



The Basic Concept of Human Rights in the Renewal of the Three Pillars of Criminal Law under Indonesia's New Criminal Code

Sarip Hidayat^{1*}, Gios Adhyaksa², Anthon Fathanudien³, Andini Khoirunnisa⁴,
Ade Rizki Fauji⁵

¹Faculty of Law, Universitas Kuningan, West Java, Indonesia

²Faculty of Law, Universitas Kuningan, West Java, Indonesia

³Faculty of Law, Universitas Kuningan, West Java, Indonesia

⁴Faculty of Law, Universitas Kuningan, West Java, Indonesia

⁵Faculty of Law, Universitas Kuningan, West Java, Indonesia

sarip.hidayat@uniku.ac.id

Abstract. The 2022 revision of the Criminal Code represents a significant milestone in Indonesia's national criminal law system. The update covers three main pillars of criminal law, namely criminal acts, criminal responsibility, and punishment. As a country that upholds the principles of Human Rights and has ratified various international human rights instruments, it is important to examine the extent to which the updated Criminal Code is in line with the basic concept of human rights. The study aims to analyze the integration of human rights principles in the renewal of the three pillars of criminal law and to identify potential problems in the social and legal context. The study applied a socio-legal approach, which is an approach combining normative studies of legislation and legal doctrine with analysis of social reality, legal culture, and societal dynamics. The data were collected through literature studies, analysis of the new Criminal Code, and various international human rights instruments. In addition, secondary data, such as reports from human rights institutions, results of public discussions, and responses from civil society and academics to the new Criminal Code, were also used. The results showed that the updated Criminal Code contains a number of positive aspects in accommodating human rights, such as strengthening the principle of legality and introducing a restorative justice approach. However, there are a number of articles that are considered open to multiple interpretations, conservative, and have the potential to limit freedom of expression, the right to privacy, and the right to freedom of religion. Hence, the successful implementation of the new Criminal Code strongly depends on the critical awareness of law enforcement officers, the strengthening of a legal culture that respects human rights, and the active involvement of the community in overseeing a fair and proportional implementation. Finally, it is concluded that the basic concept of Human Rights is an important foundation for the reform of criminal law in Indonesia, as reflected in the new Criminal Code. The renewal shows a paradigm shift from a repressive approach to a more humanistic and corrective approach. Hence, it is suggested that the judiciary must play an active role in ensuring that the implementation of the new Criminal Code remains within the corridor of human rights protection, including through constitutional and progressive interpretation of norms that have the potential to give rise to rights violations.

Keywords: Human Rights, New Criminal Code, Criminal Law.

1 Introduction

Criminal law serves as one of the primary instruments through which a state maintains order, upholds justice, and safeguards the fundamental rights of its citizens. As an essential component of the national legal system, the Criminal Code (KUHP) holds a strategic role in shaping criminalization policies, defining criminal responsibility, and regulating the imposition of sanctions for legal violations [1]. For more than a century, Indonesia was dependent on the Criminal Code inherited from Dutch colonial rule (*Wetboek van Strafrecht*, 1918), a legal framework that was never designed to reflect the values and needs of the Indonesian people. The situation raised fundamental questions, particularly the relationship between criminal law, the philosophy of Pancasila, the mandate of the 1945 Constitution, and the principles of human rights. The enactment of the new Criminal Code in 2022 marked a historical milestone in Indonesia's legal development. It was intended as a response to legal colonialism and as an effort to reconstruct Indonesian criminal law that aligns with societal progress, scientific advancement, and the nation's commitment to upholding human rights.

