

Criminal Law Reform and Social Control in Indonesia's New Penal Code Era

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Abstract

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This study examines the implementation of Law No. 1 of 2023 on the Criminal Code, the Electronic Information and Transactions Law, and the Pornography Law in shaping mechanisms of social control in modern Indonesia. Using a normative juridical method, the research analyzes the shift in criminal law paradigms from a retributive approach toward a more corrective and restorative system, as well as its implications for individual freedom, public morality, and social stability. The criminal law reform embodied in the 2023 Criminal Code reflects the state's effort to integrate the values of Pancasila, customary law, and the living law into the national legal system, transforming law from a mere instrument of punishment into a means of social development. The findings show that the implementation of these three laws strengthens the role of both the state and society in regulating social behavior, both in public and digital spaces. However, overlapping norms and moralistic interpretations continue to create legal uncertainty, potential discrimination, and restrictions on freedom of expression. Therefore, criminal law reform must aim to strike a balance between legal certainty, the protection of public morality, and respect for human rights, so that the law can truly function as an instrument of social justice that is humanistic, inclusive, and civilized.



1. Introduction

Changes in criminal law in Indonesia have entered an important phase with the passage of Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana*/KUHP). This reform is a historical milestone after more than a century of Indonesia using the Criminal Code of Dutch colonial heritage. The update not only improves the formal legal structure, but also reflects a paradigm shift towards the social and moral values of Indonesian society. The 2023 Criminal Code is expected to present a criminal law system that is in line with the spirit of Pancasila and the nation's personality and accommodates living law or laws that live in society as part of the national legal system.¹

However, these changes in criminal law take place in the midst of complex social dynamics, where public morality, freedom of expression, and social control interact with each other. The new articles in the 2023 Criminal Code, such as decency, insult to state institutions, and blasphemy, show that the state now plays an active role not only in regulating criminal acts, but also social behavior and public ethics. According to Faisal et al.,² the expansion of the scope of criminal law shows a shift in orientation from crime-based law enforcement to social morality-based law enforcement.

Meanwhile, other regulations such as Law Number 19 of 2016 concerning ITE and Law Number 44 of 2008 concerning Pornography remain relevant until

¹ Sophian Yahya Selajar and Aroma Elmina Martha. "Indonesian criminal code, living law and control in law enforcement in Indonesia." *SASTI* 29, no. 4 (2023): 705-716.

² Andri Yanto Faisal, Derita Prapti Rahayu, Dwi Haryadi, Anri Darmawan, and Jeanne Darc Noviyanti Manik. "Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code." *Cogent Social Sciences* 10, no. 1 (2024): 2301634.

2024. Both strengthen social control in the digital era by regulating the spread of content containing morality and hate speech. The ITE (*Informasi dan Transaksi Elektronik*) Law is often used to crack down on the spread of hoaxes or “inappropriate” content, but it is also criticized as a “rubber article” that restricts freedom of expression.³ In the context of legal sociology, the implementation of the ITE Law shows that social control mechanisms are now not only communitarian and physical, but also digital and psychological changing the patterns of public expression in cyberspace.⁴

The 2023 Criminal Code reform also introduces restorative justice that prioritizes corrective and rehabilitative justice, replacing the retributive system. Hehanussa et al.⁵ call this paradigm an effort to balance legal certainty and social justice, although its implementation still faces institutional and cultural constraints. On the other hand, the recognition of the living law raises debate because it can expand access to contextual justice, but it also opens up opportunities for discrimination against minority groups.⁶ The recognition of customary law has the potential to be a means of social harmony, but at the same time strengthens the morality-based social control of the majority that can suppress individual freedom.

³ Muhammad Ihsan, Devi Oktari, Edi Kristianta Tarigan, Rinanda Purba, Fani Budi Kartika, and Amos Sitorus. “Permasalahan Hukum Di Indonesia dengan Penerapan Undang-Undang Informasi dan Transaksi Elektronik.” *Lex Justitia* 6, no. 2 (2024): 102-110.

⁴ Shinta Ressmy Cakra Ningrat and Soni Akhmad Nulhaqim. “Pasal Karet UU ITE dan Peyelesaian Konflik Digital di Indonesia.” *Epistemik: Indonesian Journal of Social and Political Science* 4, no. 2 (2023): 38-52.

