

## The Contest of Moral Values and Human Rights in the Formulation of Criminal Offenses in the National Criminal Code

Amir Minabari<sup>1✉</sup>

Universitas Dumoga Kotamobagu, Indonesia

e-mail: \* [mierzmb@gmail.com](mailto:mierzmb@gmail.com)<sup>1</sup>

Entered : November 13, 2025

Accepted : January 04, 2025

Revised : December 23, 2025

Published : January 27, 2026

### ABSTRACT

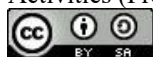
The establishment of the National Criminal Code through Law Number 1 of 2023 reflects the state's efforts to harmonize the criminal law system with the moral values that live in Indonesian society. The process of codifying criminal norms cannot be separated from the moral plurality that comes from religion, customs, and culture, which are often used as a reference for criminalization. However, differences in the acceptance of moral values pose a challenge to legitimacy when criminal norms are generally binding. Law Number 1 of 2023 shows the tendency to use morality as a basis for criminalization, which has the potential to expand delicacies, create legal uncertainty, and risk discrimination against minority groups. The protection of human rights is the main parameter, especially related to the right to privacy, the principle of non-discrimination, and the limits of state intervention. The harmonization between public morality, the protection of individual rights, and the principle of the rule of law still faces normative and structural tensions. Overcriminalization can weaken the selective power of criminal law and burden the justice system. Critical and normative evaluation is needed to ensure that criminal law functions as an instrument of justice and protection of rights, not just a tool of moral affirmation. Normative juridical research shows the need for a balance between moral values, social interests, and human rights in order for the National Criminal Code to have strong juridical, sociological, and philosophical legitimacy.

**Keywords :** Criminal Law, Morality, Law.

### INTRODUCTION

The establishment of the National Criminal Code through Law Number 1 of 2023 represents the state's efforts to reconstruct the criminal law system to be in harmony with the values that live and develop in Indonesian society. The codification process cannot be separated from the plurality of moral values inherent in the nation's social structure. Moral values derived from local religions, customs, and culture are often used as normative references in determining what acts are considered appropriate to be criminalized.<sup>1</sup> The choice of criminal policy shows a close relationship between social

<sup>1</sup> Chitkara, R. (2023). The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws. *Nat'l L. Sch. India Rev.*, 35, 139.



morality and the formation of criminal law norms. However, this diversity of moral values does not always achieve uniform agreement at all levels of society. Differences in acceptance of certain moral values raise legitimacy issues when these values are institutionalized into a generally binding criminal norm.<sup>2</sup> This condition places the formulation of delinquency in the National Criminal Code as an inevitable arena for value contestation.

The existence of moral values as the basis for criminalization requires the prudence of lawmakers so that the criminal law does not turn into a certain instrument of moral coercion. Criminal law as a last resort should be used selectively to protect the fundamental interests of the law. When morality is used as the main measure of criminalization, there is a risk of an expansion of the offense that goes beyond the principle of proportionality. These risks are even more real when the criminalized acts are related to the private domain of individuals.<sup>3</sup> Law Number 1 of 2023 shows a tendency to strengthen the role of moral values in the formulation of several criminal provisions. This situation has raised a debate about the limits of state authority in regulating the behavior of citizens through criminal sanctions. Therefore, the justification of morality-based criminalization requires a strict rational and constitutional test.

In line with the development of modern criminal law, the protection of human rights has become a key parameter in the formation of criminal norms. The principles of respect for human dignity, personal freedom, and protection from excessive state intervention are recognized as normative standards that must be guaranteed. Indonesia as a country of law has a constitutional obligation to ensure that any formulation of criminal offenses does not negate the fundamental rights of citizens. This commitment is reflected in various legislative policies that place human rights as an integral part of the national legal system. Law Number 1 of 2023 emphasizes the importance of the principle of legality and legal certainty as a guarantee of protection of individual rights. However, the integration of human rights principles into national criminal law does not always work in harmony. Tensions arise when the protection of individual rights is confronted with the demands of public morality enforcement.