It is in conformity with the mandate of the constitution, Article 28A–28J of the 1945 Constitution, which emphasizes human rights as basic rights inherent in individuals and must be upheld by the state [2]. In addition, Indonesia has ratified a number of international instruments such as the International Covenant on Civil and Political Rights (ICCPR), which requires states to guarantee human rights protection through effective legal regulations, including in criminal law [3]. In terms of Criminal Code reformation, the basic concept of human rights serves as the philosophical, legal, and sociological foundation. The reformation emphasizes not only deterrence and retributive justice, but also restorative justice, victim protection, and social restoration. The three pillars of criminal law, consisting of criminal offenses (*strafbaar feit*), criminal responsibility, and punishment, reflect as follows:

First, in criminal cases, the new Criminal Code requires that protected legal interests, proportionality, and respect for human rights be taken into account when determining whether an act should be criminalized. The principle of *ultimum remedium*, treating criminal law as a last resort, is further reinforced in the resolution of criminal cases, ensuring that not all violations result in immediate imprisonment [4]. Some criminal acts are specifically directed toward resolution via restorative justice approaches that emphasize humane treatment.

Second, in terms of criminal responsibility, the new Criminal Code emphasizes the principle of *geen straf zonder schuld* (no punishment without fault). The principle aligns with the human rights concept, stating that every person can only be held accountable for their own actions, not for the mistakes of others. The new Criminal Code also provides space to recognize certain conditions that mitigate or eliminate liability, such as emergencies, forced defense, and limited capabilities such as children

or people with disabilities. It demonstrates an effort to uphold human dignity and protect vulnerable groups.

Third, in terms of punishment, the new Criminal Code seeks to balance the functions of retribution, prevention, and rehabilitation. The death penalty is no longer absolute, but rather an alternative punishment with a 10-year probation. If the convict demonstrates improvement, the death sentence can be commuted to life imprisonment. The concept demonstrates a more humane approach while also opening up space for protecting the right to life, which is the most fundamental human right. Furthermore, additional punishments such as community service, reparations, or restrictions also emphasize a paradigm shift from purely repressive punishment to a more constructive, recovery-oriented punishment.

Nevertheless, the revised Criminal Code has generated controversy within society. Several provisions are considered to potentially restrict civil liberties and infringe upon human rights principles, including those concerning insults against the president and state institutions, as well as morality-related articles that are seen as overly intrusive into citizens' private lives. These issues have sparked debate over whether the new Criminal Code genuinely upholds human rights values or whether it allows for restrictions on certain rights that conflict with international standards. The fundamental issue, therefore, lies in how the basic concept of human rights is incorporated into the renewal of the three pillars of criminal law in the new Criminal Code, and how a balance can be achieved between protecting individual rights and serving societal interests. The study is important not only for evaluating the substance of the new Criminal Code, but also for contributing to the development of a national criminal law system that is just, humane, and consistent with both the constitutional mandate and universal human rights principles.

2 Methods

The study employs a socio-legal approach, an interdisciplinary approach that studies law at a normative level and examines its application in social life. The method is utilized because the basic concept of Human Rights (HAM) is discussed in Indonesia's new Criminal Code, which updates the three pillars of criminal law. The relationship between legal texts and law enforcement practices is adjacent. Normatively, the study analyses the 1945 Constitution, the new Criminal Code, human rights laws, and international instruments ratified by Indonesia.

Empirically, the study investigates the understanding and implementation of academics, publics, and law enforcement in human rights, following: criminal acts (*strafbaar feit*), criminal responsibility, and sentencing. The primary data were in-depth interviews with law enforcement officials, academics, and human rights institutions; secondary data consisted of literature, research findings, court decisions, and official documents. The data was collected through documentation, library research, and interviews. They were analyzed qualitatively, comparing legal norms

with practice. The analysis aims to gain a better understanding of internalized human rights concepts in the reform of Indonesian criminal law, as outlined in the new Criminal Code.

