



## Legal Politics and Norm Contestation in the New Criminal Code in the Framework of Indonesian Criminal Law Reform

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### Abstract

The formation of the New Criminal Code marks a crucial phase in the journey of Indonesian criminal law reform. As a product of legal politics born of a long process, the New Criminal Code not only brings substantial reforms but also gives rise to various normative contestations that influence the consistency and direction of the national criminal law system. This study aims to determine the legal politics of the formation of the New Criminal Code reflecting the direction of Indonesian criminal law reform and the legal politics and normative contestations within the New Criminal Code within the framework of Indonesian criminal law reform. This study uses normative juridical legal research, where the data is sourced from secondary data. The results show that the legal politics of the formation of the New Criminal Code reflect the state's commitment to renewing the national criminal law system by abandoning the colonial paradigm and emphasizing the values of Pancasila. This reform indicates a direction for Indonesian criminal law that is more modern, proportional, and responsive to the needs of society. The legal politics and normative contestations within the New Criminal Code indicate a direction for Indonesian criminal law reform that emphasizes the independence of national legislation, but still leaves behind the dynamics of differing values and interests. This indicates the need for further harmonization to ensure a more consistent criminal law system and in line with societal developments.

**Keywords:** Legal Politics; Constestation of Norms; New Criminal Code; Reform; Criminal Law.

## INTRODUCTION

Criminal law reform in Indonesia is a strategic agenda that cannot be separated from the political dynamics of national law. The birth process of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) is an important milestone in the history of the structuring of the national criminal law system, which for more than a century has still relied on the *Wetboek van Strafrecht (WvS)*, a product of Dutch colonial law adopted since 1918. The enactment of *WvS* for decades shows a dependence on foreign norms that do not fully reflect the values, morals, and social needs of the dynamic Indonesian society. This condition raises a fundamental urgency for the state to reorganize the national criminal law through a mechanism for the formation of laws in accordance with the principles of rule of law, legislative independence, and national legal politics that are oriented towards the interests of the nation.<sup>1</sup>

The birth of the new Criminal Code cannot be understood solely as a process of codifying criminal norms, but rather as a manifestation of the state's legal policy in formulating the direction of criminal law reform that is compatible with national character, human rights development, and global dynamics. Legal politics determines how the choice of criminal norms, principles, and policies is incorporated into the new Criminal Code. The content of

<sup>1</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2006), p. 45.

each article is not only a representation of legislative techniques, but the result of a contestation of norms that involves the tug-of-war between the state, civil society, international institutions, and various social groups.<sup>2</sup>

The phenomenon of normative contestation is evident in public debates during the process of drafting the Criminal Code Bill, ranging from the issue of insulting state institutions, morality regulation, living law, misdemeanors, to corporate liability. The new Criminal Code legislation process presents a dialectical space between universal norms, especially those related to human rights, and local norms that come from the values of Pancasila, customs, and religion.<sup>3</sup> This dialectic then formed the character of the new Criminal Code as a plural and responsive national criminal law, although on the other hand it still contains conceptual, interpretation, and legal certainty problems.

In addition, the reform of the criminal law through the New Criminal Code is also a reflection of the political theory of law that affirms that every law is never neutral. It is a product of political decisions that seek to direct people's behavior according to state goals. At this point, the main question that arises is: does the New Criminal Code really reflect the goals of criminal law reform, namely the modernization of the criminal system, respect for human rights, the decolonization of the law, and a legal system that is more adaptive to the development of society?<sup>4</sup>

In the midst of this complexity, discussions about legal politics and the contestation of norms in the new Criminal Code have become relevant to identify the extent to which the Criminal Code legislation process has met the principles of transparency, participation, and accountability, as well as how the dynamics of inter-norm debate reflect the direction of Indonesia's criminal law reform. This analysis is also important to assess whether the new norms that are introduced are truly representative of the aspirations of society and compatible with constitutional principles, or whether they still leave problems of disharmony, ambiguity of norms, and potential abuse of power.<sup>5</sup>

This study also has important academic value because it contributes to the development of criminal law reform theories that are rooted in the sociological framework and philosophy of Pancasila. The research on legal politics and the contestation of norms in the new Criminal Code not only captures textual changes in the law, but also examines the configuration of power, legal ideology, and social dynamics that shape the structure of Indonesian criminal law.

