

Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?

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Abstract

This study critically examines Indonesia's new penal code through the lens of international legal norms, exploring whether it genuinely embodies the principles of global justice. Despite the code's ambitious reforms aimed at modernizing Indonesia's legal framework, our analysis reveals significant gaps between its provisions and internationally accepted standards, particularly in areas such as human rights, due process, and equality before the law. The urgency of this research lies in Indonesia's important role in Southeast Asia, where legal frameworks can influence regional governance and human rights practices. Novelty arises from our comparative approach, juxtaposing Indonesia's penal code against a backdrop of global legal norms while considering local cultural and societal contexts. This study uncovers how the

interplay between domestic priorities and international expectations can lead to compromises that undermine the integrity of justice. Our findings contribute to the ongoing discourse on legal reform in emerging democracies, highlighting the challenges of aligning national legislation with international standards. By providing concrete recommendations for policy makers, legal practitioners, and civil society, this research emphasizes the need for a holistic approach to legal reform that respects both local values and global commitments. Ultimately, we argue that Indonesia's new penal code is not just a legal document but a reflection of its aspirations for justice, demanding scrutiny and ongoing dialogue to ensure it meets the standards of global justice in practice.

KEYWORDS *International Legal Norms, Indonesia's New Penal Code, Global Justice, Human Rights, Legal Principles*

Introduction

The need to consider and critically assess Indonesia's new penal code is inherently tied to the larger question of what constitutes global justice.¹ It is without a doubt that international human rights standards should resonate with national legal systems, including Indonesia's, yet different interests at the national level also need consideration.² The proposals to revise Indonesia's penal code and the processes used in their drafting can obviously be seen in the context of ongoing reform processes at the national level. Discussions on the reform of the penal code in Indonesia have been characterized by these domestic needs as well as by continuing pressures—financial, security, and the need to address domestic crimes—at the international level, including those requiring Indonesia

¹ Emma Palmer, *Adapting International Criminal Justice in Southeast Asia: Beyond the International Criminal Court*. (Cambridge: Cambridge University Press, 2020); Tongat Tongat. "The Ambiguous Authority of Living Law Application in New Indonesian Penal Code: Between Justice and the Rule of Law." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 188-209; Tody Sasmitha Jiwa Utama, "Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system." *The Journal of legal Pluralism and Unofficial Law* 53, no. 2 (2021): 269-289.

² Moch Faisal Karim, "The limits of global human rights promotion: Indonesia's ambivalent roles in the UN Human Rights Council." *Contemporary Politics* 26, no. 3 (2020): 351-370; Yogi Shahputra Al Idrus, "Quo Vadis the Importance of Ratification of the Rome Statute for Law Enforcement and Human Rights in Indonesia in Terms of Legal System Theory." *Journal Edunity: Social and Educational Studies* 2, no. 3 (2023): 329-342.

to develop new laws in order to implement international instruments and conventions.³

Within the emerging conceptual framework, the question can be answered in this way: since a national legal system and policy responses will always be driven by its own interests, as well as by international norms to some extent, we firstly need to assess if the content of the new penal code, as a public legal product in a particular historical and political context, also conforms to the enduring needs of the society in question.⁴ By asking such a question, we are equipped to problematize fundamental issues, such as to whom particular provisions of the penal code are important and for what purposes, and whose interests a specific provision may serve. By delving into this line of inquiry, we also hope to discover compromises where possible or to suggest solutions that will satisfy the different interests of several target groups. Given the political climate and significant interests at stake, the internalization of international standards by considering them in the new penal code could ultimately have a significant impact on different stakeholders.

Historically, the old penal code is a product of the colonial period, which has existed since 1918. Although several amendments have been made to the old penal code, many of the criminal justice values reflected in it have been continuously reproduced in the procedural criminal code.⁵ Given its longstanding existence, the old penal code reflects the legal culture of the people of Indonesia and the ethos of the state. The drafting of a new penal code was first proposed by the old penal code review team outlining three reasons: the need for harmonization with political developments, the general need for

³ Bagus Hermanto, "Discover future prospect of Indonesia criminal law reform: Questioning adat criminal law existence, Material and Formal Legislation, and Constitutional Court Decision Frameworks." *Paper was presented at International Seminar Udayana University and University of Melbourne*. Vol. 17. 2021; Anis Widyawati, et al. "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions." *Lex Scientia Law Review* 6, no. 2 (2022): 327-358.

⁴ Sandra G. Mayson, "The Concept of Criminal Law." *Criminal Law and Philosophy* 14, no. 3 (2020): 447-464; Indah Sri Utari, Ridwan Arifin, and Diandra Preludio Ramada. "Exploring Child Grooming Sexual Abuse through Differential Association Theory: A Criminological and Legal Examination with Constitutional Implications." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 1 (2024): 69-88.

⁵ Muchamad Iksan, and Sri Endah Wahyuningsih. "Development of Perspective Criminal Law Indonesian Noble Values." *Legal Standing: Jurnal Ilmu Hukum* 4, no. 1 (2020): 178-192. See also Helen Pausacker, "Homosexuality and the law in Indonesia." *Crime and punishment in Indonesia*. (London: Routledge, 2020), pp. 430-462.

modernization, and reciprocal reformation and unification with international standards.⁶

The process of drafting the new penal code involves struggles and maneuvering in the face of various societal pressures as well as political dynamics.⁷ Critics of the draft have stated that the new penal code contains a number of problematic clauses that are excessively conservative and against the international norms and standards on justice.⁸ Some critics also compare the old penal code with the draft and find that many progressive changes contained in the old penal code are lost in the draft. The cultural, historical, and religious background of Indonesian society is deeply reflected in the formulation of the law. The idea of having a new law is not only to revise the old laws that were outdated but also to conform to the standards set by the international community and to provide the vital penological function. However, the question remains: how to reconcile the international standards and the domestic values and principles existing in society?

This research aims to analyze whether the new Indonesian penal code aligns with global justice principles or defies international norms. To that end, the study primarily examines criminal offenses in the new Indonesian penal code. This choice is grounded in the fact that crimes are multifaceted, which allows this research to touch upon different globally accepted criminal justice systems and theories. The purpose will shed light on the direction of Indonesia's internal policy regarding criminal justice because the criminal justice system defined by the penal code may rely on the form of crimes or the whole viewpoint of the penal code.⁹ The research was carried out using a comparative legal analysis, which was conducted through field research and interviews with stakeholders within the Indonesian Criminal Justice System. The result of the findings is the most important and impactful aspect that could contribute to

⁶ Kamelia Sari, and Budi Eko Pranoto. "Representation of Government Concerning the Draft of Criminal Code in The Jakarta Post: A Critical Discourse Analysis." *Parole: Journal of Linguistics and Education* 11, no. 2 (2021): 98-113; Hermann Mannheim, *The dilemma of penal reform*. (London: Routledge, 2021); Iksan, and Wahyuningsih. "Development of Perspective Criminal Law Indonesian Noble Values."

⁷ Georg Wenzelburger, *The partisan politics of law and order*. (Oxford, UK: Oxford University Press, 2020).

⁸ Darryl Robinson, *Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law*. (Cambridge: Cambridge University Press, 2020).