The battle between moral values and human rights is evident in the formulation of the delicacies that govern personal and private behavior. Public morality is often used as the basis for legitimacy to maintain social order and the collective value of society. On the other hand, human rights demand strict restrictions on state interference with individual freedoms. These tensions reflect a normative conflict between collective interests and individual rights. Law Number 1 of 2023 is in a strategic position in managing these conflicts through the choice of delicately formulated formulations adopted. Each formulation of a criminal act reflects the value preferences prioritized by the state. Therefore, the balance between public morality and the protection of individual rights is a fundamental issue in assessing the legitimacy of the National Criminal Code. Without this balance, criminal law has the potential to lose its basis of justice and rationality.<sup>4</sup>

---

<sup>2</sup> Rosmini, S. (2025). Urgensi Reformulasi Kitab Undang-Undang Hukum Pidana (Kuhp) Dalam Konteks Nilai-Nilai Pancasila. *LEGALITAS: Jurnal Ilmiah Ilmu Hukum*, 10(1), 25-32.

<sup>3</sup> Suntoro, A. (2020). Penerapan Asas dan Norma Hak Asasi Manusia dalam Undang-Undang Pemberantasan Tindak Pidana Terorisme (The Application of Human Rights Principles and Norm in the Law on Combating Criminal Acts of Terrorism). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 11(1), 63-81.

<sup>4</sup> Pratama, A. P. (2025). Analisis Politik Hukum Terhadap Penegakan Hukum Restoratif Dalam Kitab Undang-Undang Hukum Pidana Baru. *JURNAL ILMIAH ADVOKASI*, 13(3), 892-903.

The contestation of these values is even more complex when faced with the plural and democratic character of Indonesian society. The national criminal law system is required to be able to accommodate diversity without sacrificing the principle of equality before the law. Criminalization that is too oriented to certain moral values has the potential to give birth to discrimination against groups of people who have different views. The principle of non-discrimination as part of human rights is an important benchmark in assessing the fairness of a criminal norm. Law Number 1 of 2023 must be understood as a legal political product that does not solely reflect the values of the majority. The protection of minority rights is an important element in maintaining the legitimacy of the national criminal law. Neglect of this aspect can trigger social resistance to the application of criminal norms. Therefore, the formulation of criminal offenses requires an inclusive approach based on legal rationality.<sup>5</sup>

In addition to the substantive dimension, the technique of formulating criminal norms also plays an important role in reducing value contestation. Vague or overly broad formulations open up the space for interpretation that has the potential to violate human rights. The principle of clarity of norms requires that every criminal provision be formulated in a firm and measurable manner. Law Number 1 of 2023 seeks to improve this problem through systematic reform and redaction of criminal norms. However, editorial clarity does not always guarantee substantive justice if the values adopted are problematic. Therefore, the quality of the formulation of the delicacy needs to be tested not only technically juridilly, but also philosophically and sociologically. Fair criminal law is one that is able to provide certainty without necessitating legitimate freedoms. At this point, the principle of human rights serves as a corrective instrument against the dominance of a certain morality.

The establishment of the National Criminal Code also cannot be separated from the demand for harmonization with the international legal system. Indonesia has ratified various human rights instruments that give rise to legal obligations to adapt to national laws and regulations. The consequence of the ratification is the need to ensure the conformity of national criminal law with international standards. Law Number 1 of 2023 should reflect the alignment between national values and global commitments. The inconsistency between national criminal norms and international standards has the potential to raise criticism of the legitimacy of national law. This condition shows that value contestation is not only internal, but also external. The national criminal law is required to be adaptive without losing its national character and identity. These challenges put lawmakers in a complex position in determining the direction of national criminal policy.

All of these dynamics confirm that the formulation of criminal acts in Law Number 1 of 2023 is a multidimensional value battle arena.<sup>6</sup> Morality, human rights, social interests, and the principle of the rule of law interact with each other in every formulation of criminal offenses. There is no criminal policy option that is completely free from normative and political implications. Therefore, the evaluation of the National Criminal Code needs to be carried out critically and continuously. This critical approach aims to ensure that criminal law functions as an instrument of justice and protection of

---

<sup>5</sup> Nadianti, E., & Kusumo, B. A. (2025). Politik Hukum Pidana dalam Pembaharuan Hukum Pidana Nasional: Analisis terhadap KUHP Baru Indonesia. *Indonesian Journal of Law and Justice*, 2(4), 10-10.

