



MORAL CRIMINALIZATION AND THE ILLUSION OF HUMANISM IN INDONESIA'S NATIONAL CRIMINAL CODE

Muhammad Hikmal Yazid¹, Filda Mufarrihati Yusmansyah², Zulhilmi Bin Paidi³

¹University Sunan Ampel, Indonesia, E-mail: yazid.hikmal.muhammad@gmail.com

²Universitas Airlangga, Surabaya, Indonesia, E-mail: filda.mufarrihati.yusmansyah-2025@fisip.unair.ac.id

³Universiti Utara Malaysia, E-mail: zul1085@uum.edu.my

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Abstract

This article critically examines the political direction of Indonesia's National Criminal Code (Law No. 1 of 2023) by interrogating the tension between its proclaimed humanistic orientation and its expansive approach to criminalization. Positioned as a landmark project of legal decolonization, the new Code seeks to replace the colonial penal legacy with a framework grounded in restorative justice, proportional punishment, and the recognition of living law. Using doctrinal legal analysis and critical political-legal theory, this study analyzes key normative shifts, including the introduction of non-custodial sanctions, the reconfiguration of penal objectives, and the expansion of criminal liability into the domains of private morality, freedom of expression, and customary norms. The findings reveal a structural paradox: while the Code softens modes of punishment, it simultaneously broadens the scope of punishable conduct, particularly through morality-based offenses, insult provisions protecting state authority, and the incorporation of unwritten law into the legality principle. This dual trajectory suggests not a retreat of state power, but its rearticulation through subtler and more pervasive forms of social control. The article concludes that the National Criminal Code embodies a form of selective humanism-humanistic in sanctions yet illiberal in norms posing significant risks to legal certainty, civil liberties, and democratic accountability unless constrained by rigorous constitutional interpretation and rights-based enforcement.

INTRODUCTION

The enactment of Law Number 1 of 2023 on the National Criminal Code marks one of the most consequential moments in the legal history of post-independence Indonesia. After more than seven decades of debate, delay, and revision, the Indonesian state formally replaced the colonial *Wetboek van Strafrecht voor Nederlandsch-Indië* with a nationally

codified criminal law framework claimed to reflect indigenous values, constitutional principles, and contemporary human rights standards. This legislative milestone has been widely celebrated by state institutions as the culmination of a long-standing project of legal decolonization, symbolizing the reclamation of legal sovereignty and the assertion of a distinct national legal identity. Within official narratives, the National Criminal Code is framed as a progressive and humanistic reform that abandons colonial retributivism in favor of restorative justice, proportional punishment, and moral values rooted in Pancasila.

However, the decolonial narrative surrounding the National Criminal Code should be treated critically rather than accepted at face value. Butt's analysis of Indonesia's new Criminal Code shows that indigenization and democratization are not automatically equivalent to rights-based liberalization, because nationally framed reform may still reproduce coercive or majoritarian forms of criminal regulation (Butt, 2023). This supports the need to examine whether the Code's departure from colonial legality genuinely limits state power or merely relocates penal authority within new cultural and constitutional vocabularies.

However, beneath this celebratory discourse lies a far more complex and contested reality. Criminal law is never a neutral instrument; it is an expression of political power, moral authority, and ideological orientation. Throughout history, penal codes have functioned not merely to regulate harmful conduct but to delineate the boundaries of acceptable behavior, define social norms, and legitimize the coercive reach of the state. As such, the transformation of a criminal code is not simply a technical legal exercise but a profound political act that reshapes the relationship between the state and its citizens. The National Criminal Code therefore demands scrutiny not only as a product of decolonization but as a contemporary instrument of governance operating within a democratic constitutional order.

Globally, modern criminal law reform has been shaped by two competing tendencies. On one hand, there is a growing commitment to penal humanization, reflected in the reduction of imprisonment, the expansion of non-custodial sanctions, and the adoption of restorative justice mechanisms. On the other hand, many states have simultaneously expanded the scope of criminalization, extending penal control into areas of private life, moral conduct, and expressive freedom. This dual movement softening punishment while broadening criminal norms has been widely observed in both liberal and illiberal democracies, raising questions about whether penal reform genuinely constrains state power or merely reconfigures it into subtler forms of social control (Chang, 2020).

Indonesia's National Criminal Code appears to embody this global paradox with particular intensity. While the Code introduces alternative sanctions such as community service, probationary supervision, judicial pardon, and a conditional approach to capital punishment, it also criminalizes new forms of conduct related to private morality, cohabitation, defamation of state institutions, and violations of living law. These developments invite a critical inquiry into the actual direction of Indonesia's penal politics: whether the shift toward humanistic punishment reflects a substantive commitment to

individual rights, or whether it masks an expansion of the state's normative authority over personal and civic life.

The issue of criminalization occupies a central position in this debate. Criminalization is not merely the act of labeling conduct as illegal; it is the most coercive form of social regulation available to the state. By invoking the threat of punishment, criminal law carries symbolic power that shapes behavior even in the absence of enforcement. Consequently, the decision to criminalize or decriminalize certain conduct reflects normative judgments about morality, social order, and political legitimacy. In democratic systems, criminalization is expected to be restrained, proportionate, and justified by clear harm to public interests. Excessive or vague criminalization risks undermining legal certainty, eroding civil liberties, and enabling selective or discriminatory enforcement.