⁹ Tongat, "The Ambiguous Authority of Living Law Application in New Indonesian Penal Code: Between Justice and the Rule of Law"; Ichsan Anwary, "Exploring the Interconnectedness Between Public Administration, Legislative Systems, and Criminal Justice: A Comparative Analysis of Malaysia and Indonesia." *International Journal of Criminal Justice Sciences* 18, no. 1 (2023): 172-182.

the understanding of stakeholders in the criminal justice system. The activity aims to sharpen the implementation of the preceding public policies, particularly regarding the balance of interests.

The scope of this research was limited to a comprehensive study of criminal offenses enshrined in the new Indonesian Penal Code. The international human rights standards apply in Indonesia on human rights regulations. Therefore, the core observation of this research will be on the rights of victims. It has also been brought up in the purpose of this research to analyze whether the new Indonesian Penal Code constitutes a harmony of legal substance viewpoint or if it is deviating from the legally accepted viewpoint. This research has made ethics approval as ethical research based on established guidelines. This research would contribute to the policymaking of Indonesia's criminal justice affairs as well as providing a broader understanding of the academic world. The main problem in this research is whether the aforementioned international norms on criminal offenses should be in harmony with the modernization of Indonesia's new penal code on criminal offenses or in contrast. A problem such as the one at issue is very important in the realm of legal science. To some extent, the issues can assist certain individuals in creating public policies that are related to existing law enforcement. The following research question will guide this research.

Historical Development of Indonesia's Penal Code

Indonesia's Penal Code, known as the Penal Code for the Dutch East Indies, was established during the country's colonial period under the Dutch.¹⁰ This new penal code is designed under the influence of Western and Eastern philosophies as well as international principles and norms; as such, understanding the punishment and sentencing should involve understanding the historical development of Indonesia's penal code. The first codification of criminal acts is found in the code of the Kingdom laws, which contains a de facto list linked to specific sanctions. The penal section within the Kingdom Laws adopts a laissez-faire approach by implying that the indigenous people could be allowed to live in accordance with their own precepts without Dutch intervention. Any deviation from the code of conduct contained in the *adat*,

¹⁰ Wardah Yuspin, and Ajlin Ajlin. "History of the Implementation and Development of the Criminal Law (KUHP) of the Dutch Colonial Heritage in Indonesia." *International Journal of Social Science Research and Review* 5, no. 9 (2022): 514-520.

the indigenous customary legal rules, could only be subjected to Dutch sanctions when the conduct affected Dutch companies.¹¹

After a long struggle for independence, on 23 September 1950, Indonesia was officially formed. Around 500 Indonesian nationals took advantage of this situation to carry out their actions, burning down the central prison and releasing the inmates. Such experiences, directly or indirectly, highlighted the difficulty that the majority of indigenous people had in adapting to and understanding the change from the colonial penal system to the national one. In this context, for many years, practitioners and legal scholars in colonial states began to express the need for law reform and adaptation to Indonesian legal characteristics, especially in the field of criminal law and the criminal justice system. Thus, during the first year of independence on 1 July 1946, Indonesia established the Law Council of Indonesia, one of the priorities of which became to manage the colonial penal system through a special commission for criminal law, policy, and treatment sanctions.

Colonial Origins of the Penal Code

One of the richest archives of the colonial project is its very laws, mostly written statements that allow room for interpretation of what the colonial law means and how it was practiced on the ground. In this section, I will revisit the laws from colonial Dutch East Indies, which continue to echo in present-day Indonesia's legal practices and opinions in society. Prior to its independence, Indonesia was a long-occupied Dutch colony. The Dutch subsequently passed a legal code that was in line with its own culture and values in the region, which it ruled for over 350 years. This occupation officially ended in 1949, followed by independence in 1950. In order to understand the present-day penal code, I will trace back its colonial origin. This colonial origin, I believe, has far-reaching consequences in how society viewed and treated the legal system, revising and criticizing the penal code.¹²

The foundations for the Netherlands East Indies legal systems came with the Dutch East Indies Company, which was founded in 1602 to administer

¹¹ Yana Sylvana, Yohanes Firmansyah, and Hanna Wijaya. "History of Criminal Law in Indonesia." *Jurnal Indonesia Sosial Sains* 2, no. 4 (2021): 645-656; Arvifan Naufal Awang Budhiarta, et al. "The History of Indonesian Legal System in the Dutch Colonialization Era and The Impact on Its Development." *Problematika Hukum* 8, no. 1 (2024): 1-19; Tongat, "The Ambiguous Authority of Living Law Application in New Indonesian Penal Code: Between Justice and the Rule of Law".

¹² See also Ahmad Bahiej, "Sejarah dan Problematika Hukum Pidana Materiel di Indonesia." *Jurnal Sosio-Religia* 5, no. 2 (2006): 1-21; Andi Hamzah, *Hukum Pidana Indonesia*. (Jakarta: Sinar Grafika, 2017).

trade with the region's spices. The first European law on the mainland of Indonesia was dated in 1614. With its expanding influence and control in the region in the 17th and 18th centuries, the Dutch colonial power introduced secular laws based on Roman and Old Dutch laws. The legal principles of European law, based on Roman law, were then accepted as worthy of adoption. Even though these laws were based on European legal ideas, which in part came from ancient laws, writings became Roman law and parish law, for instance, they did not take into account existing local customs, nor were they influenced by contemporary European criminal laws.¹³

Post-Independence Revisions and Amendments

The spirit to accommodate normative and egalitarian characteristics of the nationalist movement through the penal code was intended from its very beginning. Changes made after the end of the colonial period were also closely related to answering social calls for a people's legal system, to be constructed in accordance with social changes. An autonomous Indonesia, comprising a variety of cultures, religions, social structures, and governmental systems up to the regency level, within a democratic system, made Indonesian legal development a dynamic process that was marked by various attempts at revision and reformation of penal law concepts and their contents.¹⁴

The Dutch Criminal Code, which became the source of our positivists during its application, had been considered too liberal. It freed the criminal from the shackles of a stigmatizing prison sentence and let the punishment serve as the institution pertaining to resocialization or reintegrating the convict into society. As shown in the sentences, it was still the utmost disadvantage of the community that had to be taken into consideration. The mutual influences of law and society under a modern liberal penal system were less visible in the

¹³ See Nafi Mubarok, "Sejarah Perkembangan Hukum Pidana di Indonesia: Menyongsong Kehadiran KUHP 2023 dengan Memahami dari Aspek Kesejarahan." *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 27, no. 1 (2024): 15-31; Daniel Hasudungan Nainggolan, and Ade Adhari. "Perkembangan Aturan Peralihan Dari Kitab Undang-Undang Hukum Pidana Lama Ke Kitab Undang-Undang Hukum Pidana Nasional Baru Sebagai Wujud Pembaharuan." *UNES Law Review* 6, no. 2 (2023): 5240-5250.

