


# The Dynamics of Criminal Law Reform in Indonesia: a Historical and Prospective Review From the Colonial Penal Code to the 2023 National Criminal Code

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Article Info	ABSTRACT
<p><b>Keywords:</b> Criminal Law Reform, 2023 Criminal Code, Colonial Law, National Law, Legal Implementation, Normative Gap.</p>	<p>Criminal law reform is a fundamental agenda within Indonesia's national legal system, particularly aimed at replacing the colonial legacy of the Wetboek van Strafrecht, which had remained in effect for over a century. This study aims to examine the dynamics of criminal law reform from the colonial era to the enactment of the 2023 National Criminal Code (KUHP), and to analyze the challenges of implementing this codification within the context of substantive law. The research adopts a normative juridical approach, utilizing literature review methods and qualitative analysis of both primary and secondary legal sources. The study employs historical, statutory, conceptual, and comparative approaches. The findings indicate that the 2023 KUHP represents a monumental achievement in the development of national law, as it is founded on the values of Pancasila, the principles of social justice, and respect for human rights. However, the substance of several articles remains repressive and open to multiple interpretations, failing to fully embody the principles of modern, responsive, and democratic criminal law. Furthermore, a significant gap exists between the idealism of codification and its practical application, as evidenced by the unpreparedness of law enforcement institutions, the lack of supporting instruments, and public resistance to controversial provisions such as articles on cohabitation, adultery, and defamation of state institutions. Therefore, criminal law reform in Indonesia must extend beyond normative changes and be accompanied by institutional reform, capacity-building for legal actors, and broader public participation.</p>
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## INTRODUCTION

Criminal law is a branch of public law that is intrinsically linked to the state's authority to maintain order and protect the public interest (Arief, 2018). In Indonesia, the criminal law system has relied for over a century on the Wetboek van Strafrecht voor Nederlandsch-Indië (WvS), a Dutch colonial criminal code enacted in 1918 and retained after independence through the principle of concordantie (Muladi, 2002). Although some limited amendments

have occurred, the old Criminal Code still reflects colonial values that are increasingly incompatible with the principles of a Pancasila-based rule of law and Indonesia's evolving social context (Wignjosoebroto, 2002).

The discourse on Criminal Code reform has persisted since the 1960s but consistently faced political, technical, and ideological obstacles (Koentjoro, 2023). It was only in the past two decades that efforts began to gain momentum, culminating in the ratification of Law Number 1 of 2023 on the Criminal Code, officially enacted on January 2, 2023. This moment is considered historic, as it represents Indonesia's first criminal law codification developed independently and grounded in national values, constitutional principles, and human rights norms (ICJR, 2023).

However, beyond the symbolic success of the 2023 Criminal Code as a declaration of legal sovereignty, there remains a significant gap between the ideals of legal reform and its substantive implementation. According to Nonet and Selznick (1978), law should evolve from a repressive model to a responsive one, aligning with democratic values and social justice. In contrast, many provisions of the new Criminal Code still display inconsistencies and ambiguities that potentially enable authoritarian interpretation and repression (Komnas HAM, 2023).

For instance, several articles remain vague and open to multiple interpretations, such as those regulating living law, insults against the president, and limitations on freedom of expression. These lack precise criteria for enforcement and risk reviving repressive law enforcement mechanisms (YLBHI, 2022). Such ambiguity undermines the principle of *lex certa* and *nullum crimen sine lege*, which are fundamental to legal certainty and the rule of law (Kelsen, 1945).

Moreover, there is a structural gap between the normative goals of codification and the practical readiness of law enforcement agencies. Many actors police, prosecutors, and judges have not received adequate training to comprehend and implement the new provisions. As noted by Erdianto (2023), the absence of standard operating procedures and implementing regulations further increases the likelihood of misinterpretation and legal misapplication. This reflects Friedman's (1975) observation that legal reform must address not only legal substance but also legal structures and culture.

Another major challenge is the public's social reception and perception of legitimacy. Articles addressing cohabitation, adultery, and defamation of state institutions have triggered significant resistance from civil society, human rights activists, and legal scholars (Amnesty International, 2023). Critics argue that the legislative process lacked meaningful participation and public dialogue, creating a law that seems to serve political interests rather than social justice (Susanti, 2022). This disconnect illustrates the gap between state law and what Wignjosoebroto (2002) refers to as the living law of the people.

Ultimately, criminal law reform must not be limited to the rewriting of legal texts but must involve institutional transformation, transparent legislative processes, and inclusive public engagement. Without a holistic approach that encompasses substantive, structural, and cultural dimensions, the 2023 Criminal Code risks becoming a symbolic codification that merely replaces colonial terminology without abandoning its repressive legacy (Rahardjo,

2009).

## METHOD

This research employs a normative legal research method, which focuses on examining legal norms and principles through the study of primary and secondary legal materials. Normative legal research is particularly suitable for analyzing the evolution and reform of Indonesia's Criminal Code from the colonial *Wetboek van Strafrecht* to the 2023 National Criminal Code. The objective is to evaluate both the formal structure and the substantive content of criminal law, as well as its alignment with constitutional values and principles of justice.