<sup>6</sup> Siswanti, S., Dahlan, S., & Dharma, M. P. P. (2025). Analisis Peran Kepala Desa Dalam Pemberantasan Perjudian Sabung Ayam Di Desa Nijang. *Jurnal Hukum Perjuangan*, 3(2), 349-363.

rights, not just a tool of moral control. The success of the National Criminal Code is largely determined by its ability to maintain a balance between moral values that live in society and respect for human rights. If this balance is realized, the national criminal law will have strong legitimacy juridically, sociologically, and philosophically.

## METODOLOGI

This research uses the normative juridical law research method, which is research that focuses on the study of written legal norms as rules that govern human behavior in society. This approach was chosen because the main object of the research lies in the formulation of criminal acts in Law Number 1 of 2023 concerning the Criminal Code, which is substantially a product of positive legal norms. Normative juridical research allows for an in-depth analysis of the structure of norms, principles of criminal law, and human rights principles inherent in the formulation of criminal offenses. Through this approach, law is understood as an autonomous normative system, but it remains open to philosophical and systematic judgment. The focus of the research is directed at how moral values and human rights are constructed and linked in the criminal norms formulated in the National Criminal Code. Thus, this study does not examine people's behavior empirically, but examines the rationality and legitimacy of applicable legal norms. The normative juridical approach is considered appropriate to test the consistency, coherence, and conformity of criminal norms with the principles of the state of law.

Normative research aims to examine and understand how the law should apply (*das sollen*), not how the law is practiced in empirical reality (*das sein*), so that the entire analysis process relies on primary and secondary legal materials that are textual and conceptual.<sup>7</sup>

As explained by Peter Mahmud Marzuki, normative legal research is a method that focuses on the study of legal materials as the main object of study, by interpreting and constructing applicable laws to answer certain legal issues.<sup>8</sup> According to Marzuki, this approach is prescriptive because it aims not only to describe the law, but also to provide normative arguments for the validity of a legal action or act in the legal system adopted.<sup>9</sup> Meanwhile, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes research on legal principles, legal systematics, legal synchronization, legal history, and comparative law.<sup>10</sup>

The approaches used in this study include a legislative approach, a conceptual approach, and a philosophical approach. The legislative approach is carried out by systematically examining the provisions in Law Number 1 of 2023, especially norms that contain a morality dimension and have the potential to intersect with the protection of human rights. The conceptual approach is used to examine the concept of criminalization, legal morality, human rights, and the limits of state authority in criminal law. The philosophical approach is directed to assess the basis of the values and objectives of the formation of national criminal law, including considerations of justice, usefulness, and legal certainty. These three approaches are used in an integrated manner so that the

---

<sup>7</sup> Novea Elysa Wardhani, Sepriano, and Reni Sinta Yani, *Metodologi Penelitian Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia., 2025).

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

<sup>9</sup> Mahlil Adriaman et al., *Pengantar Metode Penelitian Ilmu Hukum* (Padang: Yayasan Tri Edukasi Ilmiah, 2024).

<sup>10</sup> Rangga Suganda, "Metode Pendekatan Yuridis Dalam Memahami Sistem Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (2022): 2859, <https://doi.org/10.29040/jiei.v8i3.6485>.

analysis does not stop at the textual level alone. In this way, the formulation of offenses in the National Criminal Code can be evaluated critically and systematically. This approach also allows the identification of normative tensions between collective moral values and the protection of individual rights. The results of the analysis are expected to be able to provide a comprehensive picture of the character of criminal policies in the National Criminal Code.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include Law Number 1 of 2023 concerning the Criminal Code, the 1945 Constitution of the Republic of Indonesia, and laws and regulations related to human rights. Secondary legal materials are in the form of scientific literature, legal journals, criminal law textbooks, and the opinions of experts who discuss morality, criminalization, and human rights. Tertiary legal materials are used as support in the form of legal dictionaries and legal encyclopedias. The technique of collecting legal materials is carried out through systematic and directed literature studies. All legal materials are analyzed using normative qualitative analysis techniques with deductive and interpretive reasoning. The analysis aims to assess the conformity of the formulation of criminal offenses in Law Number 1 of 2023 with human rights principles and applicable criminal law principles.