Through an in-depth study of the legislative process, the substance of the norms, and their implications for the penal system, this study is expected to be able to provide a comprehensive understanding of the direction of Indonesian criminal law reform as well as provide constructive criticism of potential normative problems that may arise in its application. This research plays an important role in providing a scientific basis for a more progressive and substantive justice-oriented legal reform agenda.<sup>6</sup> Based on the above background, the problems faced in this writing are: 1) How the legal politics of the formation of the New Criminal Code reflects the direction of Indonesia's criminal law reform; 2) How

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<sup>2</sup> Moh. Mahfud MD, *Politik Hukum di Indonesia*, (Jakarta: Rajawali Pers, 2017), p. 21.

<sup>3</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Jakarta: Kencana, 2018), p. 67.

<sup>4</sup> Muladi dan Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana*, (Bandung: PT Alumni, 2010), p. 98.

<sup>5</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara*, (Jakarta: Konstitusi Press, 2015), p. 122.

<sup>6</sup> Sudarto, *Hukum dan Hukum Pidana*, (Bandung: Alumni, 1983), p. 140.

is the politics of law and the contestation of norms in the New Criminal Code in the framework of Indonesian criminal law reform.

## METHODS OF THE RESEARCH

The type of writing used is normative juridical law research, which is in order to seek the truth of coherence in order to obtain something that is axiological and is a value or stipulation/rule as a reference to be studied.<sup>7</sup> The reason for choosing this type of research in order to find the truth of coherence is to get something that is axiologically a value or stipulation/rule as a reference to be studied. This writing is focused on written legal or legislation and research based on the rules or norms that apply in people's lives aimed at finding a truth based on the logic of law from its normative side. This paper also focuses on evaluating the conformity of the applicable legal principles with the legal practices that have been applied. The data in this writing is obtained through library *research*, which is a form of study of written information about the law from various sources regarding the object of study.

## RESULTS AND DISCUSSION

### A. Legal Politics of the Establishment of the New Criminal Code Reflects the Direction of Indonesian Criminal Law Reform

As a country of law (*rechtstaat*), Indonesia has a constitutional obligation to ensure that any establishment of laws and regulations not only meets the technical needs of the judicial system, but also reflects the political will of the nation's laws based on Pancasila and the 1945 Constitution. The formation of law, especially in the field of criminal law, is not just an administrative legislative process, but a process of determining the direction, philosophy, and identity of the national legal system. The existence of the Codification of Criminal Law is a fundamental instrument that determines how the state understands, regulates, and responds to deviant behavior in society. Therefore, any changes in criminal law must be understood as part of the political dynamics of national law that reflect social needs, shifting values, and evolving global challenges.

Legal politics in the formation of Law Number 1 of 2023 concerning the Criminal Code (KUHP) reflects the configuration of state policies in formulating the direction of Indonesia's criminal law reform. As a legislative product that replaces the *colonial legacy of the Wetboek van Strafrecht (WvS)*, the new Criminal Code is not just an editorial or technical codification change, but a political roadmap of national law towards a criminal law system that is sovereign, has Indonesian character, and is responsive to the development of modern society.<sup>8</sup>

Conceptually, legal politics is understood as the basic policy of state administrators in the formation, implementation, and enforcement of the law, which determines the direction of normative change according to the interests of the state and society, in the context of criminal law reform, legal politics becomes an instrument to determine the principles, objectives, philosophy, structure, and scope of punishment to be built. Therefore, the establishment of the new Criminal Code must be seen as a manifestation of political-legislative choices that

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<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, (Jakarta: Kencana Prenada Media Group, 2013), p. 33.