Within the National Criminal Code, the expansion of morality-based offenses has generated intense controversy both domestically and internationally. Provisions concerning adultery, cohabitation, and offenses against decency have been defended by the state as mechanisms to protect family institutions, cultural values, and social harmony. The introduction of complaint-based prosecution is presented as a safeguard against overreach, limiting state intervention to cases initiated by affected family members. Yet critics argue that the mere existence of such offenses legitimizes moral surveillance, stigmatization, and informal coercion, particularly against women, young people, and marginalized groups. This debate highlights a deeper tension between moral majoritarianism and individual autonomy in pluralistic societies.

Equally contentious are the provisions criminalizing insults against the President, Vice President, and state institutions. Although reintroduced with procedural limitations and explicit protections for public interest criticism, these offenses revive legal doctrines previously annulled for undermining freedom of expression. In a republican democracy grounded in constitutional equality, the special protection of political authority raises fundamental questions about the proper balance between dignity of office and accountability of power. Scholars have warned that even complaint-based insult laws may generate a chilling effect, discouraging public participation and critical discourse, particularly in digital spaces where expressive boundaries are inherently fluid.

Another defining feature of the National Criminal Code is the recognition of living law as a basis for criminal liability. This innovation is frequently justified as a decolonial correction to rigid legal positivism, allowing indigenous and customary norms to coexist with national law. In theory, such recognition affirms legal pluralism and respects the normative autonomy of local communities. In practice, however, incorporating unwritten and evolving norms into a formal penal system raises serious concerns regarding legality, predictability, and equality before the law. Criminal law traditionally demands clarity, prior codification, and uniform application, requirements that sit uneasily with the flexible and contextual nature of customary norms. The tension between pluralism and legal certainty thus emerges as one of the most profound theoretical challenges of the new Code.

Despite the abundance of public debate, much of the existing scholarship on the National Criminal Code remains fragmented. A significant portion of the literature focuses on doctrinal comparisons between the colonial and national codes, highlighting changes in sanction structures, subject liability, and legal principles. Other studies examine specific controversial provisions, often in isolation, without situating them within a broader political theory of criminal law. While these contributions are valuable, they frequently stop short of interrogating the underlying logic that connects penal humanization with normative expansion. As a result, the deeper political implications of the reform, particularly its impact on civil liberties and democratic governance, remain underexplored.

Moreover, prevailing narratives tend to frame the reform dichotomously: either as a progressive achievement of legal sovereignty or as a conservative regression threatening human rights. Such binary assessments obscure the internal contradictions of the Code and limit analytical precision. What is needed instead is a more integrated approach that examines how humanistic penal reforms and expansive criminalization coexist within a single legislative framework, and what this coexistence reveals about the contemporary Indonesian state.

This study positions itself within that unresolved space. Rather than asking whether the National Criminal Code is simply good or bad, progressive or regressive, this article asks a more fundamental question: what kind of state does the Code construct through its politics of criminalization? By analyzing the Code as a political-legal project, the article seeks to uncover the rationalities that justify both penal moderation and moral regulation, and to assess their implications for individual autonomy, legal certainty, and democratic accountability.

The research gap addressed in this article lies in the lack of a comprehensive political-legal analysis that connects three key dimensions of the National Criminal Code: humanistic punishment, moral criminalization, and state authority. Existing studies tend to examine these elements separately, failing to account for their interdependence. Consequently, the paradoxical nature of the reform-humanistic in form yet illiberal in scope has not been sufficiently theorized. This article seeks to fill that gap by treating the Code not merely as a collection of legal provisions, but as a coherent expression of state power operating within a moral and constitutional framework.

In doing so, the article also contributes to broader debates in criminal law theory concerning the limits of penal intervention in democratic societies. It engages with critical perspectives that view criminal law as a tool of governance rather than a neutral response to harm, and it situates Indonesia's experience within global discussions on overcriminalization, moral regulation, and the transformation of punishment. By grounding the analysis in constitutional principles and human rights norms, the study aims to move beyond descriptive critique toward normative evaluation.

The objectives of this article are threefold. First, it aims to contextualize the National Criminal Code within the broader trajectory of Indonesian legal reform and global penal transformation, highlighting the political significance of its humanistic claims. Second, it seeks to critically examine the expansion of criminalization into areas of private morality,

expression, and customary norms, assessing the justifications offered by the state and the risks they entail. Third, the article endeavors to articulate a conceptual framework for evaluating the compatibility of the National Criminal Code with democratic values, legal certainty, and the protection of civil liberties.

By pursuing these objectives, the article does not seek to reject the project of national codification itself, nor does it deny the importance of cultural and moral considerations in lawmaking. Instead, it argues that criminal law must remain a restrained instrument, employed only where necessary to protect public interests and fundamental rights. Without such restraint, even a formally humanistic penal system may become a vehicle for excessive control, undermining the very values it claims to uphold.

Ultimately, this study contends that the true measure of the National Criminal Code lies not in its departure from colonial texts, but in its capacity to balance moral diversity, individual freedom, and state authority within a constitutional democracy. Whether the Code will serve as a foundation for a humane and rights-respecting legal order, or as a mechanism for normalized coercion under the banner of national values, depends on how its underlying logic of criminalization is understood, interpreted, and contested.