## **PEMBAHASAN**

### **1. Construction of Moral Values in the Formulation of Criminal Acts in Law Number 1 of 2023**

The formulation of criminal acts in Law Number 1 of 2023 shows that the national criminal law is built on normative assumptions regarding moral values that are considered legitimate to be institutionalized. This assumption shows that lawmakers view morality as a source of legitimacy for criminalization that is equivalent to the interests of conventional law. This choice indicates that criminal law is not positioned as a neutral system, but rather as an instrument that internalizes certain values. Problems arise when the moral values raised do not have an adequate rational consensus in a plural society. Criminalization that relies on morality has the potential to ignore the principle of rationality of modern criminal law. The rationality of criminal law demands a clear causal relationship between the act and the concrete harm to the interests of the law.<sup>11</sup> When the relationship is blurred, criminal legitimacy becomes problematic. Therefore, the construction of moral values in the National Criminal Code must be tested beyond mere claims of social propriety.

The transformation of moral values into criminal norms is a political-juridical process that is full of ideological selection. Not all moral values that live in society obtain the same position in criminal legislation. Institutionalized values tend to represent the views of the dominant group in the political power structure. This situation raises questions about moral representativeness in national criminal law. When criminal law adopts the morality of the majority, there is a risk of marginalizing minority views. This risk is significant because criminal law has the highest coercive power in the legal system. Law Number 1 of 2023 shows this tendency through the regulation of delicacies that are oriented to certain social propriety values. This orientation needs to be criticized because

---

<sup>11</sup> Faisal, Yanto, A., Rahayu, D. P., Haryadi, D., Darmawan, A., & Manik, J. D. N. (2024). Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code. *Cogent Social Sciences*, 10(1), 2301634.

criminal law is supposed to protect legal interests, not just enforce moral preferences. Without clear conceptual boundaries, criminalization turns into the legitimacy of moral power.<sup>12</sup>

The use of morality as a basis for criminalization also raises serious problems with the principle of *ultimum remedium*. Criminal law should be used only when other legal instruments are no longer effective. Morality-based criminalization often ignores this principle because it departs from a symbolic impulse to affirm certain values.<sup>13</sup> Such symbolic encouragement results in an expressive, not protective, criminal law. Expressive criminal law tends to be used to express the moral attitude of the state, not to prevent concrete harm. Law Number 1 of 2023 contains indications of the use of criminal law as a means of value affirmation. This approach poses a risk of inflation of criminal norms. This inflation weakens the selective function of the criminal law. As a result, criminal law loses its rational character and turns into a moralistic instrument.

The principle of legality requires the formulation of a clear, strict, and predictable offense. Moral values have a dynamic, contextual, and often ambiguous character. When these values are translated into criminal norms, the problem of legal uncertainty arises. This uncertainty opens up a wide space of discretion for law enforcement officials. Uncontrolled discretion has the potential to give birth to arbitrary law enforcement. Law Number 1 of 2023 does seek to improve criminal legislation techniques. However, editorial improvement does not always solve the problem of value substance. Technically clear norms remain problematic if the codified values are irrational. Therefore, legal certainty cannot be separated from the rationality of the values that underlie it.

The construction of moral values in the National Criminal Code also has a direct impact on the orientation of punishment. Criminalization based on moral offenses tends to lead to a normative logic of punishment, not the protection of legal interests.<sup>14</sup> This logic has the potential to obscure the purpose of corrective and rehabilitative punishment. When moral violations are used as the basis for punishment, the perpetrator is positioned as a threat to values, not as a legal subject who has rights. Law Number 1 of 2023 recognizes a more humanistic approach to punishment. However, this approach becomes contradictory if the delicacy formulated is moralistic. This contradiction shows the insynchronization between the purpose of the crime and the basis of criminalization. This inconsistency weakens the coherence of the criminal law system. Therefore, the construction of moral values must be evaluated systemically, not partially.

Overall, the construction of moral values in the formulation of criminal acts reflects the tension between social aspirations and the demands of legal rationality. Law Number 1 of 2023 has not fully succeeded in overcoming these tensions. Criminal law is still used as a medium of value affirmation, not just the protection of legal interests. This condition poses a problem of normative and constitutional legitimacy. The legitimacy of criminal law does not rely enough on the social acceptance of the majority. This legitimacy must be tested through the principles of rationality, proportionality, and power limitation. Without such testing, criminal law has the potential to deviate from its basic

---

<sup>12</sup> Dhumillah, D. S. R., & Windiyastuti, F. (2024). Formula of The Adultery Offense In The New National Criminal Code (Law Number 1 of 2023) To Juvenile Perpetrator: Would It Make The Juvenile Criminal Justice System Getting Aggravate?. *Journal of Law, Politic and Humanities*, 4(6), 2264-2270.