<sup>8</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Op. Cit.*, p. 12.

reflect the ideology of the state as well as the dynamics of society accommodated in criminal regulations.<sup>9</sup>

### 1. Decolonization of Criminal Law as the Main Agenda of Legal Politics

One of the central elements of the legal politics of the formation of the new Criminal Code is the decolonization agenda of criminal law. For more than a century, Indonesia still used a colonial penal system that was not fully in accordance with the values of Pancasila and the social needs of the Indonesian people. The repressive, positivistic, and legalistic model of colonial criminal law is no longer in line with the vision of substantive justice demanded by modern society.

Decolonization does not mean simply replacing the Dutch term with the term Indonesian, but building a national criminal law based on the values of Pancasila, prioritizing a balance between state interests and individual rights, and integrating the pluralistic character of Indonesian society through the recognition of *living law*. This is why the new Criminal Code adopts an integrative approach between customary values, social morality, and human rights principles. The legal politics of the establishment of the new Criminal Code reflects the state's determination to realize a criminal law rooted in national identity and no longer subject to the paradigm of colonial law.

### 2. Reorientation of the Criminal System and Reform of Criminal Law Principles

The direction of criminal law reform is also reflected in the change in the criminal paradigm. The new Criminal Code introduces the principle of balance, the principle of proportionality, and the concept of *a double track system* between crime and action. This reorientation does not appear neutrally, but is the result of a legal politics that encourages the modernization of criminal law by taking into account the value of corrections and rehabilitation.

The politics of law can be seen from alternative criminal arrangements such as social work, supervision penalties, proportional fines, and reduction of prison dominance. This reorientation shows a change in the vision of the state that no longer makes prisons the main instrument of detention, but as part of a just and effective social control mechanism.

Changes in the principles of criminal law, such as the principle of *ultimum remedium*, the principle of legality in an expanded form (including the recognition of the law that lives in society), and the principle of non-retroactivity except for the benefit of the perpetrator, indicate a more adaptive and progressive direction of criminal law reform. This reflects the politics of law that places human rights as an integral part of the formulation of criminal norms.<sup>10</sup>

### 3. Strengthening Local Identity through the Recognition of "Living Law"

One of the most controversial but significant aspects of the legal politics of the formation of the new Criminal Code is the recognition of the living law in society. This recognition not only affirms Indonesia's legal pluralism, but also shows a political orientation of law that makes customary values the source of criminal law.<sup>11</sup>

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<sup>9</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara*, (Jakarta: Konstitusi Press, 2015), p. 30.

<sup>10</sup> Andi Hamzah, *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2008), p. 55.

<sup>11</sup> Maria S W Sumardjono, *Pluralisme Hukum di Indonesia*, (Yogyakarta: FH UGM, 2014), p. 13.

Politically, this choice strengthens Indonesia's legal identity as a country bound by socio-cultural diversity. Substantively, the recognition of living law provides flexibility for law enforcement officials to consider local norms in criminal law enforcement. However, this arrangement also raises debate because it is considered to open up the space of legal uncertainty and potential arbitrariness.<sup>12</sup>

Despite these criticisms, the presence of living law still shows that Indonesian legal politics not only adopts universal principles, but also affirms the distinctive character of national law. The new Criminal Code reflects the direction of criminal law reform that harmonizes global values with Indonesia's cultural roots.

#### 4. Response to Modern Challenges: Corporate Crime, Cybercrime, and the Protection of the Public Interest

The legal politics of the formation of the new Criminal Code are also directed to answer contemporary legal challenges. Therefore, the new Criminal Code includes modern norms such as corporate criminal liability, technology-based criminal regulation, and protection of the interests of the public, government, and public order.<sup>13</sup>

The normative choice is part of a criminal policy that adapts the national criminal law system to global developments and the complexity of modern crime. This shows the direction of anticipatory criminal law reform, so that the state not only revises colonial norms, but also designs a comprehensive and adaptive future criminal justice system.