METHOD

This study employs a qualitative legal research approach with a normative–doctrinal research design, chosen to critically examine the political and normative dimensions of criminal law reform as embodied in Indonesia’s National Criminal Code. Qualitative legal research is particularly appropriate for analyzing statutes, legal principles, and normative frameworks because it allows for in-depth interpretation of legal texts and their underlying rationalities rather than measurement of empirical variables. The doctrinal approach is used to systematically analyze positive law, while a critical legal perspective is applied to situate the law within broader political, constitutional, and socio-legal contexts.

The primary research object of this study is Law Number 1 of 2023 on the National Criminal Code, which serves as the central legal text under analysis. To ensure analytical depth and contextual accuracy, the study also examines related legal materials, including the 1945 Constitution of the Republic of Indonesia, decisions of the Constitutional Court concerning criminalization and freedom of expression, official academic drafts (*naskah akademik*) of the Criminal Code, and relevant statutory regulations connected to criminal justice policy. These materials were selected based on their direct relevance to the themes of criminalization, humanistic punishment, and state authority.

In addition to primary legal materials, secondary data sources were utilized to position the study within existing scholarship. These sources include peer-reviewed journal articles, scholarly books, policy papers, and authoritative commentaries on criminal law reform, legal decolonization, human rights, and theories of punishment. The selection criteria for secondary sources prioritized academic credibility, relevance to the research focus, and contribution to theoretical or critical debates in criminal law. Tertiary materials, such as legal dictionaries and encyclopedias, were used selectively to clarify conceptual terminology.

Data collection was conducted through systematic document analysis. Legal texts and scholarly sources were collected, organized, and reviewed to identify normative patterns, conceptual frameworks, and points of contention related to moral criminalization and humanistic discourse. The analysis focused on statutory provisions concerning types of offenses, principles of criminal liability, sanction models, and the recognition of living law, as well as their accompanying official explanations. This method enables a comprehensive understanding of both the textual formulation of the law and the ideological justifications behind it.

The data analysis procedure followed a descriptive-analytical and critical interpretative technique. First, relevant legal norms were described and classified to map the structure and content of the National Criminal Code. Second, these norms were interpreted using legal reasoning grounded in constitutional principles, criminal law theory, and human rights standards. Third, a critical analysis was undertaken to examine inconsistencies, normative tensions, and potential implications of expanded criminalization within a humanistic penal framework. This step involved comparing the stated objectives of the law with its substantive provisions to assess coherence and proportionality.

To enhance analytical rigor, the study adopts theoretical triangulation, drawing on theories of criminalization, state power, and penal humanism to interpret the findings. This approach allows the same legal phenomena to be examined from multiple conceptual perspectives, reducing the risk of single-theory bias. Throughout the research process, the narrative is maintained in an objective and technical manner, emphasizing transparency and replicability in line with methodological standards for qualitative legal research.

By applying this structured and systematic method, the study seeks to provide a replicable and academically grounded analysis of the National Criminal Code as a political-legal instrument, without relying on empirical field data or subjective interpretation beyond established legal reasoning.

RESULT AND DISCUSSION

Result

1. Structural Transformation of Penal Sanctions in the National Criminal Code

The analysis of Law Number 1 of 2023 reveals a significant restructuring of Indonesia's penal sanction system. The National Criminal Code introduces a clear departure from the classical punitive orientation of the colonial criminal code by emphasizing non-custodial and corrective sanctions. Imprisonment, while still retained as a principal punishment, is no longer positioned as the default response to criminal conduct. Instead, the Code establishes a hierarchy of sanctions that includes supervision, community service, fines adjusted to economic capacity, judicial pardon, and conditional sentencing.

One of the most notable outcomes identified in the legal text is the redefinition of punishment objectives. Shifts the primary focus from mere retaliation to correction. This shift is reflected in provisions allowing judges to consider the offender's personal circumstances, social background, and potential for rehabilitation when determining

sentences. The introduction of sentencing guidelines further aims to reduce disparities and ensure proportionality.

Another significant finding concerns the reformulation of capital punishment. Rather than abolishing the death penalty, the National Criminal Code places it under a probationary framework, allowing for commutation to life imprisonment or long-term incarceration if the convicted individual demonstrates reform over a specified period. This conditional approach represents a compromise between abolitionist human rights discourse and retentionist political realities.

Overall, the results indicate that, at the level of sanctions, the National Criminal Code embodies a distinctly humanistic orientation. The emphasis on individualized sentencing, restorative mechanisms, and penal moderation constitutes a substantial transformation of Indonesia's punitive philosophy.

2. Expansion of Criminalized Conduct into Moral and Private Domains

Despite the moderation of sanctions, the analysis demonstrates a concurrent expansion of criminalized conduct, particularly in relation to private morality and personal behavior. The National Criminal Code explicitly introduces and reformulates offenses related to adultery, cohabitation outside marriage, and violations of public decency, thereby extending criminal liability into domains traditionally regarded as private.

This expansion is concretely reflected in several provisions. Article 411 criminalizes adultery (*perzinaan*), defined as sexual intercourse between a married person and someone who is not their spouse. Article 412 further extends criminal liability to cohabitation outside marriage (*kumpul kebo*), penalizing individuals who live together as husband and wife without a legally recognized marriage. In addition, Article 413 regulates offenses related to incestuous relations, reinforcing the moral boundaries of familial structure. Beyond sexual conduct, Article 281 and related provisions on public decency criminalize acts deemed to violate moral norms in public spaces.