¹⁴ See Failin Alin, "Sistem Pidana dan Pemidanaan di dalam Pembaharuan Hukum Pidana Indonesia." *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (2017): 14-31; Michael Adyhaksa Padang, Billi J. Siregar, and Rosmalinda Rosmalinda. "Keberpihakan Pemidanaan dalam Undang-Undang Nomor 1 Tahun 2023." *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 2 (2024): 64-71.

sentences and had to make room for actual changes.¹⁵ The *strafzorger* was considered a statistic. Isn't this the first time in our penal legal system from its very beginning to consider the role of the prisoners within the circle of our society as an important issue before they will be reintegrated, from head to the whole body of our society?

Key Features of Indonesia's New Penal Code

The Penal Code is of considerable significance to nationhood. It harmonizes divergent interests to the effect that it gives body to social justice. The new Penal Code of Indonesia embodies the polemical stages of reform in the domain of criminal law. It updates the existing penal law but dismantles various international justice standards so much so that it raises legitimate debates among scholars and practitioners alike. Criticism aside, the new Penal Code shows potential features of global justice, whereas it embraces legal principles from other jurisdictions and adapts them to bring fairer decision-making processes.¹⁶

The new Penal Code reclassifies criminal offenses into general, special, youth, individual, violence against women, and corporate criminal acts. The first five classes of criminal acts testify to the social values that Indonesia values most. The penalties introduce the rehabilitative theory in criminal imagination—which goes back to the 1915 Penal Code—and restorative justice yet fail to remove financial penalties. With regard to procedural rights, this Code also embraces human rights standards in criminal procedures, among others ensuring the rights of defendants to legal remedy through trials.¹⁷ To protect the rights of the minority, this Code does not differentiate them in the criminal acts but recognizes their vulnerability in certain '*special*' crimes.¹⁸ This refutes the earlier contention that it undervalues the minority: the individual appears in three types of criminal acts and they all abide by an equal procedure. Further,

¹⁵ Muchlas Rastra Samara Muksin, "Tujuan Pemidanaan dalam Pembaharuan Hukum Pidana Indonesia." *SAPIENTIA ET VIRTUS* 8, no. 1 (2023): 225-247. See also Hajairin Hajairin. *Politik Pembaharuan Sistem Peradilan Pidana*. (Yogyakarta: Deepublish, 2022).

¹⁶ Faisal, et al. "Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code." *Cogent Social Sciences* 10, no. 1 (2024): 2301634; Mokhammad Najih, "Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila." *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 149-174.

¹⁷ John Kaplan, Robert Weisberg, and Guyora Binder. *Criminal law: Cases and materials*. (Waltham, MA: Aspen Publishing, 2021).

¹⁸ Abdul Kadir, and Suparji Achmad. "The Urgency of Merging Special Crimes in Reforming the Criminal Code." *International Journal of Accounting, Management, Economics and Social Sciences (IJAMESC)* 1, no. 6 (2023): 895-903.

it reflects the liberal trend by emphasizing individual freedom. Demonstration and state security can coexist: the public assembly can be conducted peacefully without asking for a permit from the public officer. These features, at a glance, mirror the present legal principles. Yet they embrace additional nuances in criminal policies. It is for these reasons that one needs wider studies at a praxis-cross section to distinguish the larger side of the new Penal Code as an ethical advancement or as retrograde steps.

Criminal Offenses and Penalties

One of the major complaints about the old KUHP and the reason why reform is necessary came from law enforcement officials who felt that the law was fraught with legal loopholes that they had to address every day in dealing with criminals.¹⁹ The new KUHP only outlined certain offenses, including smuggling, fraud, slander, etc. Legislation that makes up the penal code prescribes maximum punishment severity, such as the death penalty, regardless of whether the crime had an international character or not, and whether the situation and conditions under which the crime was committed were peaceful or in conflict, pre-, during, or post-conflict.²⁰ Aiming to provide clear-cut definitions, the new Penal Code offers a definition for every element of criminalization of all forbidden acts. The drafters of the new Penal Code sincerely worked to provide, in '*real terms*,' both in words and in clarity, the definition of each and every criminal offense. Astonishingly, the Penal Code drafters concluded that the composition and elements of the forbidden acts of severe criminal acts and the forbidden acts of transgressive acts, categorized into dissociated crimes and misdemeanors, require different treatment and investigation because the former represents a dividing line between possible and impossible acts to be forgiven, without prejudice to the so-called '*balancing of interests*' if the victims and perpetrators or society would accept the social

¹⁹ Tim Lindsey, and Helen Pausacker. *Crime and Punishment in Indonesia*. (London: Routledge, 2020).

²⁰ Daniel Pascoe, "Indonesia's Revised Criminal Code and the Death Penalty—Progress Amid the Gloom?." *Australian Journal of Asian Law* 24, no. 1 (2023): 67-81; Layyin Mahfiana, and Roykhatun Nikmah. "The Urgency of Abolishing the Death Penalty on Sexual Crimes According to Islamic Law and the Perspective of Pancasila." *1st International Seminar on Sharia, Law and Muslim Society (ISSLAMs 2022)*. Atlantis Press, 2022; Piong Khoyfung, and Asmariah Asmariah. "The Implementation of the Death Penalty in Cases of Corruption According to Law No. 31 of 1999, as Amended by Law No. 20 of 2001 and Law No. 1 of 2023, from the Perspective of Legal Certainty is as Follows." *International Journal of Social, Policy and Law* 4, no. 2 (2023): 20-28.

contract.²¹ In providing the definition of offenses, punishment shall aim for the primal goal—to punish the perpetrators, serve justice, and settle the sense of injustice. This punishment should be proportional to the crimes already committed.

Procedural Rights and Due Process

The new penal code contains explicit provisions of procedural rights and contemplates the accused as more of a rights holder.²² These provisions are essentially designed to assure that the accused has the same right to a fair and public trial and defense as enshrined in domestic laws. Some of those guarantees include, among others, the principle of the presumption of innocence; the right to access to judicial justice that includes the right to appeal; the right to legal representation; and the prohibition of being tried twice according to retroactive law. Judicial review is also provided as a tool to redress the violation of procedural law or as a remedy for fundamental human rights violations.²³

Even with these guarantees, judicial proceedings are still subject to the principle of necessity, which provides a limitation to procedural guarantees where such guarantees would disturb societal or governmental balance and order. Nonetheless, the new penal code respects principles of necessity, where regulation also incorporates the principle of proportionality.²⁴ That said, all crimes are subject to an individualized and proportional criminal punishment. Hence, the functional thrust of such provisions is twofold. On the one hand, the code reflects the need for procedural rights in the context of overarching just demands on due process in a criminal proceeding and respect for, and protection of, individual rights and dignity. On the other hand, the provision reflects the tension between individuals' rights and the necessity to establish order, security, and public safety.²⁵ Despite the trade-off, however, in their

²¹ Charles P. Nemeth, *Criminal Law: Historical, Ethical, and Moral Foundations*. (London: Routledge, 2022). See also David A. Sklansky, *A pattern of violence: How the law classifies crimes and what it means for justice*. (Cambridge, MA: Harvard University Press, 2021).

²² See Simon Butt, "Indonesia's new Criminal Code: Indigenising and democratising Indonesian criminal law?." *Griffith Law Review* 32, no. 2 (2023): 190-214; Achmad Taufan Soedirjo, and Surya Jaya. "Legal Criticism of the Code of Law the New Criminal Law is Viewed from The Point of View Philosophical, Sociological and Juridical." *Journal of Social Research* 2, no. 8 (2023): 2458-2473.