<sup>13</sup> Sirot, M., & Soesatyo, B. (2025). New Directions for Criminal Law Politics Post-National Criminal Code Law: Between Restorative and Retributive Justice. *Greenation International Journal of Law and Social Sciences*, 3(3), 932-940.

<sup>14</sup> Saputri, F. A. (2024). Implications of The Implementation of Law Number 1 of 2023 Concerning The Criminal Code (New KUHP) on Restorative Justice Practices in Indonesia. *Jurispro Law Review*, 1(2).

function. Therefore, the construction of moral values in the National Criminal Code requires continuous theoretical and normative correction.

## **2. The Relationship and Tension between the Protection of Human Rights and Public Morality in the National Criminal Code**

Human rights are the main normative limit for the use of criminal law by the state. Restrictions on rights can only be justified if they meet strict legitimacy requirements. Criminal law as a coercive instrument has the greatest potential to violate fundamental rights. When public morality is used as the basis for criminalization, the intensity of restrictions on rights increases significantly.<sup>15</sup> Public morality is often defined in abstract and immeasurable terms. This ambiguity makes it difficult to test rational restrictions on rights. Law Number 1 of 2023 contains norms that have the potential to expand these restrictions. This expansion demands a critical analysis of its conformity with human rights principles.

Public morality is often positioned as a collective interest that must take precedence. This position shifts the orientation of criminal law from the protection of the individual to the protection of values. This shift is problematic because human rights are built on recognition of individual autonomy. The state of law must not sacrifice individual rights for the sake of morality that is not rationally tested. Law Number 1 of 2023 shows this tendency through the regulation of personal behavior. The arrangement blurs the line between the public interest and the private sphere. When the private sphere is made an object of criminalization, the state enters territory that should be protected from intervention. Such interventions have the potential to violate the principle of respect for human dignity. Therefore, the relationship between public morality and individual rights needs to be strictly limited.

The right to privacy is the right that is most vulnerable to morality-based criminalization. The criminalization of personal behavior is often not based on real harm to the other party. Criminal law that does not require concrete victims loses its basis for justification. Law Number 1 of 2023 contains norms that expand the concept of loss to the moral and symbolic realms. This expansion shifts the criminal law paradigm from a harm-based approach to a moral-based approach. This shift is problematic because it opens up a space for criminalization without clear boundaries. Human rights demand that there be an objective limit to the restriction of freedom, without such limits, the criminal law has the potential to become a tool of moral supervision.<sup>16</sup> Therefore, the protection of the right to privacy must be the main parameter in the evaluation of the National Criminal Code.

The principle of non-discrimination also faces serious challenges due to morality-based criminalization. Public morality has never been neutral to social and cultural differences. Criminal norms that depart from certain morals tend to harm groups that are outside the mainstream. Law Number 1 of 2023 must be assessed from its impact on minority groups. This impact is not always explicitly seen in the formulation of norms. Discrimination often arises at the stage of law implementation. Criminal law that opens up a wide range of interpretation increases the risk of selective enforcement. Selective

---

<sup>15</sup> Karisma, P. T., & Anggellina, Y. P. (2023). Konflik antara Hak Asasi Manusia dan Kepentingan Publik dalam Penegakan Hukum Pidana: Studi Kasus Kontemporer. *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 5(2), 2297-2306.

<sup>16</sup> Wicaksono, E. N. (2025). Kohabitasi Dalam Perspektif Hukum Pidana, dan Hak Asasi Manusia: Antara Realitas dan Norma Sosial. *Journal of Law Perspectives Review*, 1(2), 93-106.

enforcement is a serious form of human rights violation. Therefore, the relationship between public morality and non-discrimination must be critically analyzed.

