

Implications of the Implementation of the New Indonesian Penal Code in 2026 on Legal Certainty and Human Rights

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Abstract: *The reform of national criminal law through Law Number 1 of 2023 concerning the Criminal Code marks a paradigm shift from a colonial legacy to a codification oriented toward Pancasila values and the protection of human rights. Its full enactment in 2026 raises fundamental questions regarding its implications for legal certainty and the guarantee of citizens' constitutional rights. This study aims to analyze the consistency of the principle of legality, the lex certa principle, and their compliance with human rights standards, including the International Covenant on Civil and Political Rights. The method used is normative legal research with a statutory, conceptual, and analytical-prescriptive approach, through a review of primary and secondary legal materials and grammatical, systematic, and teleological interpretations. The results show that the new Criminal Code normatively strengthens the national codification and integrates more humanistic and restorative criminal goals. However, the expansion of material legality through the recognition of living law in society and the existence of several formulations of crimes with the potential for multiple interpretations poses the risk of legal uncertainty and disproportionate restrictions on rights. Therefore, the success of the Criminal Code reform depends heavily on the consistency of constitutional interpretation, strengthening of due process of law, and the mechanism for testing norms to ensure a balance between legal certainty and the protection of human rights.*

Keywords: *New Penal Code, Human Rights, Legal Certainty.*

INTRODUCTION

Criminal law reform, as part of a national reform agenda, is a concrete manifestation of legal policy oriented toward the simultaneous transformation of legal structure, substance, and culture. Criminal law policy goes beyond simply establishing new norms, but also formulates a criminal policy direction aligned with the state's goals as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia.¹ From the perspective of the theory of the rule of law (rechtstaat), criminal law

holds the function of ultimum remedium which must be applied carefully and proportionally.² The use of criminal law as an instrument of repressive power without a paradigm shift has the potential to create structural injustice. Therefore, criminal law reform must be placed within the framework of reforming a national legal system that is democratic, socially just, and upholds human dignity. Such reform is not merely a legislative project, but a project of legal civilization.

¹ Alzagladi, H., & Azis, A. (2026). Kebijakan Kekuasaan Legislatif Dalam Pembaharuan Hukum Pidana Nasional. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 4(1), 4558-4568.

² Kholik, M. A., & Zulfaidah, R. (2025). Pergeseran Fungsi Hukum Pidana Dalam Sistem

Ketatanegaraan Indonesia: Dari Ultimum Remedium Ke Political Control. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(4), 4078-4091.

Since independence, Indonesia has continued to use the *Wetboek van Strafrecht* (WvS) as the basis for national criminal law. This colonial codification emerged from a 19th-century European legal paradigm oriented toward protecting the interests of the colonial government. From the perspective of progressive legal theory, law that is not rooted in social values will lose its sociological legitimacy.³ The decades-long use of WvS demonstrates a stagnation in the decolonization of criminal law. This situation creates a gap between legal norms and social, cultural, and human rights dynamics. Reform is both a historical and ideological necessity to affirm national legal sovereignty.

The enactment of the Criminal Code (KUHP) was a legislative milestone, marking a paradigm shift from colonial criminal law to national criminal law. Normatively, the creation of the new KUHP represents the implementation of the constitutional mandate to establish a legal system that reflects the values of Pancasila. From a legislative theory perspective, the codification of criminal law must meet the principles of clarity of formulation, systematic consistency, and effective enforcement. The new KUHP integrates the value of balancing individual and societal interests.⁴ The reforms also reflect a legal policy that seeks to adapt criminal law to global developments without losing national identity. Thus, the new Criminal Code is not merely technical, but also ideological and philosophical.

Criminal law reform also touched on the purpose of punishment, which underwent

significant transformation. Absolute theories emphasizing retributive justice began to be criticized and balanced with relative theories emphasizing prevention and rehabilitation.⁵ In the modern context, integrative or combined theory serves as a reference in formulating a proportional sentencing system. The new Criminal Code adopts a more humanistic approach by introducing alternative punishments and supervision sentences. This approach aligns with the principles of just and civilized humanity. The orientation of punishment is no longer solely about punishment, but also about rehabilitation and reintegration of perpetrators into society.

Empirically, the dynamics of criminal law enforcement demonstrate the problems of overcriminalization and disparities in sentencing. The phenomenon of overcrowding in correctional institutions is a concrete indicator of the failure of the old penal system.⁶ Data from the Directorate General of Corrections shows that prison occupancy rates in various regions significantly exceed ideal capacity. This situation reflects the dominance of imprisonment as the primary response to crime. From the perspective of criminal policy theory, the dominance of imprisonment without proportional differentiation has the potential to exacerbate recidivism. The revised Criminal Code seeks to address this issue by diversifying the types of punishment.

The transition to the enactment of the new Criminal Code in 2026 presents structural and cultural challenges. Law enforcement officials are required to understand conceptual changes beyond mere textual ones. Changes to

³ Christiani, V. M., & Wulansari, C. D. (2025). Dinamika Penegakan Hukum Di Indonesia: Analisis Dari Perspektif Sosiologi Hukum. *Jurnal Impresi Indonesia*, 4(12), 5641-5651. <https://doi.org/10.58344/jii.v4i12.7214>

⁴ Nurohim, M., Nurmala, L. D., Wijaya, S. A., & Efendi, S. (2025). Buku Referensi Hukum Pidana Asas, Teori Dan Praktik.

