

Criminal Law Reform Policy in Indonesia: Balancing Justice, Morality, and Human Rights

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Abstract: Criminal law reform in Indonesia is not only a legislative process, but also a reflection of complex battles over values and political interests. This study aims to analyze the role of political law in shaping the balance between justice, morality, and human rights in the 2023 revision of the Criminal Code (KUHP). Using a qualitative approach through document analysis, case studies, and interviews with legal experts and human rights activists, this study finds that politics plays a dominant role in determining the direction of criminal law reform. The tug-of-war between conservative and progressive groups creates legal compromises that often blur the line between social morality and the protection of human rights. The results of the study show that criminal law in Indonesia still functions as an instrument of political legitimacy, not merely as a means of substantive justice. Therefore, a participatory and transparent approach is needed so that criminal law reform can uphold social justice without sacrificing the basic rights of citizens.

Keywords: Criminal Law Reform; Human Rights; Justice; Legal Policy; Morality

INTRODUCTION

Criminal law reform in Indonesia is not merely a technical change to legislation, but also a reflection of the battle between ideology, morality, and political power. Criminal law plays an important role as a social instrument in upholding justice, maintaining order, and protecting the moral values of society. In this context, reform is often influenced by ideological dynamics between conservatism, which emphasizes the protection of traditional norms such as religious and family morality, and progressivism, which promotes broader respect for human rights. For example, old articles of the Criminal Code that regulate moral crimes such as adultery are often defended by conservative groups, while efforts to revise the Criminal Code in 2019-2023 attempt to remove colonial elements that are considered incompatible with modern principles, involving debates between activists, academics, and political parties.

Furthermore, morality and political power are intertwined in the formation of criminal law, where dominant moral norms are often defined by political elites to control social behavior. The Electronic Information and Transactions Law (ITE Law), for example, has been used to restrict political criticism, demonstrating how the morality of "national order" takes precedence over freedom of expression. This power struggle is evident in the stagnation of the revision of the Criminal Code, where rivalry between pro-reform and conservative parliamentary factions has hindered progress, turning criminal law into an arena for elites to



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maintain or change their dominance. However, in practice, the law is often influenced by political dynamics that make it a means of maintaining power rather than enforcing substantive justice. The 2023 revision of the Criminal Code (KUHP) is a clear example of how political power, social morality, and human rights principles clash in determining the direction of legal reform in Indonesia¹.

Since the Dutch colonial period, Indonesian criminal law has been based on the *Wetboek van Strafrecht* (KUHP 1918), which was oriented towards protecting colonial interests. Efforts to reform criminal law began to develop after independence and gained momentum since the 1998 Reformation era, when the public demanded laws that were more just, democratic, and respectful of human rights². However, to date, legal policy in Indonesia remains under the influence of a political configuration that is often compromising between the executive, legislative, and civil society forces³.

According to Mahfud MD, Indonesian legal policy is the result of the prevailing political configuration. No legal product is ever neutral; rather, it is the result of interactions between power and the dominant social interests at a particular time⁴. In other words, law is a political product that embodies values, ideologies, and the interests of the powers that be. Satjipto Rahardjo reinforces this view through the concept of responsive legal politics, which holds that law should ideally be a means of serving the community, not an instrument of power.⁵

From the perspective of justice, John Rawls' theory of justice as fairness asserts that justice must guarantee equal freedom for all citizens and provide protection for the most vulnerable groups⁶. This principle of justice is important in assessing the new articles of the Criminal Code that have the potential to restrict individual freedoms in the name of morality. Morality in the context of Indonesian criminal law itself has strong roots in local religious and cultural values. However, morality that is applied absolutely without regard for the plurality of society can be a source of discrimination⁷.

This view is in line with Donnelly's idea that human rights are universal, but their application must be contextualized according to local culture and value systems⁸. In the Indonesian context, the dilemma in criminal law reform arises from the tension between the state's obligation to comply with international conventions and efforts to preserve a national identity rooted in the values of Pancasila, particularly the first to fifth principles, which emphasize belief in God, humanity, unity, democracy, and social justice. These values demand sensitivity to morality, social ethics, and the collective interests of society, which sometimes have the potential to conflict with more individualistic international standards, such as human rights from a liberal perspective. Therefore, criminal law reform is not only a matter of regulatory adjustments, but also requires a multidimensional approach that is able to harmonize global aspirations with the local context, so

¹ Rancangan KUHP 2023, Kementerian Hukum dan HAM Republik Indonesia.