⁵ Deassy JA Hehanussa, Kukun Abdul Syakur Munawar, Muh Fadli Faisal Rasyid, Arianti A. Ogotan, and Arief Fahmi Lubis. “A Critical Review of Restorative Justice Policy in the Indonesian Criminal Justice System Post Law No. 1 of 2023 concerning the Criminal Code.” *Journal Equity of Law and Governance* 6, no. 1 (2024): 121-129.

⁶ Hendri, S., MSI SH, and S. H. Marlina. *Pembaharuan hukum terkait kebebasan berpendapat dalam bermedia sosial di Indonesia*. Yogyakarta: Deepublish, 2022.

The tension between social norms and individual freedom is a central issue in Indonesia's modern criminal law. Parindo et al.⁷ assessed that the update of the concept of criminal acts in the new Criminal Code shifted the legal orientation towards social morality which includes personal and digital behavior. Arifin et al.⁸ added that several articles in the 2023 Criminal Code and the ITE Law are not fully in line with the principles of civil liberties as guaranteed in international human rights instruments. This raises a dilemma between the protection of public morals and the potential abuse of the law to control expression that does not conform to dominant values.

In practice, the application of articles related to decency and digital expression creates the phenomenon of self-censorship among the public. Many individuals refrain from expressing opinions, producing artwork, or criticizing state institutions for fear of being entangled in the law. This shows how criminal law now functions not only as a tool for enforcing justice, but also as a means of shaping social behavior. According to Malau,⁹ the transformation of criminal law in Indonesia must be understood as part of the legal politics that shape the nation's character, not just a means of punishment.

⁷ Dhandy Parindo, Yusuf Daeng, Anton Surya Atmaja, Hapis Reski Putra, and Hendri Berson. "Penerapan Konsep Dasar HAM dan Pembaharuan Tiga Pilar Utama Hukum Pidana dalam KUHP Baru UU No. 01 Tahun 2023." *Jurnal Hukum Indonesia* 3, no. 3 (2024): 129-142.

⁸ Ridwan Arifin, Riska Alkadri, Robert Brian Smith, Nucharee Nuchkoom Smith, and Wahyudin Wahyudin. "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?" *Lex Scientia Law Review* 8, no. 1 (2024): 561-594.

⁹ Parningotan Malau. "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 837-844.

Thus, criminal law reform has far-reaching consequences for social control mechanisms, both formally through law enforcement officials and informally through customary norms and public morals. Therefore, it is important to examine how the implementation of the 2023 Criminal Code, the Pornography Law, and the ITE Law is carried out in contemporary society as well as the challenges that arise in maintaining a balance between the enforcement of social morals and the protection of individual freedoms in Indonesia's modern era.

2. Methods

This research uses the normative juridical method, which focuses on legal analysis as a system of norms that governs human behavior in society. This approach views law not merely as a social phenomenon, but as a set of rules written in laws and regulations, decisions of state institutions, and applicable legal doctrines. The main objective of this approach is to understand how legal norms are formulated, applied, and interpreted in the context of criminal law reform in Indonesia, especially related to the 2023 Criminal Code, the ITE Law, and the Pornography Law. In this study, law is positioned as an autonomous object of study, so the analysis is focused on the normative substance contained in the three laws and their implications for the concepts of social control and individual freedom.

The normative juridical approach is carried out through library research by examining various primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations such as the 2023 Criminal Code, Law Number 19 of 2016 concerning ITE, and Law Number 44 of 2008 concerning

Pornography. Secondary legal materials include research results, scientific journals, criminal law books, and academic articles that review the implementation of criminal law in social and moral contexts. Meanwhile, tertiary legal materials are used to provide additional understanding, such as legal dictionaries, encyclopedias, and credible internet sources. Data analysis is carried out in a descriptive analytical manner, namely by describing, interpreting, and relating the content of legal norms to the purpose of law formation and its impact on social behavior.

This study also examines the compatibility between written legal norms and the practice of their application in the field, especially in the context of social control in the digital era. With a normative juridical method, this study aims to find legal principles, concepts, and norms that can be used to explain the phenomenon of contemporary Indonesian criminal law. The results are expected to provide a comprehensive understanding of how the national criminal law system functions as an instrument of social control and how the role of law in maintaining a balance between social order, public morality, and individual freedom.