²³ Faisal, et al. "Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code."

²⁴ Rajin Sitepu, "Analisis Terhadap Masalah Perumusan Pidana dalam Hukum Pidana." *Doktrina: Journal of Law* 2, no. 1 (2019): 83-98.

²⁵ Afdhal Ananda Tomakati, "Konsepsi Teori Hukum Pidana dalam Perkembangan Ilmu Hukum." *Jurnal Hukum Pidana dan Kriminologi* 4, no. 1 (2023): 49-56; Randy Pradityo,

entirety and state of the codification, those guarantees remain a top priority if Indonesia still wants to align itself as part of the global system of justice. The important issue is how the content of the guarantee is structured and provided. It is not whether the guarantee is so formally loose or regrettably absent.

Treatment of Minorities and Vulnerable Groups

Given the multi-ethnic, multi-religious, and multi-cultural nature of Indonesia, the integrative purpose of the new criminal code involves protecting the rights of minorities and other marginalized individuals. Since independence, the state has generally guaranteed the right to practice one's cultural beliefs, while simultaneously encouraging and promoting inclusivity and eliminating any form of discrimination based on race or religious belief. The draft criminal code includes tangible initiatives to adopt a universal standard of human rights compliance, which addresses the consequences of the concept of never again discriminating.

The draft criminal code prohibits hate speech. As the first crucial step, the Parliament requires that the burden of proof should rely on the person who spreads hate speech, the reason being that the population groups which are less equipped and unprepared to fight for their rights are essentially the victims of hate speech. However, there is one particular challenge that needs to be addressed. Systemic discrimination remains deeply rooted in society and the legal system. The problem of discrimination based on racial or religious grounds still exists, as many cases of racism have occurred, affecting various vulnerable groups.²⁶ A common-sense reading of applicable law and public policy strongly suggests that the treatment of criminals against ethnic and religious minorities should adequately be considered a crime against humanity.

Societal responses to the attacks against minority groups are sometimes divided. It is recognized that there are communities in Indonesia that act in good faith to prevent attacks on minorities and protect the rights of people along ethnic and religious lines. At the same time, however, there is a large part of Indonesian society with biases and prejudices, stereotyping against minority groups, and rejecting or turning a blind eye to their existence. At the state level, the development of laws, as part of state policy, is directed to protect citizens

and Lingkar Timur. "Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat (Towards Criminal Law Reform of Indonesia: An Overview)." *Legislasi Indonesia* 14, no. 2 (2017): 137-144.

²⁶ Paul Marshall, "The ambiguities of religious freedom in Indonesia." *The Review of Faith & International Affairs* 16, no. 1 (2018): 85-96; Nicola Colbran, "Realities and challenges in realising freedom of religion or belief in Indonesia." *The International Journal of Human Rights* 14, no. 5 (2010): 678-704.

with unequal opportunities and power, particularly affecting children, women, people living with HIV, people with disabilities, LGBT individuals, and other groups or individuals living on the margins. Thus, the pressure from the dominant group has a direct effect on the existing discriminatory and unjust legal instruments. Although the proposed criminal law pursues harmonization with international criminal justice mechanisms and standards, examples of practices show evidence of insensitivity and bias in the draft criminal code in addressing issues faced by marginalized groups.

Comparison with International Human Rights Standards

One way to assess the new Penal Code is to compare the rules provided in the drafts with established international human rights instruments. International human rights standards are explicitly, primarily, and authoritatively expressed in key international or universal instruments: a) The Universal Declaration of Human Rights; b) The two International Covenants, namely, i) the International Covenant on Economic, Social and Cultural Rights; and ii) the International Covenant on Civil and Political Rights; and c) The Rome Statute of the International Criminal Court, which includes the principal treaties on genocide, war crimes, and atrocities, that is 1) The Convention on the Prevention and Punishment of the Crime of Genocide; 2) The Geneva Conventions; and 3) The Protocol Additional to the Geneva Conventions.²⁷

The comparison reveals the areas of international human rights accepted, modified, or rejected by Indonesia, which are not yet reflected in the existing comprehensive and comparative analysis on the drafts of the new Penal Code. This comparison covers various areas, including, among others: punishment, imprisonment, enforcement of criminal justice, drugs, territorial issues, common humanity, dignity, rights, torture, forced disappearance, slavery and servitude, working in international agreements, peace, order, security, threats to life, reconciliation, civil and political rights, freedoms, arrest, detention, legal assistance, fair hearing, independence of the judiciary, presumption of innocence, ex post facto, non-retroactive punishment, and the right to equal

²⁷ Gudmundur Alfredsson, and Asbjørn Eide, eds. *The Universal Declaration of Human Rights: a common standard of achievement*. (Leiden: Martinus Nijhoff Publishers, 2023); Rhona KM. Smith, *International Human Rights Law*. (Oxford: Oxford University Press, 2022).

treatment for all individuals.²⁸ If the codification and harmonization fail to incorporate the above international human rights standards or norms into the new Penal Code, the resulting violations might lead Indonesia to be rejected for new cooperation, trade, or friendly relations with other nations and become isolated in the present international relations. Therefore, pressures from civil society are indeed required to urge the government to complete the preparation of the new Penal Code and the Criminal Procedural Law that align with the comprehensive international norms in the field of human rights. It is necessary for an active civil society with the ability to speak up to urge the government to complete the preparation of the new Penal Code and the Criminal Procedural Law that align with the comprehensive international norms in the field of human rights.

Universal Declaration of Human Rights

The 1948 Universal Declaration of Human Rights holds a central position in the construction of the new penal code in 2020. According to international legal theorists, the UDHR stipulates the minimum standard of what is required for full human dignity and human rights to be enjoyed by all people. There are several provisions in the UDHR that are relevant to the discussion of the new penal code. Firstly, Articles 7 and 8 provide that all are equal before the law and are entitled, without any discrimination, to equal protection of the law. The penal code is the main feature of the law to protect people from any behavior that is contrary to human rights principles. Meanwhile, Article 12 emphasizes that no one shall be subjected to arbitrary interference with privacy or unlawful attacks on honor and reputation, as it undermines personal dignity.²⁹

²⁸ Muchamad Iksan, and Sri Endah Wahyuningsih. "Development of Perspective Criminal Law Indonesian Noble Values"; Aji Febrian Nugroho, "Legal Protection for Victims of Fair Trial Rights as a Form of Human Rights Protection in the Indonesian Justice System." *Policy, Law, Notary and Regulatory Issues* 2, no. 1 (2023): 1-12; Rina Rohayu Harun, Mualimin Mochammad Sahid, and Bahri Yamin. "Problems of criminal applications law in the life of Indonesian communities and cultures." *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 1 (2023): 140-155.