The tension between public morality and human rights is also related to the principle of limitation of power. The state of law demands that power not be used arbitrarily. Morality-based criminal law expands the space of state discretion. Law Number 1 of 2023 does affirm the principle of legality. However, this principle is not enough if the substance of the norm is problematic. The limitation of power demands rational and objective justification. Public morality does not always meet those standards. Therefore, the use of morality as a basis for criminalization must be treated skeptically. This skepticism is part of the mechanism of power control, without normative skepticism, criminal law has the potential to go beyond the limits of legitimacy.<sup>17</sup>

The overall tension shows that the protection of human rights has not been fully integrated consistently in the National Criminal Code. Law Number 1 of 2023 reflects a compromise between moral demands and the principle of rights. Such compromises do not always result in a fair balance. Criminal law is still used as a tool for affirming collective values. Such use has the potential to sacrifice individual rights. Therefore, the human rights approach must be positioned as a firm corrective boundary. Without these limits, criminal law will continue to be in normative tension. These tensions require continuous evaluation through a critical normative juridical approach.

## **1. Implications of Criminal Policy and the Challenge of Harmonization with the Principles of the State of Law and Human Rights**

The criminal policy reflected in Law Number 1 of 2023 shows a shift in the orientation of national criminal law. This shift can be seen from the expansion of the criminalization space for behavior that was previously beyond the reach of criminal law. This policy reflects the state's tendency to use criminal law as an instrument of social regulation. Social regulation through criminal law has serious implications for restrictions on freedom. Every expansion of criminalization enlarges the role of the state in the lives of citizens. Therefore, criminal policy must be tested from the perspective of the state of law. The state of law demands the limitation of power through legal rationality.<sup>18</sup> Without this rationality, criminal policy loses normative legitimacy.

The principle of the state of law requires a proportionate and selective criminal law. Law Number 1 of 2023 recognizes the principle of legality as the foundation of the criminal system. However, formal legality does not always guarantee substantive justice.<sup>19</sup> Formally legitimate criminal policies can still be normatively problematic. The expansion of the offense without a strong justification has the potential to hurt the principle of proportionality. Proportionality demands a balance between the goal of protection and the restriction of rights, when that balance is not achieved, the criminal law becomes repressive, excessive repressiveness is contrary to the principle of the rule of law.<sup>20</sup> Therefore, criminal policies in the National Criminal Code require in-depth

---

<sup>17</sup> Irawan, A., & Iranti, V. K. G. (2025). Kohabitasi dalam KUHP 2023: Analisis Yuridis atas Intervensi Hukum Pidana terhadap Kehidupan Pribadi. *Journal of Islamic and Law Studies*, 9(1), 1-17.

<sup>18</sup> Tekayadi, S., Sumerah, S., & Efendi, S. (2025). Tantangan Penegakan Hukum Siber Di Era Lintas Negara Dan Upaya Harmonisasi Global. *Jurnal Risalah Kenotariatan*, 6(1), 265-276.

<sup>19</sup> Omelchuk, O. M., Hryenko, S. D., Ivanovska, A. M., Misinkevych, A. L., & Antoniuk, V. V. (2021). Protection of human rights in the context of the development of the rule of law principle: The international aspect. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(1), 32-42.

<sup>20</sup> Fernando, V., Sary, W. E., & Lestari, D. P. (2025). DAMPAK INKONSISTENSI PENERAPAN PRINSIP KOMPLEMENTARITAS DAN KETIDAKSIAPAN APARAT NASIONAL



critical evaluation.

Harmonization with human rights principles is a structural challenge for the National Criminal Code. Indonesia is bound by various international obligations in the field of human rights. This obligation requires effective protection of fundamental freedoms. Law Number 1 of 2023 must be read as part of a globally integrated legal system. The inconsistency between national criminal norms and international standards poses a risk of delegitimization. The delegitimization is not only juridical, but also political. Harmonization does not mean eliminating national values. Harmonization demands the alignment of values with universal principles. These challenges require a reflective and critical normative approach.<sup>21</sup>

The implications of criminal policy can also be seen in the potential for systemic overcriminalization. Overcriminalization weakens the function of criminal law as a last resort. Law Number 1 of 2023 significantly expands the scope of crimes. This expansion has the potential to burden the criminal justice system. This burden has an impact on the effectiveness of law enforcement. Criminal law that is too broad loses its selectivity. Loss of selectivity leads to a decline in the quality of law enforcement. In addition, overcriminalization increases the risk of human rights violations. Therefore, criminal policies must be strictly controlled.