⁵ Hikmah, F., & Agustian, R. A. (2023). Konvergensi konsep retribusi dan rehabilitasi dalam

filsafat hukum pidana kontemporer Indonesia. *CREPIDO*, 5(2), 217-228. <https://doi.org/10.14710/crepido.5.2.217-228>

⁶ Ismawati, S., & Hertini, M. F. (2025). Transformasi Kebijakan Pidana Dalam Kuhp Nasional: Menuju Sistem Pidana Yang Berkeadilan Dan Humanis. *Simbur Cahaya*, 283-306. <https://doi.org/10.28946/sc.v32i2.5050>

the principle of legality that expand the material dimension require careful interpretation to avoid deviations. In legal hermeneutics theory, the interpretation of norms must consider the philosophical context and the goals of the legislators.⁷ Unpreparedness of law enforcement officials has the potential to lead to inconsistent enforcement of norms. Therefore, criminal law reform must be accompanied by reforms in the education and training of law enforcement officials.

Legal certainty as a fundamental principle of the rule of law is guaranteed constitutionally through Article 28D paragraph (1) of the 1945 Constitution. Legal certainty in criminal law has special weight because it concerns the limitation of human rights. In the principle of *nullum crimen sine lege*, the state may not impose criminal penalties without a clear legal basis.⁸ The principles of *lex certa* and *lex stricta* are the minimum standards in formulating criminal offenses.⁹ Unclear norms can open up space for arbitrariness and abuse of power. Therefore, criminal law reform must ensure consistency between the spirit of reform and the guarantee of legal certainty.

Indonesia is also bound by international commitments through the International Covenant on Civil and Political Rights, which affirms the protection of the right to freedom and guarantees a fair legal process.¹⁰ Ratification through Law No. 12 of 2005 strengthens the state's obligation to align its criminal law with international human rights

standards. The principle of due process of law requires that restrictions on rights be carried out legally, proportionally, and based on clear legal principles. Criminal Code reform must be read in the context of harmonizing national and international law. Failure to maintain this balance could lead to global criticism of the Indonesian legal system. Commitment to human rights is a parameter for evaluating the effectiveness of criminal law reform.

The issue of normative ambiguity in several provisions of the new Criminal Code has become a crucial point in academic discourse. Norms that use elastic phrases without objective parameters have the potential to give rise to multiple interpretations. In legal theory, normative ambiguity contradicts the principle of clarity of formulation.¹¹ This ambiguity can erode legal certainty and expand the discretion of law enforcement officials. Uncontrolled discretion has the potential to lead to disparity in decisions and injustice. Therefore, criminal law reform must be guided by strict constitutional interpretation.

The experience of applying loose provisions in previous regulations demonstrates a tendency to criminalize freedom of expression. This phenomenon provides an important lesson for interpreting the new Criminal Code. From the perspective of constitutional democracy theory, criminal law should not be used as a tool to silence criticism.¹² Freedom of expression is a fundamental right that can only be strictly and

⁷ Susetiyono, W. (2025). Pendekatan Hermeneutika Hukum: Metode Interpretasi untuk Memahami Makna Hukum Secara Holistik. *Jurnal Supremasi*, 148-159. <https://doi.org/10.35457/supremasi.v15i1.4170>

⁸ Arianti, R. S., & Ayudyanti, I. (2026). Asas Legalitas terhadap Penerapan Living Law dalam UU Nomor 1 Tahun 2023 tentang KUHP. *Judge: Jurnal Hukum*, 6(07), 2083-2092. <https://doi.org/10.54209/judge.v6i07.2065>

⁹ Yamin, B., & Rachman, M. T. (2025). Problematik Yuridis Pasal 2 KUHP Baru Dalam Perspektif Prinsip-Prinsip Dasar Asas

Legalitas. *Unizar Law Review*, 8(2), 170-180. <https://doi.org/10.36679/ulr.v8i2.106>

¹⁰ Wagiman, W. (2025). Relasi Antara Hukum Internasional, Hukum Hak Asasi Manusia, Dan Demokrasi. *Global Review of Law and Human Rights*, 1(1), 65-75. <https://idreach.com/Journal/index.php/grlhr/article/view/121>

¹¹ Cahya, A. D. (2025). Asas Pembentukan Peraturan Perundang-Undangan: Norma Ideal dan Realitas Praktik di Indonesia. *Constituer: Jurnal Hukum Ketatanegaraan*, 1(2), 16-29.

¹² Hofi, M. A. (2025). Eksistensi Delik Konstitusional: Perspektif Hukum Pidana dan

proportionally restricted. Vague norms have the potential to threaten democratic space. Criminal law reform must ensure that protecting public order does not compromise citizens' constitutional rights.

Harmonizing the new Criminal Code with sectoral laws is a crucial prerequisite for maintaining a consistent legal system. Unsynchronized dualism in regulations can lead to conflicting interpretations in practice. The systematic principle in the formation of laws and regulations demands vertical and horizontal integration. Regulatory disharmony can weaken the effectiveness of law enforcement. Criminal law reform must be viewed as part of a comprehensive legislative reform. Integration of norms is the foundation for creating comprehensive legal certainty. Therefore, criminal law reform, as part of the national reform agenda, is a complex process involving philosophical, normative, empirical, and institutional dimensions. The new Criminal Code embodies the spirit of decolonization, modernization, and humanization of Indonesian criminal law. The primary challenge lies in the legal system's ability to ensure clarity of norms and consistent application. Reform must not stop at the creation of laws but must be realized in fair and accountable judicial practices. Legal certainty and protection of human rights are the benchmarks for the success of this reform. A critical evaluation of the implementation of the new Criminal Code in 2026 will determine the future direction of Indonesian criminal law within the framework of a democratic rule of law.