²⁹ Bertie G. Ramcharan, *The Concept and Present Status of The International Protection of Human Rights: Forty Years After the Universal Declaration*. Vol. 13. (Leiden: Brill, 2021); Gudmundur Alfredsson, and Asbjørn Eide, eds. *The Universal Declaration of Human Rights: a common standard of achievement*. (Leiden: Martinus Nijhoff Publishers, 2023); David Weissbrodt, *The Right to a Fair Trial Under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights: Articles 8, 10 and 11 of the Universal Declaration of Human Rights*. Vol. 1. (Leiden: Brill, 2021); Mattia Pinto, "Historical trends of human rights gone criminal." *Human Rights Quarterly* 42, no. 4 (2020): 729-761.

Furthermore, the most important part of Article 14 requires every defendant to be presumed innocent until proven guilty at a fair trial, in which he or she has had all the guarantees necessary for his or her defense.³⁰ Articles 15 and 16 clearly express that once a peaceful society has been achieved, an act of law enforcement should be based on the presumption of innocence.³¹ Finally, there is the right to rest and leisure, where Article 24 establishes rest as a human right that is inseparable from human dignity. The struggle for these freedom states that the inherent dignity and worth of the human person cannot be picked or denied. Therefore, the most valuable principles in the UDHR to be realized are Articles 7, 8, and 24. Nevertheless, several other articles in the UDHR may present new advances, which have been incorporated into the new penal code but have not yet been reflected in public opinion and customary practice.³² The new penal code is only a small peak of emerging conventional reform. The real implementation of these reforms needs to be accompanied by irrefutable social changes. In essence, Articles 7, 8, 12, 14, 15, and 24 are sufficient to be comfortably addressed. In addition, the new penal code also refers to some of the conventions adopted by the Hague Conventions until the Geneva Conventions, several Geneva protocols, and European Conventions and their protocols, as well as the Reviews in Kampala Conferences. The Universal Declaration of Human Rights is the backbone of international human rights law. It is probably the most cited of all human rights documents, and yet

³⁰ Aji Febrian Nugroho, "Legal Protection for Victims of Fair Trial Rights as a Form of Human Rights Protection in the Indonesian Justice System." *Policy, Law, Notary and Regulatory Issues* 2, no. 1 (2023): 1-12; Robert R. Strang, "'More Adversarial, but not Completely Adversarial': Reformasi of the Indonesian Criminal Procedure Code." *Fordham International Law Journal* 32, no. 1 (2008): 188-231.

³¹ Hafsa S. Mansoor, "Guilty until Proven Guilty: Effective Bail Reform as a Human Rights Imperative." *DePaul Law Review* 70, no. 1 (2020): 15-62; Dewa Ayu Putri Sukadana, "Implementation of the principle of presumption of innocence of suspects in investigations, pre-trial and trial examinations." *Journal of Law Science* 6, no. 3 (2024): 382-389. See also Mathlangish Shiddiqii, and Rafly Febrian Utama. "The Criminalization of Siti Aisyah Case: The Suspect in the Murder of Kim Jong Nam (Legal and Justice Approach)." *Law Research Review Quarterly* 9, no. 2 (2023): 183-214; Muhlis Safi'i, "The Legality of Providing Legal Aid to Perpetrators of the Crime of Murder in the Perspective of the Theory of Dignified Justice." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 585-604.

³² Miguel Vatter, "Dignity and the foundation of human rights: Toward an averroist genealogy." *Politics and Religion* 13, no. 2 (2020): 304-332; Asit Defi Indriyani, and Rachma Dini Fitria. "Human Rights in Indonesia's Constitution: Human Rights Violations in Sexual Violence." *An-Nisa Journal of Gender Studies* 15, no. 2 (2022): 201-212; Teresa Mróz, "The Protection of Human Dignity in Selected Norms of Civil Law and in Theology." *Rocznik Teologii Katolickiej* 22, no. 1 (2023): 148-169.

half of the 30 articles are not binding. Although it is not binding, it implies law except for the next obligation of states. The principle of *nullum crimen sine lege atque obligatio nulla sine lege* is a cardinal principle of criminal law. It lies at the basis of this book. It is a special expression of the principle *nulla poena sine lege*. This principle is inconsistent with the binding sovereignty of states. It provides for cases of abuse of power by state officials. No law and no obligation imply that human rights are at the disposal of all states. It also provides the guarantee of human rights. It should be understood as a reference to the absence of law and obligation that applies to offenses against human dignity, human rights, and their protection.

International Covenant on Civil and Political Rights

It is assumed that the Pancasila penetrates every nook and cranny of the new criminal law regulating individual citizens' lives, restricting their freedoms and rights, and providing guidance for the settlement of legal issues.³³ However, the planned Penal Code may still embrace newer and more specific international guidelines, including provisions governing individual anti-discrimination rights in the judicial system. Thus, the proposed Penal Code is part of the conceptual development of the Criminal Law, affirming more state obligations based on the values within the international standards because a considerable number of state obligations outlined are not the law of the land in the draft Penal Code. The international standards obligate states to communicate their international obligations within the national context to remind the state and to evaluate the national enforcement. This should be in drafting the new criminal law.

Review of the Penal Code shows three main findings. *Firstly*, there is an important trend that gives hope to the positive development of a number of human rights regulations within the Penal Code. *Secondly*, many of the new criminal laws ignore the principles and provisions of international standards and subtly deviate from the international legal standards that make them weak. This has an impact on reducing the protection for Indonesian citizens who violate

³³ Joko Setiyono, and Aga Natalis. "Universal values of Pancasila in managing the crime of terrorism." *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 15, no. 2 (2023): 48-63; Musa Darwin Pane, and Diah Pudjiastuti. "The Legal Aspect of New Normal and the Corruption Eradication in Indonesia." *Padjajaran Jurnal Ilmu Hukum* 7, no. 2 (2020): 181-206; Didi Jubaidi, "The Significance of the Living Law Concept in the New Criminal Code: A Perspective of Progressive Law." *Journal of Namibian Studies: History Politics Culture* 33 (2023): 6116-6140; Dinda Fadiahturahmah, et al. "The Role of Pancasila Values in Dealing with the Rise of Terrorism and Radicalism." *Journal Transnational Universal Studies* 1, no. 9 (2023): 866-874.

the law from the state. *Thirdly*, the new criminal law seems to confirm a strong structure in the protection of the need for the state, resulting in the marginalization of the defendant. This indicates that there is still a conflict.³⁴

As an option, to promote the protection of the rights of Indonesian citizens from the sidelines, the legal reform movement and human rights could encourage the revitalization of the bases that are the legal vision and mission of the new Indonesian Penal Code. Ensure a strong basis for the present-day legislation. This regulation is able to respond to problems that arise and anticipate new issues in the future. The importance of having a legal basis such as a light implies the focus of the government as a recognition of the development of human rights through international law as the basis for responding to changes in Indonesian society.³⁵

The above points highlight the ongoing influence of evolving international criminal law criteria. As an internationally recognized treaty approved by the state, these foundational values remain relevant in shaping the national legal framework, even amid the recent controversies surrounding the Penal Code. In fact, several legal documents emphasize these principles as mandatory for the state, reinforcing their significance in determining national legal positions, particularly in light of the new norms introduced in the Penal Code. Additionally, international treaties that have undergone the ratification process are subsequently integrated into domestic law, further solidifying their impact on the legal landscape.