#### 5. Harmonization between Pancasila Values, Human Rights, and International Standards

The legal politics of the formation of the new Criminal Code seeks to balance the value of Pancasila with Indonesia's commitment to international human rights instruments. This approach is realized through the preparation of norms that meet the principles of morality, social propriety, and respect for human dignity.<sup>14</sup>

However, this harmonization is not free from contestation. A number of articles related to insults, adultery, protests, and public morality have been criticized by international human rights groups for restricting civil liberties. Although debated, it shows that the legal politics of the formation of the new Criminal Code is an arena for attracting interests that seek to find a balance between global and local values.

#### 6. Legal Politics as an Indicator of the Direction of Criminal Law Reform

From all the above dimensions, it can be concluded that the legal politics in the formation of the new Criminal Code reflects the direction of Indonesia's criminal law reform which includes: a) Decolonization of criminal law and the creation of independent national legal products; b) Modernization of the penal system based on rehabilitation and corrections; c) Strengthening local values through the recognition of customary law; d) Adaptation to the challenges of modern crime; e) Efforts to harmonize between Pancasila, social morality, and international human rights.

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<sup>12</sup> Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan*, (Jakarta: Rajawali, 2012), p. 102.

<sup>13</sup> Romli Atmasasmita, *Teori dan Kapita Selekta Kriminologi*, (Bandung: Refika Aditama, 2010), p. 121.

<sup>14</sup> Harkristuti Harkrisnowo, "Paradigma Baru Pemidanaan", Makalah FH UI, 2016.

The new Criminal Code is the result of a political construction of law that not only talks about changing norms, but also reflects the grand design of Indonesia's criminal law reform towards a national, humane, and just legal system.

## **B. Legal Politics and Norm Contestation in the New Criminal Code in the Framework of Indonesian Criminal Law Reform**

The dynamics of the development of national law, the need for harmonization between the social, political, and cultural values of the nation are becoming more and more urgent. The rapid change in society, accompanied by demands for more transparent, fair, and responsive law enforcement to contemporary realities, requires the state to carry out comprehensive criminal law reforms. This update is not only related to the modernization of norms, but also a manifestation of the reconstruction of the Indonesian criminal law paradigm that is more in accordance with national identity and character.

The establishment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) cannot be understood simply as a technical legislative activity. The process of the birth of the new Criminal Code is precisely the result of a political configuration of national law that is full of interests, and takes place through intense contestation of norms among various actors, ranging from the government, legislature, academics, civil society organizations, indigenous groups, religious leaders, to the international community.<sup>15</sup> Therefore, the analysis of the new Criminal Code must place it as a product of legal politics and norm politics, where each norm chosen or not chosen is a representation of the political choices, ideologies, and values that are being fought for in the national legislative space.<sup>16</sup>

Therefore, the analysis of the new Criminal Code must place it as a product of legal politics and norm politics, where each norm chosen or not chosen is a representation of the political choices, ideologies, and values that are being fought for in the national legislative space. The reading of the New Criminal Code cannot be separated from the social, political, and historical context that surrounds it, because the criminal norms formulated in it are born through a process of attraction of interests involving the state, society, and various strategic actors in the legal system. Every provision that is inserted or issued reflects a compromise between various groups, as well as a reflection of the state's position in balancing the demands of legal progressivity with the need to maintain order, public morality, and broader national interests.

The New Criminal Code is not just a legal document, but also an arena for articulating the nation's values and ideology, especially in determining limits on behavior that is considered destructive to the social order and therefore worthy of criminalization. The choice of criminalization, decriminalization, or codification of various articles in it is a reflection of how the state views the relationship between individuals, society, and power. Furthermore, this reform of the Criminal Code contains long-term consequences for the direction of law enforcement, strengthening criminal justice institutions, and the formation of a legal culture that is more responsive to the times and human rights demands.