3. Results and Discussion

3.1. Application of Criminal Law and Social Control in Indonesia

Fundamental changes in Indonesian criminal law through Law Number 1 of 2023 concerning the Criminal Code (KUHP) are an important milestone in the reform of the national legal system. The 2023 Criminal Code replaces a legacy of colonial law that is more than a century old and marks a paradigm shift from a retributive approach to a system that emphasizes corrective as well as restorative

justice.¹⁰ This reform makes criminal law not only a means of punishment, but also an instrument of social development and control over people's behavior.¹¹

The function of social control in the new Criminal Code appears to be strong in the provisions that regulate morality, contempt for state institutions, and recognition of living law or laws that live in society. Toatubun and Djamaludin¹² said that the recognition of living law shows the state's efforts to accommodate a plurality of customary and local norms, while expanding the scope of criminal law from formal crimes to the realm of social morality. However, this expansion poses a new challenge in the form of potential overlap between positive legal norms and social norms that have different moral standards.

In practice, the 2023 Criminal Code underlines the importance of social context, customary values, and local conditions in determining criminal acts. This contextual approach, according to Parindo et al.,¹³ strengthens the social legitimacy of criminal law while making it a tool of integration in a pluralistic society. But in practice, this approach expands the authority of the state and local communities to determine the boundaries of behavior that is considered deviant. Law ultimately

¹⁰ Deassy JA Hehanussa, Kukun Abdul Syakur Munawar, Muh Fadli Faisal Rasyid, Arianti A. Ogotan, and Arief Fahmi Lubis. "A Critical Review of Restorative Justice Policy in the Indonesian Criminal Justice System Post Law No. 1 of 2023 concerning the Criminal Code." *Journal Equity of Law and Governance* 6, no. 1 (2024): 121-129.

¹¹ Sophian Yahya Selajar and Aroma Elmina Martha. "Indonesian criminal code, living law and control in law enforcement in Indonesia." *SASI* 29, no. 4 (2023): 705-716.

¹² Najarudin Toatubun and Djamaludin Djamaludin. "The Dialectics of the Principle of Legality and Living Law in the National Criminal Law System Post-Enactment of Law No. 1 of 2023." *Jurnal Ilmu Hukum Kyadire* 6, no. 1 (2024): 85-94.

¹³ Dhandy Parindo, Yusuf Daeng, Anton Surya Atmaja, Hapis Reski Putra, and Hendri Berson. "Penerapan Konsep Dasar HAM dan Pembaharuan Tiga Pilar Utama Hukum Pidana dalam KUHP Baru UU No. 01 Tahun 2023." *Jurnal Hukum Indonesia* 3, no. 3 (2024): 129-142.

functions as a formal mechanism to maintain uniform values and social order forms of social control that originate from collective morality.¹⁴

In addition to the Criminal Code, Law Number 44 of 2008 concerning Pornography also plays an important role in controlling public morality. According to Hendri and Marlina,¹⁵ this law functions as a legal instrument that regulates the boundaries of public decency and body expression, as well as representing the moral values of the majority in the national legal system. However, because the interpretation of “pornography” and “morality” depends on the social values of each community, their application often leads to controversy and legal uncertainty. As a result, cultural expressions, works of art, and even social behavior can be categorized as moral offenses, showing the strong control aspect in the criminal law of morality.

Meanwhile, Law Number 19 of 2016 concerning ITE expands the dimension of social control to the digital space. With the increase in online activities of the public, the state uses the ITE Law to crack down on the spread of content that contains morality, defamation, or hate speech. Ihsan¹⁶ states that although the ITE Law aims to protect the digital space from abuse, its application often blurs between criticism and insults. This, according to Ningrat,¹⁷ causes a deterrent effect and self-censorship in society, where individuals refrain from expressing opinions to avoid

¹⁴ Parningotan Malau. “Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023.” *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 837-844.

¹⁵ Hendri, S., MSI SH, and S. H. Marlina. *Pembaharuan hukum terkait kebebasan berpendapat dalam bermedia sosial di Indonesia*. Yogyakarta: Deepublish, 2022.