² Komnas HAM, *Laporan Tahunan 2023: Kondisi HAM di Indonesia* (Jakarta: Komnas HAM, 2023), 14.

³ Human Rights Watch, *World Report 2023: Indonesia Section* (New York: HRW, 2023), 211.

⁴ Mahfud MD, *Politik Hukum di Indonesia* (Jakarta: Rajawali Pers, 2010), 23.

⁵ Satjipto Rahardjo, *Ilmu Hukum yang Progresif* (Jakarta: Kompas, 2012), 56.

⁶ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 42.

⁷ Barda Nawawi Arief, *Hukum Pidana Indonesia* (Jakarta: Rajawali Pers, 2018), 34.

⁸ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003), 7.

that criminal law remains relevant, fair, and reflects the character of the nation. This process requires the involvement of various parties, including legislators, academics, legal practitioners, and civil society, so that every legal policy produced is not only formal but also substantive in ensuring social justice.

Through this theoretical framework, this study aims to analyze the role of legal politics in determining the direction of criminal law reform in Indonesia. Legal politics, as a strategic instrument of the state, functions as a mediator between domestic demands and international obligations, as well as a means of simultaneously upholding the values of justice, morality, and human rights. Thus, criminal law reform can be seen as an effort to harmonize positive legal interests with universally recognized moral and ethical norms, while remaining contextual to Indonesian society. This study is expected to provide an overview of how national legal policies can be formulated in a democratic, humanistic, and inclusive manner, so that they not only meet international standards but also strengthen the legitimacy of the law in the eyes of the public as a trustworthy instrument of justice.

METHOD

This study uses a qualitative approach with a normative-empirical analysis method to examine the relationship between legal politics, morality, and human rights in criminal law reform in Indonesia. The normative approach was conducted by analyzing various relevant laws and regulations, such as the 2023 Criminal Code (KUHP), the 1945 Constitution, and international human rights instruments that have been ratified by Indonesia. Meanwhile, the empirical approach was used to understand the social and political dynamics that influence the formation and implementation of national criminal law. Research data was obtained from document studies, DPR meeting minutes, Komnas HAM reports, scientific journal articles, and interviews with five sources consisting of academics, legal practitioners, and civil society activists.

Data analysis was conducted using content analysis techniques to interpret the meaning and value trends in criminal law policy. To maintain data validity, source triangulation techniques were used, namely by comparing findings from legal documents, interviews, and official agency reports. This approach allowed researchers to comprehensively see how legal politics play a role in balancing morality and human rights principles in criminal law reform. Thus, this method provides a strong analytical basis for understanding the reality of Indonesian law substantively, not just textually.

DISCUSSION

1. The Politics of Power and the Direction of Criminal Law Reform

The results of the study show that power politics has a very significant influence in determining the direction of criminal law reform in Indonesia. The formulation of the 2023 Criminal Code shows that legal policy is not entirely based on legal considerations or pure principles of justice, but is also influenced by dominant political interests. The government and the House of Representatives (DPR) play a major role in the legislative process, which is often closed and lacks transparency, thereby severely limiting the space for public participation and for academics and legal practitioners to provide critical input⁹. As a result, the process of establishing legal norms often does not fully reflect the aspirations for justice, morality, and human rights demanded by the wider community. This shows that criminal law in Indonesia does not stand

⁹ Shodiq, M. (2025). *Hukum Pidana Perbandingan*. Takaza Innovatix Labs.

independently from political dynamics, but rather becomes an arena where political power and influence help shape the norms, interpretations, and practices of the law¹⁰.

Substantive decisions on controversial articles often reflect compromises between various political interests. The government's strategic considerations, pressure from political parties, and the aspirations of certain interest groups are often dominant factors in the formulation of articles in the Criminal Code. For example, articles regulating insults against the President, cohabitation, and adultery show a tug-of-war between those oriented towards conservative morality and groups fighting for civil rights and individual freedoms. This compromise process often prioritizes political stability over the comprehensive protection of citizens' rights, so that criminal law has the potential to be used as an instrument of moral legitimacy rather than a means of enforcing substantive justice.