The legal text justifies these provisions as mechanisms to protect family institutions, moral order, and societal values rooted in Pancasila. Procedurally, Articles 411 and 412 classify adultery and cohabitation as complaint-based offenses (*delik aduan*), limiting prosecution to complaints filed by specific parties such as spouses, parents, or children. This procedural limitation is formally presented as a safeguard against excessive state intrusion.

However, from a normative perspective, the existence of these provisions within the criminal code itself constitutes a significant shift in the boundaries of criminal law. Even as complaint-based offenses, these norms symbolically legitimize state intervention in intimate relationships and private conduct. The codification of morality-based offenses thus reflects not merely the protection of concrete harm, but the institutionalization of moral judgment through penal mechanisms.

3. Recriminalization of Insult and Expression-Related Offenses

Another key result concerns the reintroduction of criminal provisions related to insults against state authority, including the President, Vice President, and state institutions.

Although these provisions differ textually from earlier versions annulled by constitutional adjudication, their substantive function remains the protection of symbolic authority.

The Code introduces procedural filters, such as complaint requirements and explicit recognition of public interest criticism, to distinguish legitimate expression from punishable insult. Nevertheless, the normative structure of these offenses grants special legal protection to political office holders, distinguishing them from ordinary citizens.

The analysis shows that the legal threshold for insult remains indeterminate, relying on subjective assessments of dignity, intent, and social context. As a result, the potential for interpretive flexibility is structurally embedded in the law. This outcome raises questions about predictability and equal application of criminal norms.

4. Institutionalization of Living Law as a Source of Criminal Liability

A further major finding is the formal recognition of living law as a basis for criminal responsibility. The National Criminal Code allows courts to consider customary norms that exist and are observed within local communities, even when such norms are not explicitly codified in statutory law.

This recognition is framed as an acknowledgment of legal pluralism and cultural diversity. The Code requires that living law be consistent with national principles, human rights, and societal development. However, the criteria for determining the existence, content, and scope of such norms remain largely undefined.

The result of this provision is the partial departure from strict legality principles traditionally associated with criminal law. While intended to empower local normative orders, the provision introduces uncertainty regarding foreseeability and uniformity of criminal liability.

Discussion

The findings outlined above reveal a consistent pattern across multiple dimensions of the National Criminal Code, particularly in the relationship between penal moderation and the expansion of criminalized conduct. This section interprets these findings through established theories of criminalization, penal power, and legal pluralism to assess their broader implications within a democratic constitutional framework.

1. Humanistic Sanctions and the Reconfiguration of State Power

The results demonstrate that the National Criminal Code adopts a humanistic orientation at the level of punishment while simultaneously expanding the scope of criminal regulation. This duality challenges conventional assumptions that penal moderation necessarily correlates with a reduction of state coercion.

From a theoretical perspective, the humanization of sanctions does not automatically diminish state power; rather, it transforms the modality through which power is exercised. By shifting emphasis from incarceration to supervision, rehabilitation, and moral correction, the state extends its influence into the social and psychological dimensions of the offender's life. Penal power becomes less visible but more pervasive.

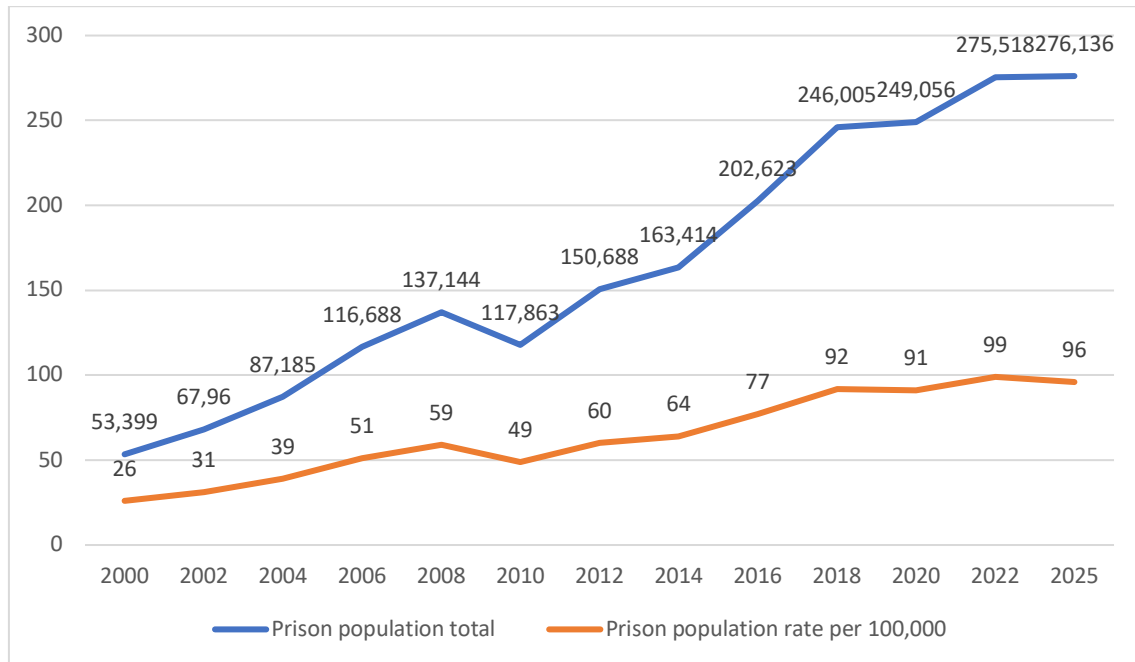
This transformation aligns with the concept of disciplinary power articulated by Foucault (1977), who argues that modern punishment operates not primarily through