3 Findings and Discussions

3.1 The Basic Concept of Human Rights in the Indonesian Legal System and the Reform of the Three Pillars of Criminal Law in the New Criminal Code

Human Rights (HAM) are basic rights given since birth. These rights cannot be revoked, reduced, or given to anyone else [5]. Human rights apply without distinction of religion, ethnicity, race, gender, social status, or political background. Its recognition encompasses law, history, and philosophy. Maintaining the history of human dignity since the struggle for independence, as reflected in the Preamble to the 1945 Constitution. Philosophically, Pancasila upholds respect for humanitarian values as the foundation of the state. From a legal perspective, the Indonesian Constitution includes numerous provisions that guarantee the protection, promotion, and implementation of human rights, forming a fundamental basis for the reform of the New Criminal Code, including:

Philosophical and Constitutional Basis of Human Rights in Indonesia. In Indonesia, human rights are firmly rooted in the principles of Pancasila. Pancasila is seen as the nation's philosophy and the source of all legal sources that underpin the legal system. The second principle, "Just and Civilized Humanity," is the philosophical foundation of equal dignity and worth. The value serves as the starting point that guarantees the protection of human rights. Constitutionally, since the 1945 Constitution was amended, human rights have become more clearly constitutional. Prior to the amendment, the 1945 Constitution had only a few articles relating to human rights [6]. However, after the changes in the second amendment in 2000, Indonesia included a special Chapter on Human Rights consisting of Articles 28A to 28J. These articles regulate fundamental rights such as the right to life, the right to family, the right to freedom of religion, the right to express opinions, the right to education, and the right to security. These arrangements demonstrate its commitment to universal human rights in Indonesia. Furthermore, Article 28I paragraph (4) of the 1945 Constitution states that the state, the government, is responsible for protecting, promoting, upholding, and ensuring human rights. The provision demonstrates that human rights are not only moral rights but also must-protected legal rights. Consequently, Indonesia cannot ignore human rights violations by individuals, groups, or state officials.

The Regulation of Human Rights Based on the Law. In addition to being regulated by the 1945 Constitution, the recognition of human rights is also governed by various laws. Law Number 39 of 1999 on Human Rights is particularly significant, as it outlines various categories of rights, including the right to life, the right to family, the right to welfare, the right to security, and the right to political participation. The law

further establishes that the state has an obligation to respect, protect, and uphold human rights. Moreover, Law Number 26 of 2000 on the Human Rights Court provides a judicial mechanism for addressing serious human rights violations, such as genocide and crimes against humanity [7]. The existence of this law is significant because it enables fairer and more accountable law enforcement in cases of tricky human rights violations. In addition, human rights are available in various sectoral regulations, including employment, education, health, child protection, and women's protection from violence. It illustrates that the concept of human rights has become deeply embedded across multiple areas, although practical challenges persist.

The Integration of Human Rights with International Instrument. Indonesia acknowledges international human rights instruments as part of its obligations as a member of the international community. The country has ratified several key conventions, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), through Law No. 12 of 2005 and Law No. 11 of 2005, respectively. By doing so, Indonesia legally commits itself to adhering to international standards for the protection of human rights. Indonesia has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). These international commitments enable the Indonesian government to update domestic regulations in line with global human rights standards. However, their implementation often gives rise to conflicts between international legal norms and Indonesian socio-cultural values.

Problems of the Indonesian Legal System with its Implementation of Human Rights. Although Indonesia has adequate legal instruments, the implementation of human rights still faces many challenges. First, there is a gap between practices and legal standards such as violations of the freedom of expression, activists' criminalization, or authorities' violations. Second, there are conflicts between universal and local, customary, or religious principles, which sometimes limit the justification of certain rights. Third, its enforcement is often hampered by political factors, such as unresolved cases of past violations of human rights. In addition to social shifts, technological advances also create additional challenges. These include personal data protection, freedom of speech in digital media, and the security of vulnerable groups in cyberspace. To keep pace with these social changes, laws must be amended.

The Role of Human Rights in Criminal Law Reform. In the context of criminal law reform—the new Criminal Code, the integration of human rights principles is essential. The Code aims to align with these principles by prescribing more proportional punishments, recognizing victims' interests, and applying the principle of *ultimum remedium* in certain cases. Nonetheless, it has also sparked debate because some provisions are considered potentially restrictive, particularly in the freedom of expression and privacy concerns.