METHODOLOGY

This research uses a normative legal research method (doctrinal legal research),

which positions law as a norm written in legislation and court decisions. This approach aligns with Soerjono Soekanto's view that normative legal research is conducted by examining library materials or secondary data as the primary source, consisting of primary, secondary, and tertiary legal materials.¹³ The primary legal materials in this study include the Criminal Code (KUHP) and the 1945 Constitution of the Republic of Indonesia, while secondary legal materials include literature, scientific journals, and expert opinions on the theory of legal certainty, the principle of legality, and the protection of human rights. The approaches used include a statute approach, a conceptual approach, and a limited comparative approach to enrich the analysis. This method was chosen because the problem being studied focuses on norm analysis, particularly regarding the issue of norm ambiguity in the new Criminal Code and its implications for legal certainty and human rights. Thus, this study relies on systematic, logical, and argumentative legal reasoning.

Methodologically, this research also uses an analytical and prescriptive approach as stated by Peter Mahmud Marzuki, who emphasized that legal research aims to provide arguments on the legal issues faced and offer normative solutions.¹⁴ The analysis was conducted using grammatical, systematic, and teleological interpretation techniques to assess the consistency of the formulation of norms in the new Criminal Code with the principles of *lex certa*, *lex stricta*, and the principle of due process of law. This research not only describes the norms but also tests their coherence with the theory of the rule of law, the principle of legality, and international human rights standards such as the International Covenant on Civil and Political Rights. A prescriptive approach is used to formulate critical arguments regarding how vague norms have the potential to affect legal certainty and human rights protection in practice. With this methodological

Hukum Tata Negara. *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora*, 2(1), 322-331. <https://doi.org/10.62383/progres.v2i1.2142>

¹³ Suganda, R. (2022). Metode pendekatan yuridis dalam memahami sistem penyelesaian sengketa ekonomi syariah. *Jurnal Ilmiah Ekonomi*

Islam, 8(3), 2859-2866. <https://doi.org/10.29040/jiei.v8i3.6485>

¹⁴ Kristiawanto, H., & SHI, M. (2024). *Pengantar Mudah Memahami Metode Penelitian Hukum*. Nas Media Pustaka.

construction, this research is expected to be able to provide a sharp, systematic analysis based on relevant legal theory.

RESULTS AND DISCUSSION

Normative Analysis of the Principle of Legality and the Principle of Lex Certa in the 2022 Criminal Code (KUHP) as a Guarantee of Legal Certainty

The reconstruction of the principle of legality in the Criminal Code (KUHP) marks a paradigmatic transformation of Indonesian criminal law from a rigid positivistic model to one that integrates the dimension of substantive justice. Under the *Wetboek van Strafrecht* (WvS) regime, the principle of legality was formulated formally through the principle that no act can be punished except under pre-existing written law.¹⁵ This formulation reflects the dominance of the legalist school, which positions the law as the sole source of legitimacy for criminal punishment. The 2022 Criminal Code retains the formal formulation of *nullum crimen sine lege* in Article 1 paragraph (1), but expands it by recognizing "living law in society."¹⁶ as stipulated in Article 2. This expansion is not merely technical, but conceptual, as it shifts the foundation of legality from the exclusivity of written texts to the recognition of social norms that are not always formalized. This shift reflects an effort to reconcile formal legal certainty with demands for justice rooted in local values.

Testing the consistency between Articles 1 and 2 of the 2022 Criminal Code raises the issue of normative dualism that deserves critical examination. On the one hand, the principles of *nullum crimen sine lege* and *nulla poena sine lege* are explicitly maintained as a guarantee of protection against state arbitrariness. On the other hand, the recognition of living law opens the possibility of criminalization based on

norms previously unwritten in the national codification. This situation raises the conceptual question of whether material legality can be fully aligned with the classical principle of formal legality. Theoretically, this expansion can be read as a correction to the rigidity of legal positivism, but in practice, it has the potential to blur the boundaries of legal predictability. If citizens cannot rationally predict the criminal consequences of an act, the essence of legal certainty is diminished. Thus, the reconstruction of the principle of legality in the new Criminal Code presents an inherent tension between normative certainty and substantive justice.

An evaluation of the expansion of the principle of material legality reveals ambivalence from the perspective of legal certainty. Recognition of customary law is intended to respect legal plurality and local wisdom values, which are sociologically present in Indonesian society.¹⁷ However, legal certainty in a modern rule of law requires objective and documented standards to ensure widespread recognition of norms. The elucidation of Article 2, which requires living law to be incorporated into regional regulations, presents an internal contradiction, as previously unwritten norms are forced into a written regime to gain legitimacy. Consequently, material legality remains dependent on administrative formalization, thus rendering the initial goal of recognizing living norms problematic. The lack of clarity regarding the definition of "living law" has the potential to create inconsistent application across regions. In this context, the expansion of material legality must be criticized to prevent it from sacrificing the principle of predictability, an essential element of legal certainty.

A conceptual review of the limits of judicial discretion is crucial within this

¹⁵ Lago, Y., Ginting, Y. P., & Sugianto, F. (2023). Dilema Keadilan Hukum Antara Hukum Tidak Tertulis Yang Hidup (*Ongeschreven Recht*) Dan Asas Legalitas Dalam Hukum Pidana Indonesia Ditinjau Dari Aspek Filo-Sofis. *DiH: Jurnal Ilmu Hukum*, 71-84. <https://doi.org/10.30996/dih.v19i1.7310>

¹⁶ Arianti, R. S., & Ayudyanti, I. (2026). Asas Legalitas terhadap Penerapan Living Law

dalam UU Nomor 1 Tahun 2023 tentang KUHP. *Judge: Jurnal Hukum*, 6(07), 2083-2092. <https://doi.org/10.54209/judge.v6i07.2065>