In addition, the lack of transparency in the legislative process and limited public participation pose the risk that the legal norms established do not fully represent the interests of the community. The community, academics, and legal practitioners have limited space to provide criticism or input, so that public aspirations are often not channeled¹¹. This condition reinforces the political dominance of power in criminal law reform, while emphasizing the importance of participatory and democratic mechanisms in the legislative process so that criminal law can have social legitimacy, be widely accepted, and be more responsive to the needs of society. In other words, ideal criminal law reform must balance political interests, moral norms, and the human rights of citizens, so that the law becomes a fair and democratic instrument, not merely a political or moral tool.¹²

2. The Balance Between Justice, Morality, and Human Rights

Criminal law reform should ideally aim to achieve a balance between justice, morality, and human rights. However, research shows that this balance has not yet been fully achieved. Substantive justice, which is equal treatment for all citizens before the law, is still often neglected¹³. Several articles in the 2023 Criminal Code have the potential to cause discrimination, both directly through interpretations that limit the rights of vulnerable groups and minorities, and indirectly through the application of disproportionate sanctions. This situation reflects that the principle of justice, which should be the foundation of criminal law, still faces obstacles in practice, especially when confronted with political dynamics and certain pressure from vested interests.¹⁴

From a moral standpoint, the 2023 Criminal Code contains strong religious values and social norms, reflecting the character of Indonesian society, which upholds social ethics and morality. Although this is relevant to the cultural context, the application of these values in positive law poses the risk of narrowing the private space of citizens. Articles related to blasphemy, cohabitation, or adultery, for example, reveal a tension between collective morality and individual rights, which, if applied rigidly, could limit citizens' freedom to live their personal lives. Conversely, human rights principles that demand freedom of

¹⁰ Adinda, D., Salam, A., Ramadhan, A., Narendra, A., Anasti, M., & Yanto, J. (2024). Politik Hukum Dalam Pembaharuan Hukum Pidana di Indonesia. *Wathan: Jurnal Ilmu Sosial Dan Humaniora*, 1(1), 12-25.

¹¹ Setiawan, I. (2024). *Pengawasan pemerintahan dalam ulasan teori dan praktik*. CV. Rtujuh Media Printing.

¹² Tarigan, R. S. (2024). *Reformasi hukum tata negara: Menuju keadilan dan keseimbangan*. Ruang Berkarya.

¹³ Firdaus, A., & Koswara, I. Y. (2024). Pembaharuan hukum pidana di Indonesia: Analisis tentang pidana pengawasan dan asas keseimbangan. *Lex Renaissance*, 9(1), 1-22.

¹⁴ Abdullah, F., Safira, R., & Faradiz, N. A. (2025). Tinjauan Hukum tentang Tindak Pidana terhadap Agama dan Kepercayaan Menurut KUHP 2023 dengan Pendekatan Keadilan Korektif. *Journal of Contemporary Law Studies*, 2(3), 195-208.

expression, the right to privacy, and non-discrimination are still not fully accommodated. This inconsistency creates legal uncertainty and differences in treatment in judicial practice, thereby reducing public confidence in the national legal system.¹⁵

In addition, human rights as a framework for protecting individuals in legal proceedings still face implementation challenges, both in terms of institutions and oversight mechanisms. Independent supervisory institutions, although they exist, do not yet have sufficient power to ensure consistent legal compliance with human rights principles. This shows that criminal law reform in Indonesia still requires significant improvement so that the principles of justice, morality, and human rights are not just ideal concepts on paper, but can also be implemented in practice and felt by all levels of society.¹⁶

By recontextualizing the relationship between morality and human rights, these two aspects can reinforce each other: morality serves as ethical guidelines and social norms that provide direction for values in law, while human rights become a framework for protecting individual rights, ensuring that the law is not used to oppress citizens. The harmonious integration of morality and human rights in the Criminal Code can create democratic, fair, and humanistic criminal laws that not only uphold moral values but also protect the fundamental rights of citizens, including those who have been most vulnerable to legal discrimination.

Table 1. The Relationship between Politics, Morality, and Human Rights in Indonesian Criminal Law Reform

Key Aspects	Description of Findings	Implications for Legal Reform
Justice	Many articles do not yet reflect substantive justice; there is still bias against minority groups.	Revisions are needed based on the rule of law and the principle of non-discrimination.
Morality	Religious morality is used as the basis for several articles on decency.	Strengthens social values, but has the potential to limit citizens' privacy.
Human Rights	Human rights are ignored in certain articles that restrict freedom of expression and opinion.	There is a need for harmonization with international conventions and the 1945 Constitution.
Political Power	Compromise between the executive and legislative branches dominates the legislative process	Legal reform tends to be a tool for political legitimacy.