The study applies multiple legal approaches, namely historical, statutory, conceptual, and comparative approaches. Each of these perspectives contributes to a holistic understanding of criminal law reform by analyzing its development, its legal foundations, and its current normative challenges. This combination of methods is crucial to uncover the ideological underpinnings, political dynamics, and institutional readiness that shape the success or failure of legal codification in Indonesia.

The historical approach is used to trace the trajectory of criminal law in Indonesia from the colonial period to post-reform developments. This includes examining the imposition of the *Wetboek van Strafrecht voor Nederlandsch-Indië* in 1918, its continued use after independence under the concordant principle, and the long journey toward a national Criminal Code. By exploring these historical layers, the study illustrates how legal legacies continue to influence contemporary reform efforts.

The statutory approach involves a close examination of the relevant legal texts, including the old Criminal Code, Law Number 1 of 2023 on the National Criminal Code, the 1945 Constitution, and related human rights legislation. This approach allows the researcher to identify normative shifts, such as the expansion or reduction of criminal provisions, changes in sentencing structures, and the introduction of new legal categories like living law and corporate liability.

The conceptual approach is applied to assess the theoretical and philosophical foundations of the 2023 Criminal Code. The study draws from various legal doctrines and theories, including the theory of responsive law by Nonet and Selznick, the legal system theory of Lawrence M. Friedman, and the theory of legal reform developed by Soetandyo Wignjosoebroto. These frameworks are used to interpret whether the Criminal Code reflects a progressive, democratic, or authoritarian legal orientation.

A comparative approach is employed to evaluate the normative and structural differences between the colonial and national Criminal Codes, as well as to compare Indonesia's codification process with that of other countries such as the Netherlands, Germany, and several ASEAN nations. This comparative lens helps assess whether Indonesia's reform is consistent with global trends in criminal justice, particularly those emphasizing human rights and restorative justice.

The study utilizes three types of legal materials: (1) primary legal sources, such as the Criminal Code texts and national legislation; (2) secondary sources, including academic books, scholarly journals, and policy papers from institutions like ICJR, Komnas HAM, and

YLBHI; and (3) tertiary materials such as legal dictionaries and encyclopedias. These materials were systematically collected through library research and thematic classification based on key legal issues.

## RESULT AND DISCUSSION

### The Dynamics and Direction of Criminal Law Reform in Indonesia Leading to the 2023 National Criminal Code

#### 1. Historical Evolution from Colonial Law to National Reform

The reform of Indonesia's criminal law cannot be separated from its colonial legacy. The *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvS NI), introduced in 1918 and derived from the 1881 Dutch Penal Code, was applied under the principle of concordance. Following independence, Indonesia continued to enforce this colonial code under Article II of the Transitional Provisions of the 1945 Constitution due to the absence of a national alternative.

For over seventy years, efforts to revise the Criminal Code experienced stagnation, despite the establishment of a drafting committee in 1963. Only after the 1998 reform era did significant demands from civil society and legal scholars emerge, pressing for the abandonment of colonial norms seen as incompatible with Pancasila, democracy, and human rights. A major milestone was reached with the enactment of Law No. 1 of 2023 on January 2, 2023, symbolizing the official end of colonial criminal law and the beginning of a nationally rooted legal system.

#### 2. Philosophical Foundations of the 2023 Criminal Code

Conceptually, the 2023 Criminal Code aspires to reflect Indonesia's national identity while accommodating social change and legal pluralism. It is founded on several key principles:

- a. Pancasila as the ultimate legal foundation,
- b. Democratic rule of law,
- c. Recognition of living law,
- d. Integration of human rights, and
- e. A restorative justice approach.

The structure expanded from 569 to 624 articles, introducing new elements such as corporate liability, alternative sentencing, administrative criminal law, and recognition of customary crimes. These additions aim to align the Criminal Code with modern legal needs. However, some articles on cohabitation, adultery, defamation of state institutions, and freedom of expression have sparked criticism, raising concerns about whether the reform is genuinely democratic or merely a re-codification of old authoritarian norms.

#### 3. Analysis through Legal Reform and Responsive Law Theories

According to Soetandyo Wignjosebroto's theory, ideal legal reform should encompass structural, substantive, and cultural transformation. While the 2023 Criminal Code shows textual reform, it lacks institutional and cultural readiness indicating a largely formalistic shift. From the perspective of responsive law theory (Nonet & Selznick), the Code should represent a legal system that protects civil liberties and adapts to social needs. In

practice, however, the presence of vague and overly broad provisions reflects lingering elements of repressive law, highlighting an ambiguous and incomplete reform process.

#### **4. Final Evaluation of the Reform Dynamics**

Using historical, conceptual, and legislative approaches, it can be concluded that the reform of Indonesia's criminal law from colonial times to the 2023 National Criminal Code (KUHP) has been a long and complex process marked by institutional and ideological compromises. While the codification of the 2023 KUHP is a formal breakthrough, it falls short of resolving deeper systemic issues. The persistent gap between national legal ideals and the normative content of several provisions suggests that the reform has not fully addressed the structural roots of Indonesia's criminal justice challenges.