physical repression but through subtle forms of surveillance and normalization. Jouet’s reading of Foucault further complicates this point by showing that Foucauldian critique does not necessarily reject all penal reform, but exposes the ambiguity of reforms that appear humane while preserving disciplinary rationalities (Jouet, 2022)). This perspective is useful for interpreting the National Criminal Code: alternative sanctions and restorative mechanisms may reduce the visible harshness of punishment, yet they can also expand supervisory and corrective forms of state intervention if not limited by clear rights-based safeguards. In this sense, the National Criminal Code does not represent a retreat from coercion but a rearticulation of control through more diffused and internalized mechanisms.

At the same time, this development reflects what Tonry (2017) describes as penal moderation, where states seek to reduce reliance on imprisonment while maintaining the functional authority of criminal law. However, as Tonry cautions, such moderation does not inherently limit the scope of criminalization itself. The Indonesian case demonstrates that penal humanization can coexist with, and even facilitate, broader normative regulation.

Empirical prison data provide important context for this managerial dimension of penal humanization. World Prison Brief data show that Indonesia’s prison population increased substantially from 53,399 prisoners in 2000 to 276,136 prisoners in 2025, while the prison population rate rose from 26 to 96 per 100,000 people during the same period (World Prison Brief, 2026). This trend suggests that the appeal of non-custodial sanctions and restorative mechanisms cannot be understood solely as a normative commitment to humane punishment; it is also shaped by the practical pressure of managing a continuously expanding correctional population.

Figure 1. Growth of Indonesia’s Prison Population, 2000–2025



Source: (World Prison Brief, 2026)

2. Moral Criminalization and the Limits of Democratic Legitimacy

The expansion of morality-based offenses raises fundamental questions about the proper limits of criminal law in a democratic society. Classical liberal theory maintains that criminalization must be justified by demonstrable harm to others rather than mere moral disapproval. This principle is most prominently articulated by Feinberg (1984), who argues that the state should not criminalize conduct solely on the basis of its perceived immorality in the absence of tangible harm.

From this perspective, provisions criminalizing adultery, cohabitation, and related forms of private conduct reflect a departure from harm-based justification toward moral regulation. While the state frames these norms as necessary to protect family institutions and social order, such claims rely on abstract and often unverified assumptions about collective harm.

Critiques of overcriminalization further reinforce this concern. Husak (2008) argues that the expansion of criminal law into domains lacking clear harm risks undermining both individual autonomy and the moral credibility of the legal system. Similarly, Simester & von Hirsch (2019) emphasize that criminal law must be constrained by principled limits to prevent its transformation into a tool of excessive social control.

In the Indonesian context, the reliance on complaint-based mechanisms (*delik aduan*) is often presented as a safeguard against overreach. However, this procedural limitation does not eliminate the symbolic and regulatory effects of criminalization. As noted in socio-legal scholarship, the mere existence of such offenses shapes social norms and legitimizes informal enforcement practices, including stigma and moral surveillance (Cohen, 2018).

3. Freedom of Expression and the Symbolic Protection of Authority

The recriminalization of insult-related offenses illustrates the tension between authority protection and democratic accountability. In constitutional democracies, political office holders are expected to tolerate heightened scrutiny and criticism. Criminal law protection of dignity, when selectively applied to state officials, disrupts the principle of equality before the law.

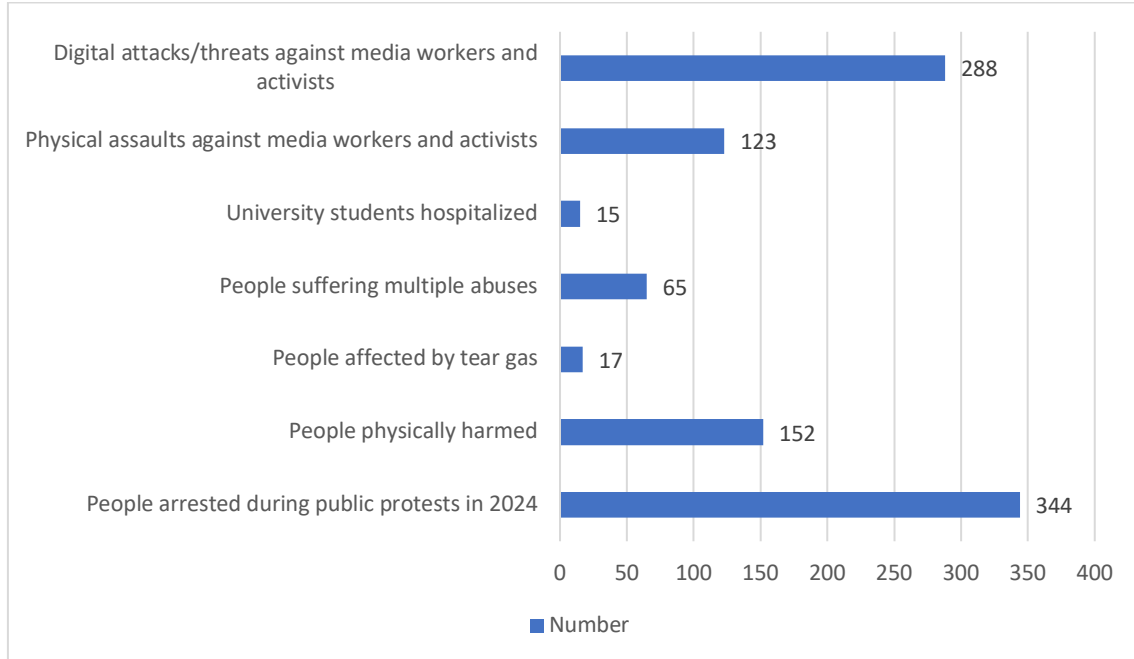
Although the National Criminal Code incorporates safeguards for public interest expression, the indeterminate nature of insult creates a chilling effect. Individuals may refrain from legitimate criticism due to uncertainty about legal boundaries. This outcome is particularly significant in digital spaces, where expressive norms evolve rapidly.