3.2 The Reconstruction of Criminal Law in the New Criminal Code: Integrating Human Rights Principles into the Three Pillars

The enactment of the new Criminal Code (KUHP) in 2022 marked a significant milestone in Indonesia's legal system. The previous code, based on the *Wetboek van Strafrecht* (1918), was no longer relevant to the evolving legal, philosophical, and sociological values of Indonesian society. The state has sought to reconstruct the three main pillars of criminal law: criminal acts (*strafbaar feit*), criminal responsibility, and sentencing under the new Criminal Code [8]. The reconstruction aims to align Indonesian criminal law with contemporary conditions and incorporate human rights (HAM) principles into the national criminal law framework. The three pillars of criminal law are as follows:

Criminal Acts (*Strafbaar Feit*). In criminal law, criminal acts constitute the first pillar. The colonial-era approach to the Criminal Code was largely formalistic and positivistic, as the codification system governing criminal acts focused exclusively on the act itself (*daad*) [9]. Through the reconstruction of criminal offenses, the new Criminal Code (KUHP) defines a crime as an act prohibited by law, inherently unlawful, and causing harm or posing a threat to specific legal interests. One of the key changes in the new Criminal Code is the expanded recognition of protected legal interests [10]. For instance, the new Criminal Code recognizes corporate crimes, establishing criminal liability for legal or business entities, while also safeguarding societal interests, the environment, and social justice values. Consequently, criminal law relies not only on statutory texts but also accommodates customary norms or unwritten laws, provided they do not conflict with the principles of Pancasila [11]. The new Criminal Code also reinforces the principle of legality, stipulating that an act can only be punished if clearly prescribed by law, while adopting a more flexible formulation that includes recognition of existing societal norms.

Criminal Responsibility. The second pillar is criminal responsibility. Under the colonial Criminal Code, the principle of fault (*schuld*) served as the foundation for determining criminal responsibility [12]. The new Criminal Code broadens the principle to a wider range of excuses and justifications. Acknowledging the perpetrator's capacity or ability to assume responsibility becomes the key aspect of the reconstruction. Under the revised Criminal Code, not every individual who commits a crime can be held automatically accountable. For example, individuals acting under duress, minors, or persons with mental illnesses may be exempted from liability or receive special consideration. In accordance with child protection principles and the best interests of the child, the new Criminal Code sets an age threshold for criminal responsibility and introduces diversion mechanisms for juvenile offenders.

Furthermore, the acknowledgment of corporate criminal liability marks a paradigm shift in Indonesian criminal law. Legal entities, companies, or organizations can be held accountable for actions that harm society or the environment, such as corruption, environmental offenses, or violations of consumer rights. In this way, the new Criminal Code aims to balance law enforcement objectives with the demands of social justice.

Criminalization. The third pillar is criminalization. In the colonial Criminal Code, punishment was retributive, which limited the penalties to imprisonment, the death penalty, and fines. However, the new Criminal Code has reshaped it with a more humane, proportional, and restorative focus [13]. The new Criminal Code states that the goals of criminal punishment are to punish, prevent, improve, and protect society. Therefore, a more diverse penal system was introduced, including principal and additional penalties. Principal penalties include imprisonment, supervision, community service, and fines. They represent a shift from repressive to more beneficial punishments.

In addition, the new Criminal Code sets limits on the use of the death penalty [14]. The death penalty is categorized as a special punishment, imposed selectively, and its execution can be postponed. The death penalty can be commuted to life imprisonment or a specific sentence if the convict demonstrates good behavior within a specified period. In this way, the right to life, one of the most fundamental human rights, is upheld. In the new Criminal Code, the concept of restorative justice is strengthened, particularly for minor crimes, emphasizing the restoration of the victim's losses rather than punishment [15]. The approach aligns with the goal of reducing over-criminalization and overcrowding in correctional institutions while giving greater priority to substantive justice.