¹⁷ Ramadhan, R., Syafrizal, S., & Oktapani, S. (2024). Harmonisasi Hukum Adat Dan Konstitusi Nasional: Studi Konflik Pengelolaan Sumber Daya Alam di Indonesia. *Nusantara: Journal for Southeast Asian Islamic Studies*, 20(2), 92-99. <http://dx.doi.org/10.24014/nusantara.v20i2.33987>

reconstruction framework. The new Criminal Code prohibits analogies in criminal law, as per the principle of *lex stricta*, but at the same time allows judges to explore living legal values. This discretion, if not methodologically constrained, has the potential to broaden subjective interpretations. In legal hermeneutics theory, interpretation must be limited by the text, context, and objectives of the legislator, not simply the judge's individual moral judgment.¹⁸ Without strict interpretative guidelines, living law can become an instrument of justification for inconsistent decisions. Diverse interpretations among judges risk creating disparities in decisions that erode the sense of justice. Therefore, the limits of discretion must be affirmed through constitutional parameters and human rights standards.

The shift from strict legality to progressive interpretation also has epistemological implications for the criminal law system. Strict legality emphasizes the supremacy of the text and limits state power through clear written formulations. Progressive interpretation, on the other hand, allows judges to consider substantive justice values beyond normative texts.¹⁹ While a progressive approach can address the contextual needs of society, it also carries the risk of legal relativism. This relativism has the potential to erode legal certainty if not balanced with clear normative boundaries. The tension between certainty and justice is a classic dilemma that has resurfaced in the 2022 Criminal Code reforms. These reforms will only succeed if progressive interpretations are placed within measurable constitutional boundaries.

From a *lex certa* perspective, clarity of the formulation of a crime is an absolute requirement for the legitimacy of criminal

punishment. Norms that use elastic phrases or abstract terminology without operational definitions have the potential to give rise to multiple interpretations. Phrases that lack clear conceptual boundaries open the door to subjective interpretation by law enforcement officials. In the theory of legislative formulation, the principle of clarity of formulation requires the use of clear, systematic, and unambiguous language.²⁰ The lack of explicit definitions of the elements of a crime can complicate proof in court. Clarity of norms is not merely a matter of linguistic technicality, but rather a guarantee of protection for citizens' rights. Therefore, a rigorous *lex certa* test must be conducted on each formulation of a crime in the new Criminal Code.

Grammatical and systematic analysis of the structure of the elements of a crime is also an important tool in assessing compliance with the principle of legality. A clear separation between *actus reus* and *mens rea* ensures that punishment is not imposed without sufficient proof of the subjective element. If the formulation of a crime does not explicitly stipulate the element of fault, the risk of objectivizing criminal responsibility increases. This objectivization contradicts the principle of culpability, which requires fault as the basis for punishment. Unclear structure of a crime can expand the scope for criminalization of acts that should fall within the non-criminal realm. Thus, clarity of the elements of a crime serves as a barrier against overcriminalization. Systematically unclear norms have the potential to create uncertainty in judicial practice.

The relationship between normative clarity and protection against overcriminalization is crucial in this analysis. Overcriminalization occurs when the state uses

¹⁸ Harini, M., & Rahmat, D. (2025). Peran hakim pada proses penemuan hukum sebagai upaya penegakan keadilan berdasarkan kode etik hakim. *Journal Evidence Of Law*, 4(1), 207-230. <https://doi.org/10.59066/jel.v4i1.1097>

¹⁹ Triadi, I., & Heradika, D. (2025). ASAS LEGALITAS DALAM DINAMIKA PENEMUAN HUKUM PIDANA: KAJIAN NORMATIF TERHADAP BATASAN KEWENANGAN HAKIM. *Jurnal Analisis Hukum dan*

Kebijakan, 6(4).

<https://ejournals.com/ojs/index.php/jahk/article/view/4120>

²⁰ Haryadi, H., & Hamdani, H. (2025). PROBLEMATIK FRASA MEMPUNYAI KEKUATAN HUKUM MENGIKAT DALAM PERATURAN PERUNDANG-UNDANGAN. *Tanjungpura Law Journal*, 9(1), 86-103. <https://doi.org/10.26418/tlj.v9i1.89280>

criminal law to regulate behavior that should be addressed through administrative or civil mechanisms.²¹ The vague formulation of crimes expands the scope of criminalization without measurable limits. As a result, citizens face the risk of being punished for acts not explicitly recognized as criminal. This ambiguity also increases the potential for disparate interpretations among law enforcement officials, thus threatening the principle of equality before the law. Legal certainty can only be assured if the formulation of crimes is formulated precisely and consistently. Therefore, the reconstruction of the principle of legality in the 2022 Criminal Code must continue to be critically examined to ensure it does not deviate from the initial goal of reform, namely strengthening legal certainty while ensuring substantive justice.

The codification through Law Number 1 of 2023 concerning the Criminal Code marks a systematic reconstruction of national criminal law by simplifying the structure of the three books of the colonial regime into two large books covering General Rules and Criminal Acts. Normatively, this simplification is intended to emphasize the character of the Criminal Code as a complete, and no longer fragmentary, national codification. The integration of various specific crimes into Book Two demonstrates the ambition of a comprehensive recodification, but at the same time raises questions about the logical consistency between chapters and between the formulations of offenses. From the perspective of legal system theory, a codification must not only be complete but also internally coherent to avoid horizontal norm conflicts.²² If the systematic arrangement does not reflect a rational hierarchy between general and specific

provisions, the risk of inconsistent interpretation is inevitable. Therefore, an analysis of the structure of the books and chapters in the 2022 Criminal Code must assess whether the arrangement truly forms an integral normative structure or is simply a compilation of norms in a new format.