Source: Author's analysis based on the 2023 Criminal Code Bill, DPR meeting minutes, Komnas HAM report (2023), and Human Rights Watch (2023).

3. The Politics of Power and Selective Law Enforcement

Power politics not only affects how criminal regulations are formally formulated, but also greatly determines how the law is practiced in the field, especially in criminal law enforcement. In the Indonesian context, enforcement practices often exhibit selective patterns: social or politically disadvantaged groups, activists, or minority groups are the primary targets of criminal law enforcement, while economic elites,

¹⁵ Iwan Rasiwan, H., & SH, M. (2025). *Asas Keseimbangan KUHP Baru Cermin Nilai Pancasila dalam Penegakan Hukum*. Takaza Innovatix Labs.

¹⁶ Kurnia, Y. R. (2024). Perlindungan hak asasi manusia dan tantangan demokrasi dalam sistem hukum berdasarkan Pancasila di Indonesia. *Innovative: Journal Of Social Science Research*, 4(4), 3612-3623.

public officials, or those with political connections tend to receive more lenient treatment¹⁷. This pattern clearly demonstrates the failure of the principle of equality before the law, namely that all citizens must be subject to and protected by the law with equal status. The substantive injustice that arises from this selectivity not only harms individuals or groups, but also erodes public trust in the national legal system and weakens the legitimacy of law enforcement agencies.¹⁸

This selectivity can be seen through the mechanisms of investigation, prosecution, and trial, where political intervention, economic pressure, or patronage networks can influence the direction and outcome of legal proceedings¹⁹. As a concrete illustration, the implementation of the ITE Law shows how criminal regulations on information technology have the potential to be used as a tool for political control: for example, articles in the ITE Law such as Article 27 paragraph (3) related to defamation through electronic media are often used to prosecute individuals who criticize government officials or policies. On the other hand, the same mechanism is rarely seen to be applied consistently to public officials or elites who may have committed more serious acts but receive different legal treatment.²⁰

Similarly, the 2023 Criminal Code contains a number of articles that have sparked controversy because they are considered to allow for overly broad interpretation and potential abuse by those in power. For example, Articles 218 and 219, which regulate insults against the President and/or Vice President, have been reintroduced, despite having been previously overturned by a Constitutional Court ruling for being contrary to freedom of expression. In addition, Article 2 paragraph (2), which recognizes the validity of “living law,” has also been criticized for providing loopholes for informal or customary laws that could marginalize vulnerable communities and potentially contribute to discrimination.²¹

According to social justice theory, for example that of John Rawls, which emphasizes that the legal system must protect the most vulnerable, rather than becoming an instrument of oppression, this selective enforcement clearly contradicts the principle of substantive justice. Therefore, comprehensive reform must not stop at the formulation of laws alone, but must also address aspects of implementation: transparent enforcement mechanisms, effective independent oversight, and procedures that guarantee equal treatment for all citizens, without discrimination based on social, political, or economic status. Only then can criminal law return to its basic function as an instrument for protecting rights and upholding justice, rather than as a tool of political power.²²

4. Implications of Reform for Democracy and the Rule of Law

Criminal law reform in Indonesia has crucial implications for the quality of democracy and the application of the principle of rule of law. Criminal law is not merely a technical regulation governing public behavior,

¹⁷ MUFTY, A. (2023). *Kebijakan Penegakan Hukum Terhadap Tindak Pidana Ringan Dalam Perspektif Ius Constituendum* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

¹⁸ Perdana, A. A. I. (2023). *Analisis Hak Imunitas Anggota Dpr Dalam Sistem Ketatanegaraan Indonesia Berdasarkan Prinsip Equality Before The Law* (Master's thesis, Universitas Islam Sultan Agung (Indonesia)).

¹⁹ Fanica, O., Fujianah, H., Syafirda, B., & Ananda, D. E. (2025). DINAMIKA SISTEM PERADILAN PIDANA DALAM MENGHADAPI PERUBAHAN STRATEGI PELAKU KEJAHATAN POLITIK. *Jurnal Inovasi Hukum dan Kebijakan*, 6(2).

²⁰ Antonio, A., & Adhari, A. (2024). Menilai Implementasi Undang Undang ITE dalam Menegakkan Kepastian Hukum Terhadap Kasus Pencemaran Nama Baik. *Ranah Research: Journal of Multidisciplinary Research and Development*, 6(4), 1079-1087.