A paradigm shift is occurring in the Indonesian criminal law system, as demonstrated by the reconstruction of its three pillars. The new Criminal Code is expected to align with the current social, political, and cultural conditions in Indonesia. Criminal law is no longer viewed merely as a tool of state retaliation; it also serves to protect human rights, maintain social order, and promote justice. However, the reconstruction also presents new challenges. If not properly monitored, the Living Law could face disapproval. Moreover, new provisions, such as those regarding insults to state institutions, raise concerns about potential restrictions on freedom of expression. Therefore, the implementation of the new Criminal Code must be carried out carefully, appropriately, and in full accordance with human rights principles.

One of the main goals of creating a national criminal law that is more just, humane, and in line with contemporary demands is to incorporate Human Rights (HAM) principles into the renewal of the three pillars of criminal law in the new Criminal Code [16]. Normatively, human rights principles are reflected in the 1945 Constitution, Chapter XA, and various international instruments ratified by Indonesia, such as the ICCPR and the ICESCR. Furthermore, these principles are internalized into the three pillars of criminal law: criminal acts (*strafbaar feit*), criminal responsibility, and sentencing. In the context of criminal offenses, the confession must be firmly regulated by law, or the principle of legality, which demonstrates the integration of human rights (HAM). At the same time, the new Criminal Code also allows room for living law within society. The integration is ensured by making certain that customary or unwritten laws do not conflict with human rights, Pancasila, or the 1945 Constitution. Furthermore, the Criminal Code has recently regulated the

protection of broader legal interests, such as those of society, the environment, and vulnerable groups, demonstrating that criminal law serves as a tool to protect basic human rights. By acknowledging that not all individuals who commit crimes can automatically be held accountable, human rights principles are integrated into the pillars of criminal accountability. Responsible capacity, child protection through diversion mechanisms, and the recognition of special circumstances such as mental disorders or forced labor are now explicitly regulated in the Criminal Code. Since corporate crimes often have significant impacts on the environment, public health, and overall welfare, acknowledging corporate criminal liability is an important step toward safeguarding human rights for the broader community. Accordingly, criminal accountability now emphasizes social justice rather than focusing solely on the individual. Within the pillar of criminal justice, the integration of human rights is most evident in the shift from retribution toward a more humanistic approach to justice.

The Criminal Code recently established that punishment must be proportionate, consider human dignity, and prioritize rehabilitation goals. The alternative punishments, such as community service, supervision, and fines, demonstrate a desire to reduce reliance on imprisonment. Respect for the right to life, the most fundamental human right, is also demonstrated by the option to substitute life imprisonment after a certain probationary period. Furthermore, the concept of restorative justice, strengthened in the new Criminal Code, emphasizes that the punishment is to protect the rights of victims and facilitate the social reintegration of offenders, aligning more closely with human rights principles.

Overall, the incorporation of human rights principles into the three pillars represents a major transformation in Indonesian criminal law. Criminal law is now seen not only as a tool to punish the government, but also as a tool to protect and advance human dignity. In fact, its integration faces several challenges, particularly in maintaining a balance between human rights and public order. Therefore, the integration relies heavily on consistent law enforcement, a courageous government, and public awareness.