The coherence between Books One and Two is crucial in testing this systematic consistency. Theoretically, general provisions should serve as the *lex generalis* that informs all criminal offenses, including those found outside the Criminal Code, unless otherwise specified. The principle of systematic specialization requires that any exceptions to general provisions be formulated explicitly, not implicitly.²³ However, it is necessary to examine whether all offenses in Book Two truly comply with the parameters of criminal responsibility, excuses, and justifications as formulated in Book One. If any offense substantially deviates without clear normative justification, this violates the principle of internal consistency. In this context, harmonization should not be understood merely as formalistic, but must ensure a rational unity between the principles and their operationalization in concrete formulations.

The synchronization between the objectives of punishment and the types of sanctions stipulated also reflects the quality of normative coherence in the 2022 Criminal Code. The formulation of the objectives of punishment, which emphasize corrective, rehabilitative, and restorative justice, demonstrates a paradigm shift from a retributive approach to a more humanistic one. The dual-track system, which accommodates both punishment and action, conceptually supports a social reintegration orientation.²⁴

²¹ Mahesa, P. K. S., & Danyathi, A. P. L. (2025). Penerapan Prinsip *Ultimum Remedium* Dalam Kebijakan Kriminalisasi Di Indonesia: Tinjauan Teoritis dan Praktis. *Jurnal Media Akademik (JMA)*, 3(9). <https://doi.org/10.62281/ax2d1f19>

²² Fahrian, Y. (2025). Normatifikasi Nilai Transendental Dalam Pembentukan Hukum Positif di Indonesia: Perspektif Teori Hukum Transendental. *Justici*, 18(2), 87-98.

²³ Siregar, P. N. (2022). Implementasi Asas Sistematis Spesialis Sebagai Ketentuan Spesialis

Pidana Perbankan Menjadi Tindak Pidana Korupsi (Analisis Putusan Mahkamah Agung Nomor 2405/Pid. Sus/2016). *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]*, 2(2). <http://jurnalmahasiswa.umsu.ac.id/index.php/jimhum/article/view/1390>

²⁴ Maharani, N. M. D., & Arsawati, N. N. J. (2025). Analisis Yuridis Pengaturan Sanksi Tindakan Dalam Upaya Mengatasi Prison Overcapacity. *JPeHI (Jurnal Penelitian Hukum Indonesia)*, 6(02), 142-160. <https://doi.org/10.61689/jpehi.v6i02.795>

However, critical questions arise when some offenses continue to carry relatively heavy prison sentences without adequate differentiation based on the degree of culpability and social impact. This lack of synchronization between the stated objectives and the reality of the criminal threat has the potential to create normative inconsistencies. Therefore, evaluating the proportionality of sanctions is an important indicator of whether the objectives of punishment are truly internalized throughout the system.

The transitional norms in the 2022 Criminal Code present a uniquely problematic dimension, particularly regarding the principle of *lex favorabilior* during the transition period. The provision regarding gradual implementation over three years raises the possibility of overlap between the old and new regimes. In practice, determining which law is more favorable to the accused can trigger differing interpretations among law enforcement officials. This interpretive conflict has the potential to undermine the principle of legal certainty if not accompanied by clear guidelines. Normatively, transitional law must be formulated with high precision because it serves as a bridge between two different systems. Without such clarity, the transition period can become a space of uncertainty that reduces the legitimacy of the reform itself.

The consistency between general principles and the formulation of concrete crimes is also tested through the recognition of "living law in society" as stipulated in Article 2 of the 2022 Criminal Code. The recognition of living law does reflect legal pluralism and decolonization, but conceptually it can be in tension with the principle of formal legality which requires a written formulation.²⁵ This tension creates a dilemma between flexibility and certainty. If the application of customary law is not strictly limited, judicial discretion can expand beyond reasonable predictability. From

a *lex certa* perspective, any expansion of criminal law sources must remain within measured limits. Therefore, consistency between general principles and concrete crimes must be maintained through rational interpretative limitations.

In legal theory, vague norms are viewed as a threat to legal certainty because they open up the opportunity for multiple interpretations. Norms that use flexible phrases without clear operational parameters have the potential to become "rubber articles." In the 2022 Criminal Code, certain offenses are considered to still leave significant room for ambiguity. This ambiguity can increase the discretion of law enforcement officials, potentially leading to abuse of authority in certain situations. The relationship between vague norms and the potential for selective criminalization is a serious issue in a democratic state governed by the rule of law. Therefore, testing the clarity of the formulation of offenses is not only a matter of legislative technique but also a matter of protecting citizens' constitutional rights.

A further impact of normative ambiguity is the disruption of legal predictability for society. One of the primary functions of criminal law is to provide clear behavioral guidelines regarding what is prohibited and what the consequences are.²⁶ If the formulation of a crime does not provide clear boundaries, citizens cannot rationally predict the legal consequences of their actions. From the perspective of a state governed by the rule of law, this situation contradicts the principle of foreseeability, which is an integral part of the principle of legality. This uncertainty can also undermine public confidence in the criminal justice system. Therefore, the need for guidelines for constitutional interpretation is urgent to ensure that any interpretation remains within the framework of human rights protection.