Challenges and Controversies Surrounding the New Penal Code

Two main parts of the draft new Penal Code, relating to '*slander*' and '*insult*', have become the cause of major concern and protest. These two sections have been widely critiqued on the grounds that they will retrogressively limit freedom of expression and press freedom, all in the name of honor and morality. They believe that the construction of those two provisions runs against the ideals of justice and criminal law, which should primarily serve to protect the weak against exploitation and domination. The provisions on '*offenses against the State's honor*' will potentially legitimize the State's and dominant groups' authority, which is the ultimate purpose of criminal law in any predominantly

³⁴ Adi Mansar, and Ikhsan Lubis. "Harmonization of Indonesian Criminal Law Through the New Criminal Code Towards Humane Law." *Journal of Law and Sustainable Development* 11, no. 12 (2023): e2381-e2381.

³⁵ Ali Rezky, and Oheo Kaimuddin Haris. "Broadening of the Concept of Obscenity in the Draft of Indonesian Penal Code." *Hasanuddin Law Review* 4, no. 2 (2018): 233-241.

non-democratic social system.³⁶ The compatibility of such a construction with international standards guaranteeing each person's right to freely express will need to be discussed and analyzed as well in relation to harmonizing the new Penal Code with international norms. Other problems and critiques of the draft Penal Code have also been brought up by various groups. The provisions that '*can ban activities*' open a wide possibility for the state to oppress its citizens when those provisions are published as law. The idea is that they may lead to the formation of a totalitarian state.

Some women's rights activists and human rights advocates contend that the draft of the new Penal Code reflects a significant resistance to aligning Indonesian criminal law with democratic principles.³⁷ They argue that the draft is influenced by specific religious and moral values, lacks a gender-sensitive perspective, and hints at the emergence of a theocratic state. In the realm of public policy, this approach appears less supportive of the feminist movement and the establishment of equal legal rights for women. Activists emphasize the need to avoid symbols that would position the country as a fundamentalist state, advocating instead for legal frameworks that ensure equality and certainty for all citizens, free from eclectic legislative practices.

While Indonesia ratified the International Covenant on Civil and Political Rights in 2006, the political will to advance gender equality and protect women's rights is not fully realized in the draft Penal Code. Although it does not outright negate the possibility of diverse sexual identities and gender expressions, certain provisions in Chapters I-IV exhibit discriminatory tendencies, potentially allowing for the formalization of discriminatory practices both privately and publicly. This situation raises concerns that some elements of the draft fail to guarantee and uphold human rights, reflecting an underlying assumption of inequality between men and women.³⁸

³⁶ Fifink Praiseda Alviolita, and Barda Nawawi Arief. "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik dalam Pembaharuan Hukum Pidana di Indonesia." *Law Reform* 15, no. 1 (2019): 130-148; Wemby Adhiatma Satrio Prayogo, "Tinjauan Kebijakan Pidana terhadap Martabat Presiden dan/atau Wakil Presiden dalam RKUHP." *Pandecta Research Law Journal* 15, no. 2 (2020): 207-217.

³⁷ Niken Savitri, and Aep Gunarsa. *HAM Perempuan: Kritik Teori Hukum Feminis Terhadap KUHP*. (Bandung: Refika Aditama, 2008).

³⁸ See Yulio Iqbal Cahyo Arsetyo, "Indonesia's New Criminal Code and Its Implication of International Treaties of Human Rights Commitment in Indonesia." *Jurnal Penelitian Serambi Hukum* 16, no. 2 (2023): 179-186; I. Dewa Made Suartha, I. Dewa Agung Gede Mahardika Martha, and Bagus Hermanto. "Between Mental Illness, Criminal Policy Reform, and Human Rights: Discourse on Reformulation of The Article 44 Indonesia Criminal Code." *International Journal of Criminal Justice Sciences* 17, no. 1 (2022): 1-21.

Moreover, the draft may obscure the legal neglect surrounding pressing issues in family law, such as mental and physical violence against wives and children. This neglect could extend to insufficient protections for women within the criminal justice system, particularly regarding existing crimes like adultery, sexual harassment, and the trafficking of women and children. A critical question arises: what specific interests do women have, particularly concerning the proposed abolition of concubinage within these criminal provisions?³⁹

Freedom of Expression and Press Freedom

As many legal professionals and government officials have acknowledged, residents of democratic countries have the right to freedom of expression. A free press is essential for providing public information across a country. The discussion of current pressing issues in democratic nations is extremely contingent on solutions to help them and prevent governments from failing to achieve major policies. They, however, should neither over-liberalize nor succumb to conservative control, often concentrating on the local region far removed from national security doctrine. For many countries, Indonesia has struggled for decades to suppress the desire for global uniqueness.⁴⁰

Legal authorities are currently urging journalists to limit their coverage of transgender issues as the Indonesian parliament deliberates on penalties related to gender disorders. In light of recent developments, many female journalists are avoiding the parliament buildings in Jakarta after a former Chief of Police approached investigative reporters regarding bribery allegations. This environment of fear is compounded by the threat of libel suits, particularly since Law No. 1 of 1946 recognizes defamation against state officials.

In addition, it is crucial to consider the insights of experts in this context, particularly regarding constitutional obligations that protect individual rights. This understanding should also take into account broader initiatives, including capital initiatives. For instance, while there has been opposition to the

³⁹ Suwandoko Suwandoko, and Satrio Ageng Rihardi. "Legal Reform for the Fulfilment of Disabilities Human Rights." *Unnes Law Journal* 6, no. 2 (2020): 217-224; Adi Saputra, and Febrian Jadug Santoso. "Death Penalty, Right to Life, and Various Controversies in Human Rights." *Unnes Law Journal* 5, no. 1 (2019): 1-8; Ade Putranto, "Capturing Human Rights Issues in Indonesia: Some Controversial Cases." *Lex Scientia Law Review* 1, no. 1 (2017): 1-4.

⁴⁰ See Moh Fadhil, "Criminal Law Reform in Indonesia: The Perspective on Freedom of Expression and Opinion." *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 128-146.

accessibility of broadcast advertising for photographic equipment, the underlying issues remain consistent across various domains.

In such a climate, journalists must be cautioned that ordinary citizens, who are deeply affected by the government's actions and the socio-political climate, may also face state resistance. It is imperative for journalists to remain vigilant and attuned to how the government interacts with society. Even if the state takes action, reporters should be not only alert but also critically aware of the implications of governmental conduct on the public sphere.⁴¹

Gender Equality and Women's Rights

The news of the revision and ongoing discussion on the penal code has received even more attention since it was revealed that there are legal provisions that show the intersection between the penal code and the issue of gender equality and women's rights—the eradication of violence against women in particular. On the one hand, the penal code will not only retain most of what has been amended in the old penal code, for instance, the word “*shame*,” which was the only significant provision protecting women and their reproductive rights.⁴² On the other hand, seen from the discursive content of the discussion, as well as the provisions themselves, those aligned with global policies against gender-based violence tend to amplify worldwide in all disseminated reports. It is important to scrutinize the meaning of those two articles, a provisional phrase for the new penal code, to see the way in which the new penal code accommodates some positions related to the lives of marginal groups, including women.