The findings indicate that the protection of symbolic authority remains a core concern of the state, even within a framework that claims to prioritize human rights. This tension reflects an unresolved conflict between republican accountability and hierarchical respect.

Recent human rights monitoring provides empirical context for this concern. Amnesty International's 2024 reporting, as summarized by AP News, recorded at least 344 arrests during public protests, 152 cases of physical harm, 17 people affected by tear gas, and 288 digital attacks or threats against media workers and human rights activists (Amnesty

International Indonesia, 2025; Karmini, 2025). These figures illustrate that expression-related criminal norms operate within a broader enforcement environment in which criticism, protest, and digital expression remain vulnerable to coercive responses.

Figure 2. Reported Protest and Expression-Related Rights Violations in Indonesia, 2024



Source: (Amnesty International Indonesia, 2025; Karmini, 2025)

4. Legal Pluralism versus Legal Certainty

The incorporation of living law into criminal liability reflects a commitment to legal pluralism but simultaneously destabilizes foundational principles of criminal justice. The principle of legality requires that criminal norms be clear, accessible, and foreseeable. Customary norms, by contrast, are dynamic, localized, and often contested.

While the recognition of living law may empower local communities, it also risks uneven application of criminal law and differential treatment of individuals based on geographic or cultural affiliation. Without clear procedural safeguards and evidentiary standards, the potential for arbitrariness increases.

This tension highlights a broader dilemma: how to reconcile cultural recognition with the demands of a modern constitutional criminal justice system. The National Criminal Code resolves this dilemma normatively but not operationally, leaving significant interpretive burdens to judicial discretion.

A similar concern appears in broader debates on Indonesian legal reform, where regulatory change often produces tension between normative ideals, institutional capacity, and implementation ethics. Mukhlis, Maskun, et al. (2025) show that legal reform may generate practical uncertainty when regulatory conflict is not accompanied by clear operational standards and coherent ethical orientation. Applied to the National Criminal Code, this reinforces the argument that the recognition of living law requires more than

normative affirmation; it demands precise procedural safeguards, evidentiary standards, and institutional guidance to prevent uneven enforcement.

Synthesizing the findings, the National Criminal Code can be characterized as embodying selective humanism. Sanctions are humanized, individualized, and moderated, yet the normative scope of criminal law is expanded in ways that constrain personal and civic freedoms.

This selective approach suggests that humanism is applied primarily to the treatment of offenders rather than to the definition of criminality itself. The state demonstrates compassion in punishment but assertiveness in moral regulation. Such a configuration may reduce physical suffering while intensifying normative control.

From a political-legal standpoint, this model reflects an illiberal turn within a formally democratic framework. The law accommodates human rights discourse while maintaining strong moral authority over citizens' lives.

The findings have broader implications for criminal law reform beyond the Indonesian context. They illustrate that legal decolonization does not inherently lead to liberalization. Replacing colonial texts may reproduce or even amplify regulatory ambitions under new ideological justifications.

For democratic governance, the challenge lies in ensuring that criminal law remains a last resort rather than a primary tool of moral governance. Without rigorous constitutional interpretation and rights-based enforcement, the National Criminal Code risks normalizing expanded coercion under the banner of national values and humanism.

This study contributes to criminal law scholarship by demonstrating that penal humanization and overcriminalization are not mutually exclusive but mutually reinforcing. The National Criminal Code exemplifies how states can soften punishment while simultaneously expanding normative reach.

By integrating analysis of sanctions, criminalization, and legal pluralism, this article advances a more holistic understanding of contemporary penal reform. It underscores the need to evaluate criminal law not only by how it punishes, but by what—and whom—it chooses to criminalize.

Beyond its coercive function, the National Criminal Code operates as a form of moral pedagogy. The expansion of morality-based offenses and symbolic protection of authority indicates that criminal law is being used not only to sanction harmful conduct but also to educate citizens about acceptable values and behaviors. In this sense, the Code functions as a normative script through which the state communicates moral expectations.

The results suggest that criminal law in Indonesia is increasingly positioned as an instrument for shaping character and social ethics rather than merely preventing harm. This pedagogical orientation aligns with communitarian legal philosophies but raises concerns when translated into penal norms. Criminal law differs fundamentally from other forms of moral education because it is enforced through coercion, stigma, and the threat of deprivation of liberty.