Therefore, a comprehensive review of the New Criminal Code requires an approach that is not only dogmatic, but also critical and interpretive. Legal researchers must be able to see the content of the New Criminal Code as the result of a dialectic between the colonial legal

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<sup>15</sup> Moh. Mahfud MD, *Legal Politics in Indonesia*, Op. Cit., p. 15.

<sup>16</sup> Satjipto Rahardjo, *Ilmu Hukum*, Op. Cit., p. 45.

tradition inherited from the *Wetboek van Strafrecht (WvS)* and the national aspiration to build a more sovereign, humanist, and just criminal justice system. The New Criminal Code is also a reflection of the long journey of the Indonesian nation in realizing a national criminal law that is not only conceptually modern, but also in harmony with the values of Pancasila, the needs of society, and the development of global law.

The contestation of norms in the new Criminal Code is not only about the debate about the content of certain articles, but also about the debate about the basic paradigm of Indonesian criminal law. This process reflects that the reform of Indonesia's criminal law is not actually a technocratic project, but a political-normative project that describes the struggle between local values, state interests, international human rights principles, and the dynamics of Indonesia's social plurality.<sup>17</sup> Legal politics and norm contestation are two inseparable dimensions in understanding the direction of Indonesia's criminal law reform through the new Criminal Code.

### 1. The Legal Politics of the New Criminal Code: The Arena of Determining the Ideological Direction of National Criminal Law

The new Criminal Code Law was born from a political decision that wanted to direct the development of Indonesian criminal law into a new platform. The political law of its formation is inseparable from three main agendas: (a) decolonization of criminal law, (b) the establishment of a legal system with national characteristics, and (c) adjustment to global developments.

The decolonization agenda is reflected in the state's desire to no longer rely on the *Wetboek van Strafrecht (WvS)* which is a symbol of colonial domination in the field of criminal law. The drafting of the new Criminal Code is a forum to reformulate values that are considered to be in line with the nation's identity, such as the values of morality, public order, decency, and respect for social harmony.

On the other hand, the agenda for the formation of a national criminal law gives rise to an inevitable political and legal dimension. The government and the House of Representatives as the dominant actors in the legislation process bring an ideological perspective that influences the choice of norms. For example, regulations regarding insulting the president, criminal acts of morality, and living together without marital ties are examples of norms born from considerations of social morality and protection of state authority. However, the legal politics in the new Criminal Code are not single. It is the result of a compromise between conservative forces that emphasize traditional values, and progressive groups that emphasize human rights and civil liberties. This contestation then formed the face of the new Criminal Code as a criminal law product that combines various paradigms.

### 2. Norm Contestation: The Battle for Values, Morality, and Social Interest

The contestation of norms in the new Criminal Code is a phenomenon that greatly determines the direction of Indonesia's criminal law reform. This contestation is seen in several central issues, such as: a) Public Morality and Morality: The regulation of adultery, cohabitation, pornography, and immoral behavior reflects the dominant force of moral and religious norms in the legislative process. Civil society groups push for decriminalization to protect private freedoms, while conservatives want criminalization to preserve decency. This

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<sup>17</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Op. Cit., p. 76.

contestation shows the tug-of-war between the universal value of human rights and the particular value of the Indonesian people; b) Living Law and Legal Pluralism. The most significant contestation occurs in the recognition of the law that lives in society (living law). Indigenous groups and progressive legal academics see it as a recognition of Indonesia's legal pluralism. However, human rights groups consider that the application of customary law without clear limits has the potential to cause legal uncertainty and violations of the principle of legality; c) Insult to the President and State Institutions. This norm reflects the contestation between the state's interests to maintain institutional authority, and democratic principles that require freedom of expression without state repressive intervention; d) Political Crimes. The ban on incitement to separatism or treason has raised a debate about the extent to which states can restrict freedom of speech in the name of national security.<sup>18</sup> These contests show that the new Criminal Code was not born out of a sterile space, but through a forum full of ideological debates, both from within the country and from international pressure.