Articles 474 and 476 have significantly altered the provisions regarding rape charges in the Penal Code. *Firstly*, they introduce stricter penalties for public officials who commit rape or report cases of rape, ensuring that these measures apply without discrimination based on skin color. *Secondly*, the new provisions impose harsher penalties for instances of rape that lead to family issues stemming from a failed marriage proposal. However, this regulation appears to perpetuate elements of the previous coding system and remains somewhat vague in addressing women's rights. The revision of Article 486 does

⁴¹ Clara Staples, "Freedom of Speech in Indonesian Press: International Human Rights Perspective." *Brawijaya Law Journal* 3, no. 1 (2016): 41-59; Ahmad Fakih, "Media Under the Law: Press Freedom Challenges in Indonesia." *Indonesia Media Law Review* 3, no. 1 (2024).

⁴² See Lidwina Inge Nurtjahyo, "Tubuhku Bukan Milikku: Pasal 463 KUHP Baru Ditinjau dari Perspektif Hukum Feminis My Body Is Not Mine: Analysing Article 463 of Indonesia's New Penal Code from Feminist Legal Perspective." *Jurnal Perempuan* 28, no. 1 (2023): 1-10.

not adequately protect or enforce the rights of violence victims, particularly women. For example, while the law revises the rape provision to state that “*everyone who commits rape is punished with death or life imprisonment, solitary confinement for a maximum of nine years, or demotion to the highest grade*,” it fails to provide sufficient safeguards for victims or to reflect a comprehensive understanding of their needs.⁴³

Religious Freedom and Minority Rights

Another area of concern is that the new Penal Code contains a number of provisions that endanger the religious freedom of the people of Indonesia and their public order. For instance, a number of articles in Book Four on Social Order aim to protect the majority and only criminalize the religious activities of highly deviant minority groups. This book also asserts that compliance with the religious beliefs of the majority is vital for the security of the state, and only this type of religion can bring peace, stability, security, and justice to the state. These articles may place non-majority religious groups at particular risk because they focus exclusively on the religious freedom of the majority and interpret the harm caused by any idiosyncratic religious belief in terms of the majority’s religious tolerance.⁴⁴

Clearly, any individual or group has the right to raise specific concerns about the feasibility of or respect for any legal provision or the rationale of a procedural requirement, but such individuals or groups are always entitled to make an intra-regulatory appeal. Consequently, the role of state regulation is to define specific state regulations and establish national standards. However, in some cases, religious beliefs or practices still need to be discussed in society, including whether something is considered a crime. You cannot force people to agree to a law that prevents them from violating the principles of their faith.

⁴³ See Sri Wiyanti Eddyono, “Criminal code draft and protection for victims of gender based violence.” *Jurnal Perempuan* 23, no. 2 (2018): 65-76; Khudzaifah Dimyati, and Angkasa Angkasa. “Victimological Approaches to Crime of Rape in Indonesian Criminal Justice System.” *Hasanuddin Law Review* 4, no. 3 (2019): 366-376. See also Zainurohmah Zainurohmah, et al. “Provisions of Legal Aid as a Form of Protection for Child Victims of Rape.” *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 1 (2023): 21-46; Muhammad Faisal Al Faraby, “Creativity of Protection of Rape Victims in Victimological Perspective.” *Journal of Creativity Student* 4, no. 2 (2019): 143-156.

⁴⁴ See Junius Fernando Zico, Sarjana Putra Panca, and Sri Wulandari. “Potential overcriminalization in religious offenses: A critical analysis of the formulation of the new national criminal code (Law 1 Number 2023).” *Jurnal HAM* 14 (2023): 205-215; Syahril Siddik, “The Origin of the Indonesian Blasphemy Law and its Implication towards Religious Freedom in Indonesia.” *Tebuireng: Journal of Islamic Studies and Society* 3, no. 1 (2022): 17-33.

Three interesting case studies show that the law is failing to provide a sense of security for the people who are not part of the majority group. Overall, the implications of the new Penal Code on religious freedom and minority rights at the grassroots level are obvious. Advocacy concerning these problems should be intensified. With accountability and vigilance, the stage has been set to ensure that any process of change will place the people, especially minority groups, in ethical and legal frameworks.⁴⁵

Legal Reforms and Recommendations for Indonesia

The analysis in the preceding sections demonstrates that Indonesia's Criminal Code is not aligned with international standards. It is imperative for the state to uphold the principles enshrined in international treaties and conventions. Several legal foundations exist to facilitate this harmonization process. A comprehensive legal review should encompass amendments to Law Number 28 of 1999 and Law Number 8 of 1981, as these laws may compromise the legitimacy of criminal proceedings in the future. The Indonesian Criminal Code still contains gaps, elastic clauses, and strong interpretative potential where it bears a significant risk of being used and misused according to political interests. It violates the constitutional principles that uphold civil liberty and foster human rights; therefore, as a replacement, Indonesia has to conduct a comprehensive review of the Criminal Code, from the formulation, the substance, and the sentencing principles, so that the new Penal Code can elaborate on the Universal Declaration of Human Rights or, to be more specific, the International Covenant on Civil and Political Rights. The review process must involve all relevant stakeholders, not only law enforcement. The goal of such a penal case review is to find a harmonized legal basis with international and regional legal instruments, which are content-based on the harm principle and focus on the offender's actions.

The principles of international law also stress that the foundation of all justice must be through judicial independence and the rule of law. The Supreme Court, as the highest and final institution of the judiciary in Indonesia, has the right to provide and interpret law through the courts and should serve as the first step in the legal reform process. Any legal basis areas that uphold the

⁴⁵ Jeremy Zefanya Yaka Arvante, Maulana Fuad Nugraha, and Andrew Sergei Rostislav. "A Comparative Study of Religious Freedom Between Indonesia-Russia and Its Limitations." *Jurnal Scientia Indonesia* 8, no. 2 (2022): 197-222; Ahmad Khoirul Anwar, "Protection of the Right to Freedom of Religion in Indonesia (Case Study: Destruction of the Ahmadiyah Mosque in Balai Harapan Village, Temunak District, Sintang District, West Kalimantan)." *Journal of Creativity Student* 6, no. 1 (2021): 111-130.

practice of enacting the law, as well as the corpus itself, should be based on considerations supporting the ideas of legal certainty. Let the next Indonesian generation judge the success of that reform based on its foundation and process.

Alignment with International Treaties and Conventions

Aligning with International Treaties and Conventions, The Indonesian government is aware that the nation must harmonize domestic laws with international treaties. This is reflected in the answers to the Universal Periodic Review Working Group stating, 'Indonesia is a party to seven out of nine core international human rights treaties', legal instruments, and conventions or rules of international law regarding human rights. Those documents regulate the obligation of states in ensuring the protection and fulfillment of human rights for their citizens in civil, political, economic, social, and cultural fields.

It regulates: prohibition of discrimination, gender equality; protection of the right of self-determination of indigenous peoples; respecting human rights defenders; upholding the rights of the child; ensuring the rights and freedoms of women; protecting disability rights; civil and political rights; and economic, social, and cultural rights. One of the objectives of such reform is also the protection of human rights, in particular by aligning the penal code with international standards on the protection of human rights and other international treaty bodies following the adopted legislation. Indeed, changes to sexual offenses and restrictions on the rights to freedom of opinion may have significant repercussions for Indonesia's international relations.