²⁵ Putranto, A. C., & Triadi, I. (2025). Konsep Hukum Pidana Adat Pasca Pemberlakuan Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Perspektif Living Law. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(5), 7317-7338. <https://doi.org/10.61104/alz.v3i5.2372>

²⁶ Wahidah, N. (2025). Fungsi Hukum Pidana. *JUSTITIA: Journal of Justice, Law Studies, and Politic*, 1(01), 8-16. <http://ejournal.hamjahdiha.org/index.php/Justitia/article/view/147>

In comparison with modern legislative standards, the principle of *lex certa* becomes the main benchmark for the quality of the formulation of crimes.²⁷ Contemporary legal systems tend to formulate the elements of *actus reus* and *mens rea* in detail to limit the scope for excessive interpretation. The 2022 Criminal Code explicitly prohibits analogy and emphasizes the principle of legality, a progressive step compared to the previous regime. However, the success of this normative framework remains dependent on consistent implementation and the existence of adequate implementing regulations. Architecturally, the 2022 Criminal Code represents a transition from a colonial legacy to a more democratic and humane national codification, but its standards of normative clarity remain to be tested in judicial practice. Therefore, a restrictive interpretation based on proof of malicious intent and concrete acts is an essential normative recommendation to strengthen legal certainty and prevent deviations in its application.

Implications of the Implementation of the 2022 Criminal Code on Human Rights Protection from the Perspective of Due Process of Law and International Human Rights Standards

The enactment of Law Number 1 of 2023 concerning the Criminal Code requires a serious constitutional review of its guarantee of the right to fair legal certainty as affirmed in the 1945 Constitution of the Republic of Indonesia, particularly Article 28D paragraph (1). Normatively, the provisions regarding the principle of *lex favor reo* and the strengthening of reasons for forgiveness and justification

indicate an orientation to guarantee fair treatment before the law.²⁸ However, this guarantee cannot be measured solely by the existence of abstract norms, but must also be tested by the clarity of the formulation of the offense and the consistency of its application. Several articles deemed open to multiple interpretations raise questions about whether the promised legal certainty truly has effective protection for citizens' rights. From the perspective of a state based on the rule of law, legal certainty is not merely a legal drafting formality, but an instrument of protection against arbitrary actions. Therefore, the correlation between the 2022 Criminal Code and Article 28D paragraph (1) of the 1945 Constitution must be analyzed through a substantial, not merely procedural, test.

The principle of proportionality is the primary benchmark for assessing the consistency of criminal restrictions with constitutional guarantees. Restrictions on rights through criminal instruments are only valid if there is a rational balance between the prohibited act and the sanction imposed. The 2022 Criminal Code does shift the orientation of criminal punishment toward rehabilitation and restorative measures, but this paradigm shift must be demonstrated through the construction of concrete criminal penalties.²⁹ If an act within the realm of private morality or public expression is punishable by severe punishment without justification for real harm (the harm principle), proportionality is questionable. Within a constitutional framework, disproportionate restrictions have the potential to violate the very essence of the right. Therefore, the proportionality test is not merely an evaluation of criminal policy, but

²⁷ Nurhalizah, A., & Buana, B. W. (2025). Asas Legalitas dan *Lex Temporis Delicti* Dalam Reformasi KUHP Indonesia: Legalitas and *Lex Temporis Delicti* In Indonesia's Criminal Code Reform. *Journal Juridisch*, 3(3), 210-220. <https://doi.org/10.26623/jj.v3i3.12490>

²⁸ Nasrullah, M. R., & Hutabarat, R. R. (2026). The Principle of Judges in Determining the Validity of Grounds for Criminal Expungement in the Criminal Justice System in Indonesia: Prinsip Hakim dalam Menentukan Sah Tidaknya Alasan

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²⁹ Yoga, I. G. K. A., & Darma, I. M. W. (2025). PERTANGGUNGJAWABAN PIDANA PELAKU TINDAK PIDANA PENGHINAAN TERHADAP LEMBAGA PEMERINTAH. *INICIO LEGIS*, 6(2), 49-61. <https://doi.org/10.21107/il.v6i2.31608>

also a mechanism for safeguarding constitutional supremacy.

The balance between public interest and individual rights is at the heart of a democratic state based on the rule of law. The 2022 Criminal Code seeks to affirm social interests by protecting public order, public morality, and the honor of state institutions.³⁰ However, when protection of state symbols or authority is formulated broadly and flexibly, the potential for subordination of individual rights becomes apparent. In a constitutional democracy, criticism of those in power is part of the protected freedom of expression. Therefore, criminal norms affecting the realm of expression must be formulated carefully to avoid shifting the balance toward the dominance of state interests. If this balance is disturbed, the democratic legitimacy of such restrictions is questionable.

The legitimacy of rights restrictions in a democratic state governed by the rule of law requires three things: a clear legal basis, a legitimate purpose, and proportional implementation. Procedurally, the 2022 Criminal Code fulfills the formal requirements as a product of national legislation. However, its substantive legitimacy remains contingent on its compliance with constitutional principles and human rights standards. Overly broad restrictions on civil liberties can create the impression of regressive rights protection. In constitutional theory, rights restrictions should be understood as strict exceptions, not general norms.³¹ Therefore, the legitimacy of the 2022 Criminal Code will be largely determined by future law enforcement practices and constitutional review.

The relationship between legal certainty and human rights protection is inherent and

inseparable. Legal certainty provides predictability, while human rights provide substantive limits on the use of power.³² The 2022 Criminal Code, through its integrated codification, seeks to strengthen certainty by unifying various criminal provisions into a single system. However, if certain norms remain vague or open to multiple interpretations, such certainty becomes illusory. Unclear norms open up wide discretion for authorities, potentially leading to discriminatory or selective actions. Therefore, human rights protection is only effective if supported by clear and unambiguous formulations of norms.

In the proportionality test, the theory of rights restrictions requires that legitimate aim, necessity, and proportionality be fulfilled in the strict sense.³³ The purpose of restrictions must be legitimate and recognized in a democratic society, such as protecting the rights of others or public order. However, necessity requires proof that there are no less severe means to achieve these goals. If the state can use administrative or civil instruments, then criminalization must be the *ultimum remedium*. Furthermore, proportionality in the narrow sense requires that the harm to individual rights not outweigh the intended public benefit. Without these three stages, restrictions risk being unconstitutional.