This pedagogical turn blurs the boundary between ethical guidance and legal compulsion. While moral education is a legitimate function of social institutions such as

family, religion, and civil society, its translation into criminal law risks transforming moral disagreement into legal deviance. The findings thus indicate a shift in the function of criminal law from a reactive system addressing concrete harm to a proactive mechanism for moral normalization.

An important yet often overlooked dimension of the findings concerns the political economy underlying penal humanization. Non-custodial sanctions, restorative mechanisms, and probationary models are frequently justified in humanitarian terms. However, they also correspond with pragmatic considerations related to prison overcrowding, budgetary constraints, and administrative efficiency.

The National Criminal Code's emphasis on alternatives to imprisonment reflects an awareness of systemic limitations within Indonesia's correctional system. From this perspective, humanistic reform may serve not only ethical objectives but also managerial ones. Penal moderation reduces the financial and infrastructural burdens associated with mass incarceration while maintaining the symbolic authority of criminal law.

This observation does not negate the normative value of humanistic sanctions but complicates their interpretation. Humanism, in this context, is intertwined with governance rationality. The state appears to recalibrate punishment to remain sustainable while preserving its capacity to regulate conduct. The findings thus support the argument that penal reform must be analyzed not only in moral terms but also through the lens of institutional capacity and political calculation.

Judicial Discretion and the Risk of Normative Fragmentation

The results further reveal an expanded role for judicial discretion within the National Criminal Code. Judges are granted broader authority to assess personal circumstances, social context, and restorative potential when imposing sanctions. While this discretion is intended to humanize justice, it also introduces variability and uncertainty.

When combined with vague offense definitions, morality-based norms, and living law provisions, expanded discretion risks producing normative fragmentation. Different courts may interpret the same provision differently based on local values, social pressures, or institutional culture. This fragmentation undermines the predictability and uniformity that criminal law seeks to uphold.

The discussion therefore highlights a structural tension: humanization through discretion versus legality through determinacy. Without strong interpretive guidelines and constitutional oversight, discretion may become a vehicle for inconsistency or implicit bias. This is particularly concerning in cases involving morality or expression, where social norms are contested and power asymmetries are pronounced.

The cumulative effect of expanded offense categories, moral regulation, and symbolic protections is a phenomenon best described as symbolic inflation of criminal law. The law increasingly speaks on matters that could be addressed through civil regulation, administrative sanctions, or social norms. As criminal law expands, its symbolic weight risks dilution.

Overcriminalization does not necessarily lead to increased enforcement; rather, it creates a surplus of norms that exceed the state's capacity or willingness to enforce uniformly. This surplus produces selective enforcement, informal bargaining, and legal uncertainty. The findings suggest that the National Criminal Code contains multiple provisions that are unlikely to be consistently applied but nonetheless shape behavior through fear, stigma, or moral pressure.

This symbolic inflation weakens the expressive clarity of criminal law. When too many forms of conduct are criminalized, the distinction between serious wrongdoing and moral disapproval becomes blurred. Such blurring undermines the legitimacy of criminal law as a rational and principled system.

The results and discussion point to an inevitable constitutional tension between the National Criminal Code and fundamental rights guarantees. Provisions related to privacy, expression, and equality raise questions about compatibility with constitutional principles. While the Code attempts to preempt constitutional challenges through procedural safeguards, substantive tensions remain.

This situation positions constitutional adjudication as a critical arena for resolving ambiguities and limiting overreach. This constitutional dimension can be strengthened by considering the role of the Constitutional Court as a guardian of constitutional supremacy. Mukhlis et al. (2025) argue that the absence of adequate judicial control over constitutionally significant legal changes may weaken constitutional supremacy and create risks of democratic erosion through formally valid political processes (Mukhlis et al., 2025). In the context of the National Criminal Code, this insight reinforces the need for constitutional adjudication not merely as a corrective mechanism after abuse occurs, but as a substantive safeguard against the normalization of vague, morality-based, or authority-protective criminal norms. Judicial review will likely play a decisive role in determining whether morality-based offenses and insult provisions can be applied consistently with democratic freedoms. The findings imply that the fate of the Code's most controversial elements will depend less on legislative intent and more on judicial interpretation.

However, reliance on courts to correct legislative excess introduces its own risks. Constitutional litigation is reactive, case-specific, and often slow. Moreover, courts operate within political and institutional constraints. The discussion thus underscores the importance of legislative self-restraint and principled criminalization at the drafting stage, rather than post hoc correction.

Although grounded in the Indonesian context, the findings resonate with broader global trends in criminal law reform. Many jurisdictions pursue penal moderation while simultaneously expanding regulatory offenses related to morality, security, or public order. Indonesia's experience illustrates how these trends can coexist within a single legal instrument.

Comparatively, the National Criminal Code reflects a hybrid model: liberal in its approach to punishment, communitarian in its approach to norms. This hybridity challenges binary classifications of legal systems as liberal or illiberal. Instead, it suggests a

spectrum in which different dimensions of criminal law evolve at different speeds and in different directions.

The global relevance of this case lies in its demonstration that decolonization and modernization do not necessarily converge with liberalization. States may adopt humanistic language while reinforcing moral authority. This insight contributes to comparative criminal law by highlighting the importance of examining internal coherence rather than surface rhetoric.