Moreover, the presence of international monitoring mechanisms of civil and political rights, with the view to ensuring, promoting, and protecting the rights stated in the instrument, can play an important counteract to positive change brought forth by the socialization of the revised penal code. Additionally, local and international advocacy groups are very active in their advances on the growing trend in this regard. Therefore, it is their role to monitor the government, as they have effectively called for compliance in meeting international standards. Civil society organizations shall take the same stand in challenging the government to respect its obligations and responsibilities in promoting justice and equality.

Strengthening Judicial Independence and Rule of Law

Armed with such potential, the strengthening of political will for legal reforms certainly supports the reform of the legal system in Indonesia. Apart from the strong political will, the reform of the legal system in a country can only be advanced effectively and efficiently through a good bench system. The role of the judiciary is quite important to ensure that the relevant legislation in

Indonesia and the world at large is not only a *paper tiger*, but can become an effective legal umbrella to protect the individual rights of life. The view that a just individual is an individual who could be one of the footholds of this discourse. Democracy underlining consensus, which is the essence of the rule of law to date, must certainly place the judiciary as an important independent institution.⁴⁶

It is ironic that efforts to ensure that the justice system in a politically constructed democracy, based on majoritarianism doctrine, can truly work in an accountable manner can be undercut by political interference. Thus, the problem of legal reform in Indonesia cannot be quickly delayed by the issue of judicial accountability. Several strategies can be drawn on the momentum generated by the reform era to improve the judiciary's ability to play its roles, even in the midst of such problems as judicial experts. Efforts to provide broad and intensive legal education, and the development of judicial construction that is based on horizontal and vertical mobility promotion are essential. Judicial reforms must address all legal problems in earnest, including the capacity building of judges. Furthermore, they must be trained and intellectually equipped to weigh the truth and law based on the basic principles of law itself. The legal knowledge and truth that they reflect must be based on critical systems and not dogmatically static in the face of social developments. One of the strengths of democratizing the judiciary is the increasing openness and accountability of the judiciary. Judgments should clarify the development of the law in the judicial framework. The judgments should also be internally consistent and provide a weighty picture of the law.

Implications for Indonesia's Legal System

Our findings carry significant implications for Indonesia's legal framework and the broader global legal landscape. The introduction of the New Indonesian Criminal Code has the potential to reshape human rights practices within Indonesia. While it may not immediately lead to changes in on-the-ground practices, the new code could reinforce the rule of law by establishing foundational principles that promote justice and fairness. For Indonesia to maintain its legitimacy on the global stage, aligning national laws with international conventions and norms is crucial. Since Indonesia has signed and ratified several international human rights treaties, it is imperative that these

⁴⁶ See Yustina Trihoni Nalesti Dewi, W. Riawan Tjandra, and Grant R. Niemann. "Independence of Judicial Power as a Foundation of Human Rights Judicial Function in Indonesia." *International Journal of Social Science and Humanity* 6, no. 3 (2016): 239-242; Daniel C. Prefontaine, and Joanne Lee. "The Rule of Law and the Independence of the Judiciary." *Revue Québécoise de Droit International* 11, no. 2 (1998): 163-186.

standards be effectively integrated into the domestic legal system, ensuring they are enforceable and relevant.⁴⁷

The interplay between Indonesian law and international law underscores the importance of considering local norms alongside global standards. Indonesia's unique cultural context and interpretations of justice and fairness significantly differ from those in the Western legal framework. This divergence invites critical questions about modernity, post-modernity, and global justice, revealing the complexities inherent in a legal system marked by multiple, fragmented, and evolving perspectives. Understanding these dynamics is essential for assessing the impact of the new penal code on the country's legal practices.⁴⁸

Given Indonesia's multicultural makeup, reforming its national legal system is a sensitive and challenging task. The new KUHP must navigate these complexities by integrating both global and local norms, reflecting the diverse societal landscape. This endeavor requires a careful balance between respecting traditional values and adhering to contemporary human rights standards. By addressing the realities of a multicultural society, the KUHP can foster a legal environment that is more inclusive and equitable.

To ensure the new penal code is effective, civic engagement and continuous evaluation are essential after its enactment. The legal community, along with civil society, should actively monitor the application of the KUHP in courts, advocating for its adaptation to practical realities and the protection of vulnerable populations. By fostering a collaborative approach, Indonesia can work toward a legal system that not only reflects its unique cultural identity but also upholds its commitments to international human rights, ultimately enhancing the protection of those who cannot protect themselves.

⁴⁷ See also Katharine McGregor, and Ken Setiawan. "Shifting from international to "Indonesian" justice measures: Two decades of addressing past human rights violations." *Journal of Contemporary Asia* 49, no. 5 (2019): 837-861; Rifqi S. Assegaf, "Sentencing guidance in the Indonesia's criminal code reform bill: For whose benefit?." *Australian Journal of Asian Law* 19, no. 1 (2018): 87-104; Dhandy Parindo, et al. "Penerapan Konsep Dasar HAM dan Pembaharuan Tiga Pilar Utama Hukum Pidana dalam KUHP Baru UU No. 01 Tahun 2023." *Jurnal Hukum Indonesia* 3, no. 3 (2024): 129-142; Muhammad Ridwan Lubis, and Muhammad Yusrizal Adi Syaputra. "Kedudukan Hukuman Mati dalam KUHP Baru Perspektif Hak Asasi Manusia." *Jurnal Ilmiah Penegakan Hukum* 10, no. 2 (2023): 113-120.

⁴⁸ Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 837-844; Yusuf Syakir, and Herman Sujarwo. "Kebijakan Pemaafan Hakim (Rechterlijk Pardon) dalam KUHP Baru." *Syariati: Jurnal Studi Al-Qur'an dan Hukum* 9, no.1 (2023): 109-118.

Conclusion

This study has sought to illuminate the essence, implications, and future of Indonesia's new penal code in the context of fostering a 'just' society. By analyzing the law through multiple lenses, we aimed to ascertain its alignment with contemporary international standards of justice and human rights. Our findings suggest that while the new penal code exhibits a commendable effort to harmonize with global legal norms—particularly in recognizing human dignity and addressing serious crimes like genocide and corruption—it also reveals significant contradictions. These inconsistencies, especially in how the code addresses gender-based violence and the rights of persons with disabilities, highlight a troubling divergence from internationally accepted legal standards.

Furthermore, the diverse perspectives gathered from legal professionals and the public underscore the complexity of law reform in Indonesia. This diversity is not merely an indication of differing opinions but serves as a reminder that the legal system must evolve continuously to remain responsive to societal needs. As our study indicates, the penal code's shortcomings, particularly regarding protections for vulnerable populations, reveal a critical need for ongoing reform. By recognizing that individuals with disabilities should be viewed as victims rather than criminals, we can better align Indonesia's legal framework with its constitutional values and international obligations, ultimately contributing to a more equitable legal system.

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The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned. We are all implicated when we allow other people to be mistreated.

Bryan Stevenson

An American lawyer, social justice activist,
Professor at New York University School of Law

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