Evaluation of crimes that potentially restrict freedom of expression must consider the doctrine of overbreadth. Norms formulated too broadly can encompass expressions that should be constitutionally protected. This creates a chilling effect, where people are reluctant to exercise their rights for fear of criminal prosecution. In a democratic system, restrictions on expression must be interpreted

³⁰ Rauf, D. A., & Moha, M. R. (2025). Ekuivalensi Kebebasan Berekspresi dan Perlindungan Nama Baik Pasca Perubahan Undang-Undang Informasi dan Transaksi Elektronik. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(2), 601-621. <https://doi.org/10.61104/alz.v3i2.1104>

³¹ Kamal, M. A., Yusriansyah, Y., Multazam, M. F., & Kurniati, K. (2026). Islam, Negara, dan Hak Konstitusional: Analisis terhadap Kebebasan Beragama dalam Perspektif Hukum Islam dan UUD 1945. *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora*, 4(1), 301-309.

³² Bhakti, T. S. (2025). Kepastian Hukum dalam Pengujian Formil Undang-Undang oleh Mahkamah Konstitusi di Indonesia terkait Inkonsistensi Putusan, Batas Waktu Pengujian, dan Implikasi Pembatalan Undang-Undang. *Jurnal Ilmiah Global Education*, 6(4), 2859-2870. <https://doi.org/10.55681/jige.v6i4.4693>

³³ Oktavia, E. M. (2024). Uji Proporsionalitas UUD 1945: Pembatasan Hak Beragama dalam Pembubaran Hizbut Tahrir Indonesia. *Jurnal Restorasi Hukum*, 7(2), 188-208.

narrowly and specifically.³⁴ If the formulation of the offense fails to clearly distinguish between legitimate criticism and insults that cause real harm, the norm has the potential to exceed constitutional limits. Therefore, the overbreadth test is a crucial instrument in maintaining the balance between freedom and order.

Prescriptively, strengthening human rights protection in the implementation of the 2022 Criminal Code requires a restrictive and constitutionally oriented interpretation. Judges must prioritize human rights principles as the primary parameter in interpreting criminal norms that restrict rights.³⁵ Interpretations that expand the scope for criminalization must be avoided to maintain the integrity of the rule of law. Furthermore, the Constitutional Court's judicial review mechanism should be utilized as a corrective instrument if norms are found to exceed the limits of proportionality. The success of Criminal Code reform is ultimately measured not by the completeness of the codification, but by its ability to maintain a balance between legal certainty and respect for human rights. Therefore, the correlation between the 2022 Criminal Code and constitutional guarantees will only be meaningful if its implementation is consistent with the principle of due process of law and democratic human rights standards.

The harmonization of Law Number 1 of 2023 concerning the Criminal Code with the International Covenant on Civil and Political Rights (ICCPR) must be analyzed not only at the declarative level, but also in terms of the consistency of the substance of the norms with the state's international obligations. The ICCPR demands the protection of civil and political rights, including freedom of expression, freedom of religion, and the guarantee of a fair trial. The 2022 Criminal Code demonstrates

progress by strengthening the principle of legality and prohibiting analogy, which aligns with the principle of legality in international human rights law. However, several offenses affecting expression and insulting state institutions raise concerns because they have the potential to restrict rights broadly. From a harmonization perspective, compatibility is measured not only by the adoption of terminology but also by the effectiveness of protecting substantive rights as guaranteed by the ICCPR. Therefore, the compatibility test must be critical and oriented towards international minimum standards.

Testing the Criminal Code norms against the principle of fair trial requires attention to the balance between the interests of law enforcement and the protection of civil liberties. The principle of fair trial encompasses the right to the presumption of innocence, the right to a defense, and an independent and impartial trial.³⁶ Several provisions regarding attempted and prepared criminal acts have the potential to expand criminalization to levels that do not necessarily pose a real danger, thus undermining the principle of proportionality. If the line between intent and concrete action is not clearly defined, the risk of civil liberties violations increases. In the context of freedom of expression, overly broad norms can have a chilling effect, contradicting Article 19 of the ICCPR. Therefore, the test of fair trial concerns not only judicial procedures but also the quality of the formulation of the offense.

The principle of non-retroactivity is a key pillar of modern criminal law and is affirmed in both the ICCPR and national constitutions. The 2022 Criminal Code explicitly upholds the principle of prospective legality, which prohibits criminalization for acts that were not yet regulated at the time of

³⁴ Kusdarini, E. (2025). Konstitusionalisasi Hak atas Kebebasan Berkepres di Era Digital Pasca-Amendemen UUD 1945. *JURNAL USM LAW REVIEW*, 8(3), 2387-2402. <https://doi.org/10.26623/julr.v8i3.13025>

³⁵ Widyaardana, F. (2026). Problematika Pembatasan Kebebasan Berpendapat di Indonesia Sesuai Instrumen Hak Asasi Manusia Internasional: Perspektif Pidana. *Jurnal Locus Penelitian*

dan Pengabdian, 5(1), 63-80. <https://doi.org/10.58344/locus.v5i1.5289>

³⁶ Fadli, M. A. (2025). Batasan Penerapan Contempt Of Court Terhadap Advokat Dalam Persidangan: Analisis Keseimbangan Antara Wibawa Peradilan dan Hak Pembelaan. *Jurnal Ilmu Hukum*, 1(2), 48-55. <https://ejournal.samudrailmu.com/index.php/jih/article/view/83>

their commission.³⁷ This demonstrates continuity with international standards regarding *nullum crimen sine lege*. However, recognizing living law within a community raises concerns about potential temporal uncertainty if not strictly formulated. If customary norms are not clearly documented, potential debates regarding their applicability and scope may arise. Therefore, the principle of non-retroactivity must be maintained through strict limitations on the sources of criminal law.