Indonesia's criminal law reform is not merely a juridical exercise but a socio-political transformation. Historically, the country's criminal justice system originated from the *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvS), enforced since 1918 and adapted from the 1881 Dutch Penal Code. This colonial model, formalistic and repressive in nature, remained in effect for more than seven decades after independence due to the transitional provisions of the 1945 Constitution.

The formal drafting of a national criminal code began in 1963, but political upheaval and shifting regimes delayed progress. The eventual ratification of Law No. 1 of 2023 on December 6, 2022 set to take effect in 2026 was hailed as a milestone in the decolonization of Indonesia's criminal law.

The 2023 KUHP is normatively based on core principles such as Pancasila, human dignity, social justice, and human rights. It introduces alternatives to incarceration, reinforces protections for vulnerable groups, and recognizes living law through provisions that incorporate customary law. However, critics argue that vague definitions and ambiguous limits risk excessive interpretation by law enforcement agencies.

Despite its progressive appearance, several provisions in the new KUHP such as those on adultery, cohabitation, defamation of the president, and restrictions on protests remain morally charged and potentially repressive. These elements, widely criticized by civil society and scholars, reflect lingering colonial paradigms. Thus, while the 2023 Criminal Code signifies a formal shift toward national legal identity, it has yet to fully embody democratic values, human rights, and substantive justice.

### **Challenges in Implementing the 2023 National Criminal Code and the Gap Between Normative Law and Practical Reality**

#### **1. Legal and Sociological Challenges**

The enactment of Law No. 1 of 2023, the National Criminal Code (KUHP), marked a significant legal milestone in Indonesia's history. However, its implementation faces serious obstacles, reflecting a substantial gap between legal idealism (*das sollen*) and practical enforcement (*das sein*). One major issue is the ambiguity of legal provisions such as Article 2 on living law, which allows customary communities to initiate legal proceedings based on *adat* norms. The absence of clear definitional and evidentiary standards raises concerns about legal uncertainty and unequal treatment.

Institutionally, many law enforcement agencies including the police, prosecutors, and

judges remain unprepared to apply the new provisions, particularly those concerning conditional sentencing, corporate liability, and alternative sanctions. The lack of supporting instruments such as standard operating procedures (SOPs) and technical guidelines further hinders effective implementation.

## 2. The Substantive-Legal Gap and Democratic Expectations

A significant value gap exists between the normative content of certain articles and the expectations of a democratic society. Provisions on adultery (Articles 411–413), cohabitation (Article 414), and defamation of state institutions (Articles 240–241) have sparked public outcry, as they are viewed as threats to individual freedoms and privacy. These provisions appear to contradict constitutional guarantees under Articles 28E and 28G of the 1945 Constitution and the Human Rights Law (Law No. 39/1999).

Rather than reflecting a responsive legal paradigm, the legislative process was criticized for its lack of transparency and public participation. As such, many view the reform as top-down and politically driven, rather than a genuine effort to create justice-oriented law.

## 3. Comparative Evaluation

Compared to other countries—such as the Netherlands, Germany, and even several ASEAN nations—Indonesia’s 2023 KUHP appears less progressive. Many democracies have repealed criminal defamation of heads of state, whereas Indonesia reinstated it, albeit with certain conditions. This contrasts with global trends prioritizing civil liberties and international instruments like the International Covenant on Civil and Political Rights (ICCPR). These discrepancies highlight that the challenges are not merely technical but also ideological—raising questions about whether Indonesia’s legal development is moving toward a repressive or democratic legal system.

## 4. Reform Agenda and Strategic Solutions

Bridging the gap between written law and lived reality requires urgent and strategic steps. First, implementing regulations must be developed swiftly and inclusively to provide clear technical guidance. Second, extensive legal education for both the public and law enforcement personnel is essential. Third, an independent monitoring body should be established to oversee the implementation process—comprising academics, civil society representatives, and state institutions.

Most importantly, institutional reform and a paradigm shift in criminal justice are required—from a punitive model toward restorative, corrective, and preventive approaches. Without such a transformation, the new KUHP risks perpetuating colonial-era legal logic under the guise of national codification.

## CONCLUSION

The reform of Indonesia's criminal law from the colonial period to the enactment of the 2023 National Criminal Code reflects a long journey of legal decolonization driven by the aspiration to build a national legal system grounded in Pancasila, social justice, and human rights. Although the 2023 KUHP is normatively Indonesia’s first independently drafted criminal code, its substance still reflects traces of colonial legal paradigms and falls short of embodying a fully democratic, progressive, and responsive criminal justice framework. The

implementation of the KUHP 2023 faces significant challenges, including ambiguously worded provisions, inadequate institutional preparedness, and limited public acceptance of several controversial articles. The gap between legal idealism and practical enforcement suggests that the reform has not yet delivered substantive justice. Without institutional reform, sufficient legal infrastructure, and a paradigm shift in law enforcement, the new KUHP risks becoming a merely formal codification rather than a transformative instrument of criminal law reform.

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