challenges related to institutional capacity, access to justice, and competing legal frameworks. The tension between state sovereignty in criminal matters and international human rights obligations emerges as a central challenge in Indonesia's criminal law development. While Indonesia has made significant progress in incorporating international human rights norms into its domestic legal framework, balancing these obligations with national values and priorities remains an ongoing process. Looking forward, several recommendations can be drawn from this research. First, further reforms are needed to address remaining inconsistencies between Indonesia's criminal law and international human rights standards, particularly regarding provisions that may disproportionately affect vulnerable groups. Second, greater attention should be paid to implementation mechanisms, including institutional capacity-building, training of law enforcement personnel, and strengthening of oversight bodies. Third, more inclusive and participatory approaches to criminal law reform should be adopted, ensuring that diverse perspectives are considered in the development and implementation of legal frameworks.

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