A central implication of the findings is the need to reassess what humanism means in the context of criminal law. If humanism is confined to the mitigation of suffering after criminalization has occurred, it risks becoming ethically incomplete. A genuinely humanistic criminal law must also scrutinize the justification for criminalization itself.

The National Criminal Code demonstrates that it is possible to treat offenders more humanely while expanding the range of people subject to criminal sanction. This selective humanism prioritizes compassion in punishment but not restraint in norm-setting. The discussion suggests that such an approach may alleviate physical harm while exacerbating symbolic and social harm.

Humanism, therefore, should be understood not only as a philosophy of punishment but also as a principle of legislative restraint. Without this broader conception, penal reform may reproduce coercion under a more benevolent appearance.

Taken together, the results and discussion reveal that the National Criminal Code represents neither a straightforward regression nor an unequivocal advancement. Instead, it constitutes a complex reconfiguration of penal power. The state retreats from harsh punishment but advances into moral governance. It softens sanctions while hardening norms.

This reconfiguration produces a paradoxical outcome: a criminal justice system that appears more humane but potentially governs more aspects of life. The findings underscore that the true impact of criminal law reform cannot be measured solely by the severity of punishment. It must also be assessed by the breadth of criminalization, the clarity of norms, and the protection of individual autonomy.

CONCLUSION

This study set out to critically examine the political-legal character of Indonesia's National Criminal Code by interrogating the relationship between penal humanization, expanded criminalization, and state authority. The primary objective was not to assess the reform in binary terms of success or failure, but to evaluate its internal coherence and its implications for individual autonomy, legal certainty, and democratic governance. The findings demonstrate that the National Criminal Code represents a complex and paradoxical reconfiguration of criminal law rather than a linear progression toward liberalization.

The analysis shows that, at the level of punishment, the National Criminal Code embodies a clear humanistic orientation. The restructuring of sanctions, the prioritization of non-custodial measures, the conditional approach to capital punishment, and the emphasis on rehabilitation and restoration collectively mark a substantive departure from

the retributive logic of the colonial criminal code. These developments contribute to a more individualized and potentially humane system of punishment, aligning Indonesia's penal policy with contemporary reformist trends in criminal justice.

However, this humanization of sanctions is accompanied by a simultaneous expansion of criminalized norms. The inclusion of morality-based offenses, the recriminalization of insult-related provisions, and the institutionalization of living law as a source of criminal liability significantly broaden the scope of conduct subject to penal intervention. As demonstrated in this study, these expansions shift criminal law beyond the regulation of concrete public harm into the domains of private morality, expressive freedom, and culturally contingent norms. This dual trajectory reveals that penal moderation does not necessarily entail a reduction of state power, but rather its transformation into more subtle and normatively intrusive forms.

In addressing the research objectives, this article contributes theoretically by demonstrating that penal humanization and overcriminalization can operate simultaneously and even reinforce one another. The concept of selective humanism emerges as a central analytical insight: the National Criminal Code is humanistic in its treatment of offenders but illiberal in its approach to defining criminality. This finding challenges assumptions that softer punishment inherently reflects a stronger commitment to individual rights and underscores the importance of evaluating criminal law reform holistically rather than through isolated indicators.

From a practical and normative perspective, the study highlights significant implications for legal certainty, equality before the law, and democratic accountability. The reliance on vague moral standards, symbolic protection of authority, and unwritten norms increases interpretive discretion and risks uneven application of criminal law. Without rigorous constitutional interpretation and rights-based enforcement, these features may undermine public trust and normalize selective enforcement, particularly against vulnerable or dissenting groups.

Several limitations of this research must be acknowledged. The study is based on normative and doctrinal analysis and does not incorporate empirical data on law enforcement practices, judicial behavior, or societal impact. As a result, the conclusions drawn reflect the structural and conceptual implications of the National Criminal Code rather than its practical operation. Furthermore, the analysis is confined to the legal text and its immediate theoretical context, without comparative empirical assessment of similar reforms in other jurisdictions.

Future research is therefore recommended in several directions. Empirical studies examining how morality-based offenses, insult provisions, and living law are interpreted and enforced in practice would provide crucial insight into the real-world effects of the Code. Comparative research could further illuminate whether Indonesia's experience reflects a broader pattern in post-colonial or emerging democracies. Additionally, constitutional analysis of judicial decisions interpreting the National Criminal Code will be essential to assess how its tensions are resolved within the legal system.

In conclusion, this study argues that the true measure of criminal law reform lies not only in the humanization of punishment but also in the restraint exercised in criminalization. The National Criminal Code represents a pivotal moment in Indonesia's legal development, offering both opportunities for a more humane justice system and risks of expanded normative control. The author expresses sincere gratitude to academic mentors and colleagues at the Faculty of Humanities, UIN Sunan Ampel Surabaya, for their intellectual support and constructive discussions throughout the development of this research. Appreciation is also extended to peer reviewers and editors whose critical feedback has significantly improved the clarity, rigor, and analytical depth of this article. Any remaining errors or omissions remain the sole responsibility of the author.

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DISCLOSURE STATEMENT

The author(s) declare that there is no conflict of interest regarding the publication of this article. This research was conducted independently and was not influenced by any financial, commercial, or institutional interests that could affect the objectivity or integrity of the study.

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