²¹ Siagian, A. (2025). *HUKUM PERS: Menjamin Kebebasan Pers Berbasis Keadilan*. CV. Gita Lentera.

²² Nusantara, R. H. G., & Harahap, N. T. H. (2025). FILSAFAT HUKUM DAN KEADILAN SOSIAL: ANALISIS TEORITIS TENTANG PERAN HUKUM DALAM MEWUJUDKAN KESEJAHTERAAN MASYARAKA. *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora*, 3(01).

but reflects the extent to which the state functions fairly, accountably, and with respect for human rights. If the law is used as a tool for social or political control to silence criticism, restrict freedom of expression, or protect the interests of the elite, it will undermine public trust in legal institutions and weaken the foundations of democracy. Conversely, if criminal law reform is carried out in a participatory, inclusive, transparent manner that is committed to substantive justice, it will strengthen the legitimacy of the legal system and, at the same time, strengthen democracy²³.

For example, the 2023 Criminal Code contains articles that raise concerns: articles on insulting the President/Vice President (Articles 218 and 219), which are considered a regression in freedom of expression; articles on customary law (Article 2), which tend to give space to social or customary norms that can limit the rights of certain subjects. Meanwhile, the Electronic Information and Transactions Law (ITE Law) has also shown how regulations can be misused to criminalize criticism through the article on electronic “defamation” (Article 27 paragraph (3)) or other vague articles.

The impact of this situation is very real. When the law is not perceived as fair or is seen as an instrument of power, public participation in the democratic process will decline as citizens feel that their voices are not recognized and that the legal system does not protect them equally. Conversely, reforms that prioritize public participation in the drafting of regulations, transparency in the legislative process, strengthening the integrity of law enforcement officials, and oversight by independent institutions such as the National Human Rights Commission (Komnas HAM) and the Constitutional Court can create a credible legal system that upholds the principle that all citizens, including public officials and economic elites, are subject to the same law. Criminal law in this context is not only a punitive tool, but also a pillar of social justice, human rights protection, and the enforcement of a healthy democracy.²⁴

Through reforms that are truly implemented with accountability and participation, the national legal system will increase its legitimacy and effectiveness, strengthen public trust, and reinforce democracy and the rule of law in Indonesia. Conversely, if reforms are merely symbolic or legislative without changes in implementation and enforcement mechanisms, then the risks of democratic regression, weakening of the rule of law, and increasing substantive injustice will continue to loom.²⁵

CONCLUSIONS

Criminal law reform in Indonesia shows that the process of drafting the 2023 Criminal Code was heavily influenced by political dynamics, competing interests, and the dominance of social morality embraced by the majority group. As a result, a number of legal provisions still reflect political compromise and do not fully comply with the principles of substantive justice and the protection of human rights. Some articles are even considered to have the potential to restrict civil liberties and privacy, as well as reinforce the use of law as a tool of control by those in power. In addition, law enforcement practices still show selectivity that undermines the principle of equality before the law, leaving vulnerable communities and non-dominant groups often in a less protected position. This situation has serious implications for the quality of democracy and public trust in the legal system. Therefore, criminal law reform needs to be carried out in a participatory

²³ Cahyono, S. T., Erni, W., & Hidayat, T. (2025). Rikonstruksi Hukum Pidana Terhadap Kejahatan Siber (Cyber Crime) Dalam Sistem Peradilan Pidana Indonesia: Rekonstruksi Hukum Pidana terhadap Kejahatan Siber (Cyber Crime) dalam Sistem Peradilan Pidana Indonesia. *Dame Journal of Law*, 1(1), 1-23.

²⁴ Ramadhan, A. F. (2025). Hukum dan Demokrasi: Sinergi Negara Hukum dan Partisipasi Warga Negara. *Islamic Law: Jurnal Siyasah*, 10(2), 192-202.

²⁵ Nurfadilla, Y., & Sahyana, Y. (2024). Peran Aturan Hukum dalam Menciptakan Tata Pemerintahan yang Membangun Partisipasi Demokratis yang Berkelanjutan. *Jurnal Pemerintahan dan Politik*, 9(4), 259-264.

and transparent manner, with a focus on human rights and social justice, so that the law truly functions as an instrument for protecting citizens and strengthening democracy.

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