In Indonesia, the implementation of the new Criminal Code faces numerous challenges: legal, social, political, and cultural. The gap between social realities and legal norms remains a major concern [17]. Although the new Criminal Code aims to incorporate human rights principles and Pancasila values, the progressive standards will be ineffective without consistent, professional law enforcement and without political interference. Furthermore, the public has opposed several controversial articles. For example, insulting state institutions, living law, and articles governing citizens' private spheres have sparked debate about potential restrictions on freedom of expression and privacy. The situation could lead to conflict between the government and civil society, particularly among pro-democracy groups who believe the new Criminal Code contains a "colonial spirit" that limits civil liberties. Conversely, some segments of society support the new Criminal Code, believing it

better aligns with Indonesian cultural and moral values. The differences show that socio-political changes influence its implementation

Additionally, the technical aspects of implementation present a significant challenge. Police officers, prosecutors, and judges must be trained and fully understand the substance of the new Criminal Code, which differs from the colonial-era code. Without adequate human resources, the interpretation of the new provisions may lead to disagreements or even misuse of authority. These challenges are further complicated by limited legal infrastructure, such as overcrowded correctional facilities, even though the new Criminal Code still maintains imprisonment as one of its primary sanctions. From a social perspective, the implementation of the new Criminal Code has significant implications. On one hand, the introduction of alternative sanctions, limitations on the death penalty, and recognition of victims' interests through a restorative justice approach are expected to create a more humane criminal justice system while reducing the social burden caused by overcriminalization. Another positive implication is the space provided for customary communities to participate in law enforcement through recognition of living law, which can strengthen the national legal identity.

Conversely, the implementation of the new Criminal Code can also have negative consequences if not carefully monitored. For example, the recognition of customary law can lead to legal uncertainty if it conflicts with human rights principles or national law. Similarly, controversial laws deemed to restrict civil liberties lead to social discontent, demonstrations, and even horizontal conflict. Therefore, the new Criminal Code must be implemented carefully, with an emphasis on broad discussion, public outreach, and active community involvement. Ultimately, the challenges and social implications of its implementation demonstrate that criminal law reform entails more than just textual changes, it also requires a transformation of legal culture. Achieving this transformation demands political commitment, professionalism from law enforcement officials, and public legal awareness, so that the new Criminal Code can truly serve as a tool for protecting human rights and promoting social justice for all Indonesians.

4 Conclusion

The recent reform of the Criminal Code (KUHP) represents a significant step toward establishing a national legal system based on Pancasila, the 1945 Constitution, and human rights. The three pillars of criminal law: criminal offenses, criminal responsibility, and punishment, internalize the fundamental concepts of human rights. In terms of criminal offenses, the new Criminal Code emphasizes the principle of culpability, provides special protection for children and individuals with disabilities, and acknowledges corporate criminal liability. Furthermore, it protects the interests of society, the environment, and individuals. Sentencing, on the other hand, the new Criminal Code's approach is more humane. There are some alternative punishments that limit the death penalty and strengthen the principle of restorative justice.

The implementation of the new Criminal Code faces significant challenges, including gaps between legal norms and enforcement practices, potential restrictions on civil liberties arising from controversial provisions, and limited resources for law enforcement personnel. Without thorough socialization, effective oversight, and strong political commitment, the outcomes of these reforms may be mixed: they can yield positive effects, such as strengthening human rights protection and substantive justice, but they may also create legal uncertainty and social conflict. Therefore, the successful internalization of human rights principles in the new Criminal Code depends on consistent implementation, the professionalism of authorities, and active community participation in monitoring the law enforcement process.

5 Recommendation

The government, together with law enforcement authorities, must ensure that the implementation of the new Criminal Code aligns with human rights principles. It can be achieved by enhancing the capacity of officers through education and training, developing clear guidelines for interpreting provisions that are open to multiple interpretations, and enforcing strict oversight to prevent abuse of authority. Additionally, the new Criminal Code must be thoroughly disseminated to the public, enabling citizens to understand its substance and critically monitor its implementation.

Continuous evaluation of new provisions that may restrict civil liberties is essential, particularly those concerning the rights to privacy and freedom of expression. Mechanisms for public participation should be widely accessible to academic institutions, the general public, and civil society organizations. Recognition of living law within society must be aligned with human rights principles to prevent discrimination and legal uncertainty. By doing so, the new Criminal Code can genuinely serve as a legal instrument that reflects the nation's identity while adhering to universal standards of justice and human rights.

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