Criminal policy also affects the social legitimacy of criminal law. Criminal norms that are not considered fair by society are difficult to enforce effectively. Law Number 1 of 2023 must obtain social acceptance in order to function optimally. Social acceptance depends on perceptions of fairness and rationality. Criminal policies that are too moralistic have the potential to generate resistance. Such resistance can erode the authority of the law. The state of law requires criminal law that is trusted by the public. Without trust, criminal law loses its effectiveness. Therefore, social legitimacy must be the main consideration in criminal policy.

Overall, the implications of criminal policy in the National Criminal Code show the complexity of the relationship between morality, the rule of law, and human rights. Law Number 1 of 2023 has not completely resolved these tensions. Criminal law is still in a tug-of-war between social control and the protection of rights. The challenge of harmonization requires ongoing normative evaluation. The normative juridical approach provides an adequate analytical framework for the purpose. The success of criminal law reform is highly dependent on the consistency of criminal policy. Without such consistency, the goals of the rule of law and the protection of human rights are difficult to achieve.

## CONCLUSION

Based on an analysis of the construction of moral values, the relationship between public morality and human rights, and the implications of criminal policy in Law Number 1 of 2023, it can be concluded that the formulation of criminal acts in the National Criminal Code still presents significant normative tensions. Institutionalized moral values tend to reflect the preferences of the majority and dominant groups, thus potentially ignoring the principle of rationality of criminal law and the principle of ultimum

---

Terhadap Kegagalan Implementasi Tanggung Jawab Pidana Individual Atas Kejahatan Genosida. *Causa: Jurnal Hukum dan Kewarganegaraan*, 12(6), 61-70.

<sup>21</sup> Smokov, S. M., Horoshko, V. V., Korniienko, M. V., & Medvedenko, S. V. (2022). Rule of Law as a Principle of Criminal Procedure (on materials of the European Court of Human Rights). *Pakistan Journal of Criminology*, 14(3).

remedium. This moralistic approach raises the risk of inflation of criminal norms, legal uncertainty, and arbitrary enforcement. The relationship between public morality and individual rights is often in conflict, especially related to the right to privacy and the principle of non-discrimination, so the protection of human rights needs to be used as the main parameter in the evaluation of the Criminal Code. Criminal policies that expand offenses without rational justification can threaten the principles of proportionality, selectivity, and social legitimacy of criminal law. Harmonized with the principles of the rule of law and the international obligation of human rights to demand the alignment of moral values with universal standards, Law Number 1 of 2023 shows the tendency to use criminal law as a tool for value affirmation, not just the protection of legal interests.<sup>22</sup> These tensions pose challenges to the consistency of criminal policy and the effectiveness of law enforcement. Systemic overcriminalization can burden the justice system and weaken the selective power of criminal law. Therefore, continuous theoretical, normative, and critical evaluation is very important. The legitimacy of criminal law must be tested through rationality, proportionality, and clear limitations on power. The overall findings underscore the need for reform of the Criminal Code that integrates moral values, human rights protection, and the principles of the rule of law in a balanced and systemic manner.

## REFERENCES

- Chitkara, R. (2023). The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws. *Nat'l L. Sch. India Rev.*, 35, 139.
- Dhumillah, D. S. R., & Windiyastuti, F. (2024). Formula of The Adultery Offense In The New National Criminal Code (Law Number 1 of 2023) To Juvenile Perpetrator: Would It Make The Juvenile Criminal Justice System Getting Aggravate?. *Journal of Law, Politic and Humanities*, 4(6), 2264-2270.
- Faisal, Yanto, A., Rahayu, D. P., Haryadi, D., Darmawan, A., & Manik, J. D. N. (2024). Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code. *Cogent Social Sciences*, 10(1), 2301634.
- Fernando, V., Sary, W. E., & Lestatika, D. P. (2025). Dampak Inkonsistensi Penerapan Prinsip Komplementaritas Dan Ketidaksiapan Aparat Nasional Terhadap Kegagalan Implementasi Tanggung Jawab Pidana Individual Atas Kejahatan Genosida. *Causa: Jurnal Hukum dan Kewarganegaraan*, 12(6), 61-70.
- Ibrahim, M. A., & Triadi, I. (2024). The dynamics of defense law and state security in the context of globalization: Challenges and prospects in the 21st century. *Judge: Journal of Law and Social Sciences*, 2(1), 110-117.
- Irawan, A., & Iranti, V. K. G. (2025). Kohabitasi dalam KUHP 2023: Analisis Yuridis atas Intervensi Hukum Pidana terhadap Kehidupan Pribadi. *Journal of Islamic and Law Studies*, 9(1), 1-17.
- Karisma, P. T., & Anggellina, Y. P. (2023). Konflik antara Hak Asasi Manusia dan Kepentingan Publik dalam Penegakan Hukum Pidana: Studi Kasus Kontemporer. *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 5(2), 2297-2306.
- Mahlil Adriaman et al., *Pengantar Metode Penelitian Ilmu Hukum* (Padang: Yayasan Tri Edukasi Ilmiah, 2024).