### 3. Norm Contestation as a Dialectical Mechanism for Criminal Law Reform

Theoretically, norm contestation can be seen as a form of legal dialectic that encourages the birth of norms that are most representative of society. Lawrence Friedman stated that legal change will only be effective if it is able to accommodate the three elements of the legal system: structure, substance, and culture. The contestation of norms in the new Criminal Code reflects this dynamic:<sup>19</sup> a) The legal structure (government, DPR, state power) carries the interests of stability and order; b) The substance of the law (the content of norms) becomes an arena of conflict between traditional values and universal principles; c) Legal culture (societal values) demands that the law be aligned with local norms and a sense of social justice. Contestation of norms is not an obstacle, but rather a constitutive element of Indonesia's criminal law reform. The long and intense debate process enriches the perspective, so that the resulting norms show an eclectic effort to accommodate the plurality of values in Indonesian society.

### 4. Legal Politics, Normative Criticism, and Implementation Challenges

Although the new Criminal Code is considered a monumental achievement, the contestation of norms that occurred during its drafting process also raises a number of criticisms, including: a) There are still articles that are considered to have the potential to curb civil liberties, such as the articles on insulting the president and articles on decency; b) Recognition of living law which is feared to open up space for arbitrariness in the application of criminal law; c) Disharmony with international human rights instruments that Indonesia has ratified; d) The potential for multiinterpretation and overcriminalization. These criticisms show that the legal politics that colored the formation of the new Criminal Code did not fully reflect the consolidation of the interests of a pluralistic society. However, this criticism also strengthens the position of the new Criminal Code as a dynamic legal document and will continue to undergo evaluation through the mechanism of material testing and legislative revision in the future.

### 5. Legal Political Position and Norm Contestation in the Framework of Criminal Law Reform

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<sup>18</sup> Romli Atmasasmita, *Teori dan Kapita Selekta Kriminologi*, (Bandung: Refika Aditama, 2010), p. 145.

<sup>19</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, (Jakarta: Rajawali Pers, 1986), p. 11.

Ultimately, the politics of law and the contestation of norms in the new Criminal Code should be seen as an integral part of the great project of reforming Indonesia's criminal law oriented to: a) Decolonization of the criminal justice system, b) Rearrangement of a more humanistic orientation of punishment, c) Recognition of local wisdom, d) Adjustment to global developments, e) Strengthening of national legal identity, f) Finding a balance between universal values and local values; g) Legal politics determines the direction of criminal policy, while norm contestation becomes a critical mechanism that ensures that criminal law reform is not carried out authoritarily, but through a process involving public opinion, academics, and various interest groups.

The reform of the criminal law through the new Criminal Code is the result of a complex and multidimensional political-normative process. It not only reflects the will of the state in building a national criminal law, but also reflects the ever-evolving social dynamics and efforts to find a legal formula that is able to answer the challenges of the modern state.

## CONCLUSION

The legal politics of the establishment of the New Criminal Code shows the state's commitment to reform the criminal law system independently by abandoning the colonial legacy and affirming the sovereignty of national legislation. This update reflects the direction of the development of criminal law that is more in line with the values of Pancasila, the social needs of the community, and the principles of modern criminal justice that are proportionate and humane. The New Criminal Code is a manifestation of Indonesian legal politics in building a more integrated, adaptive, and national criminal law system. The politics of law and the contestation of norms in the New Criminal Code reflect the process of reform of Indonesian criminal law that affirms the independence of national legislation while presenting the dynamics of value and interest in the formulation of norms. The legal politics of the New Criminal Code leads to the formation of a penal system that is more in line with the values of Pancasila and the development of society, while the contestation of norms shows the need for further harmonization in order to achieve certainty and consistency in the Indonesian criminal law system.

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