The state's obligation to provide an effective remedy is also an indicator of compliance with international standards. The ICCPR requires states not only to respect rights but also to provide redress mechanisms in the event of violations.³⁸ The 2022 Criminal Code, which adopts a restorative paradigm, opens up space for victim recovery through a more humane approach. However, the effectiveness of remedies depends heavily on integration with criminal procedure law and a concrete compensation mechanism. Without an efficient complaint and rehabilitation system, substantive norms will lack practical protective power. Therefore, the obligation for effective remedies must be translated into concrete, implementable policies.

The integration of human rights principles into the objectives of sentencing is a progressive aspect of the 2022 Criminal Code. The objectives of sentencing, which emphasize prevention, restoration of balance, and social reintegration, reflect a shift from a retributive to a restorative paradigm. This orientation aligns with international developments that place respect for human dignity as the basis for sentencing. However, the consistency between

normative objectives and sentencing practices must be tested empirically and legally. If the threat of punishment remains severe and disproportionate to the level of culpability, then the integration of human rights is merely symbolic. Therefore, evaluating the implementation of sentencing objectives is crucial in assessing compliance with global standards.

In due process of law, clarity of norms is the main prerequisite for the realization of a fair trial.³⁹ Vague norms make it difficult for defendants to understand the specifics of the charges, thus weakening their right to defense. The principles of *lex certa* and *lex stricta* serve to limit interpretations that go beyond the intent of the lawmakers. If the definition of the offense is unclear, law enforcement officials can expand the scope of action based on subjective interpretations. This has the potential to violate the principle of equality before the law. Therefore, due process can only be upheld if criminal norms are formulated clearly and measurably.

The potential for abuse of discretion by law enforcement officials also poses a serious challenge to the implementation of the 2022 Criminal Code. Discretion is necessary in law enforcement, but it must be limited by strict normative parameters.⁴⁰ Elastic norms can increase the scope for unaccountable intervention. In such situations, the presumption of innocence can be eroded as the legal process is influenced by subjective considerations. Therefore, internal and external oversight mechanisms must be strengthened to prevent abuses of authority. Without effective controls, due process remains merely a

³⁷ Musdalifah, D. A., Masyhar, A., & Wulandari, C. (2025). Eksistensi dan Perluasan Asas Legalitas dalam Undang-Undang No. 1 Tahun 1946 dan Undang-Undang No. 1 Tahun 2023. *JISPENDIORA Jurnal Ilmu Sosial Pendidikan Dan Humaniora*, 4(1), 590-602. <https://doi.org/10.56910/jispendingora.v4i1.2485>

³⁸ Zahra, N. I., & Kurniawan, A. B. S. (2025). Perbandingan Prinsip Antara Undang-Undang Hak Asasi Manusia Dengan Deklarasi Universal Hak Asasi Manusia. *QOSIM: Jurnal Pendidikan Sosial & Humaniora*, 3(4), 1682-1689. <https://doi.org/10.61104/jq.v3i4.2624>

³⁹ Fadli, M. A. (2025). Status Hukum Para Pihak, Legal Standing, Due Process, Kewenangan Institusional Pengadilan, dan Perlindungan Hak Prosedural. *Jurnal Ilmu Hukum*, 1(2), 56-67. <https://ejournal.samudrailmu.com/index.php/jih/arti cle/view/85>

⁴⁰ Arifin, F., & Ramdhani, H. T. (2024). Rekonseptualisasi Diskresi Perspektif Hukum Administrasi Negara: Analisis Kritis Terhadap Implementasi Undang-Undang Administrasi Pemerintahan. *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara dan Hukum Administrasi Negara*, 2(1), 115-148. <https://doi.org/10.55292/evaza559>

normative principle without practical implementation.

The practical implications of the full implementation of the Criminal Code by 2026 include challenges in the preparedness of law enforcement agencies, harmonization of implementing regulations, and protection of vulnerable groups. Minority groups, journalists, and human rights defenders are potentially impacted if sensitive norms are not interpreted restrictively. Therefore, the development of technical guidelines for interpretation is an urgent need to ensure consistent implementation. Strengthening the role of the Constitutional Court as a judicial reviewer of the constitutionality of criminal norms is also crucial in maintaining the balance between legal certainty and human rights protection. The success of Criminal Code reform is ultimately determined not only by a comprehensive national codification, but also by the consistency between the implementation of norms and the constitutional commitment to human rights.

CONCLUSION

Regarding the Indonesian Criminal Code (KUHP), which is part of the national criminal law reform that will take effect in 2026, this article concludes that the renewal of Indonesia's criminal codification brings conceptual ambivalence towards legal certainty and human rights protection. On the one hand, the reconstruction of the principle of legality and the systematics of the national codification demonstrate an effort to consolidate a more modern and integrated criminal law. However, on the other hand, the expansion of the principle of material legality and the use of a number of flexible and multi-interpretable crime formulations have the potential to create vague norms that shift the principle of *lex certa* from its classical meaning. This condition has a direct impact on legal predictability, opens up room for disparity in interpretation, and increases the risk of disproportionate restrictions on rights, especially if not balanced by the application of the principle of due process of law and international human rights standards such as the International Covenant on Civil and Political Rights. Thus, the main

problem of this article is answered, namely that the implications of the implementation of the 2022 Criminal Code on legal certainty and human rights are highly dependent on the construction of restrictive interpretations, strengthening constitutional testing, and the consistency of law enforcement in placing the principles of legality and proportionality as the main parameters in its implementation.

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