---

<sup>22</sup> Ibrahim, M. A., & Triadi, I. (2024). The dynamics of defense law and state security in the context of globalization: Challenges and prospects in the 21st century. *Judge: Journal of Law and Social Sciences*, 2(1), 110-117.

- Nadianti, E., & Kusumo, B. A. (2025). Politik Hukum Pidana dalam Pembaharuan Hukum Pidana Nasional: Analisis terhadap KUHP Baru Indonesia. *Indonesian Journal of Law and Justice*, 2(4), 10-10.
- Novea Elysa Wardhani, Sepriano, and Reni Sinta Yani, *Metodologi Penelitian Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia., 2025).
- Omelchuk, O. M., Hrynko, S. D., Ivanovska, A. M., Misinkevych, A. L., & Antoniuk, V. V. (2021). Protection of human rights in the context of the development of the rule of law principle: The international aspect. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(1), 32-42.
- Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).
- Pratama, A. P. (2025). Analisis Politik Hukum Terhadap Penegakan Hukum Restoratif Dalam Kitab Undang-Undang Hukum Pidana Baru. *Jurnal Ilmiah Advokasi*, 13(3), 892-903.
- Rangga Suganda, "Metode Pendekatan Yuridis Dalam Memahami Sistem Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (2022): 2859, <https://doi.org/10.29040/jiei.v8i3.6485>.
- Rosmini, S. (2025). Urgensi Reformulasi Kitab Undang-Undang Hukum Pidana (Kuhp) Dalam Konteks Nilai-Nilai Pancasila. *LEGALITAS: Jurnal Ilmiah Ilmu Hukum*, 10(1), 25-32.
- Saputri, F. A. (2024). Implications of The Implementation of Law Number 1 of 2023 Concerning The Criminal Code (New KUHP) on Restorative Justice Practices in Indonesia. *Jurispro Law Review*, 1(2).
- Sirot, M., & Soesatyo, B. (2025). New Directions for Criminal Law Politics Post-National Criminal Code Law: Between Restorative and Retributive Justice. *Greenation International Journal of Law and Social Sciences*, 3(3), 932-940.
- Siswanti, S., Dahlan, S., & Dharma, M. P. P. (2025). Analisis Peran Kepala Desa Dalam Pemberantasan Perjudian Sabung Ayam Di Desa Nijang. *Jurnal Hukum Perjuangan*, 3(2), 349-363.
- Smokov, S. M., Horoshko, V. V., Korniienko, M. V., & Medvedenko, S. V. (2022). Rule of Law as a Principle of Criminal Procedure (on materials of the European Court of Human Rights). *Pakistan Journal of Criminology*, 14(3).
- Suntoro, A. (2020). Penerapan Asas dan Norma Hak Asasi Manusia dalam Undang-Undang Pemberantasan Tindak Pidana Terorisme (The Application of Human Rights Principles and Norm in the Law on Combating Criminal Acts of Terrorism). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 11(1), 63-81.
- Tekayadi, S., Sumerah, S., & Efendi, S. (2025). Tantangan Penegakan Hukum Siber Di Era Lintas Negara Dan Upaya Harmonisasi Global. *Jurnal Risalah Kenotariatan*, 6(1), 265-276.
- Wicaksono, E. N. (2025). Kohabitasi Dalam Perspektif Hukum Pidana, dan Hak Asasi Manusia: Antara Realitas dan Norma Sosial. *Journal of Law Perspectives Review*, 1(2), 93-106.