¹⁶ Muhammad Ihsan, Devi Oktari, Edi Kristianta Tarigan, Rinanda Purba, Fani Budi Kartika, and Amos Sitorus. “Permasalahan Hukum Di Indonesia dengan Penerapan Undang-Undang Informasi dan Transaksi Elektronik.” *Lex Justitia* 6, no. 2 (2024): 102-110.

¹⁷ Shinta Ressmy Cakra Ningrat and Soni Akhmad Nulhaqim. “Pasal Karet UU ITE dan Peyelesaian Konflik Digital di Indonesia.” *Epistemik: Indonesian Journal of Social and Political Science* 4, no. 2 (2023): 38-52.

legal risks. Thus, social control is no longer only communitarian and physical, but also digital and psychological.

The three laws show a synergistic and complex relationship in shaping the pattern of social control in Indonesia. The Criminal Code serves as the main normative framework, while the Pornography Law and the ITE Law are special regulations that expand the scope of criminal law into the realm of public morality and cyberspace. Arifin et al.¹⁸ emphasized that Indonesia's criminal law system is now transforming from just a guardian of order to a social moral arranger based on the values of Pancasila. However, this transformation also creates tensions between the protection of public morals and respect for individual rights, especially regarding freedom of expression and digital privacy.

In social practice, the moralistic application of criminal law creates a dual form of social control: formal and informal. Formally, law enforcement officials enforce rules based on written norms; Informally, the community also becomes a supervisory agent that suppresses behavior that deviates from the majority values. This condition gives birth to strong social conformity. According to Hehanussa et al.,¹⁹ legal sensitivity to morality can narrow the space of personal freedom and lead to discrimination against minority groups or alternative cultural expressions.

¹⁸ Ridwan Arifin, Riska Alkadri, Robert Brian Smith, Nucharee Nuchkoom Smith, and Wahyudin Wahyudin. "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?" *Lex Scientia Law Review* 8, no. 1 (2024): 561-594.

¹⁹ Deassy JA Hehanussa, Kukun Abdul Syakur Munawar, Muh Fadli Faisal Rasyid, Arianti A. Ogotan, and Arief Fahmi Lubis. "A Critical Review of Restorative Justice Policy in the Indonesian Criminal Justice System Post Law No. 1 of 2023 concerning the Criminal Code." *Journal Equity of Law and Governance* 6, no. 1 (2024): 121-129.

However, the application of the principle of restorative justice in the new Criminal Code shows a positive direction. This paradigm places the perpetrator of crime not just as an object of punishment, but as a subject that needs to be restored in order to return to play a role in society. Magala²⁰ assesses that this orientation reflects a shift from revenge to social improvement, which has the potential to strengthen community cohesion and reduce morality-based conflicts.

Overall, the implementation of the 2023 Criminal Code, the Pornography Law, and the ITE Law shows ambivalence in the function of criminal law. On the one hand, the law plays a role in protecting the social and moral stability of the public; On the other hand, laws can be a means of restricting individual freedom and cultural creativity. As stated by Faisal et al.,²¹ the effectiveness of criminal law reform can only be achieved if it is balanced with humanist legal education and an enforcement system based on human rights. Thus, criminal law can double function as a protector of public morality and as a means of upholding inclusive and civilized social justice.

3.2. The Challenges and Urgency of Criminal Law Enforcement in Maintaining a Balance between Social Control and Individual Freedom

The transformation of Indonesia's criminal law through the 2023 Criminal Code, the ITE Law, and the Pornography Law not only presents normative updates,

²⁰ Anugrah Sahtia Magala. "Akomodasi Hukum Yang Hidup Dalam Kehidupan Baru Indonesia Menurut Perspektif Hukum Progresif." *Spektrum Hukum* 20, no. 2 (2023): 115-127.

²¹ Andri Yanto Faisal, Derita Prapti Rahayu, Dwi Haryadi, Anri Darmawan, and Jeanne Darc Noviyanti Manik. "Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code." *Cogent Social Sciences* 10, no. 1 (2024): 2301634.

but also poses serious challenges in the practice of its implementation. The complexity of the relationship between morality, social norms, and individual rights poses two major challenges: the overlap and inconsistency of law enforcement, as well as restrictions on individual freedom of expression and privacy. Both show that although the law functions as a tool of social control, without the right balance, it has the potential to be an instrument of limiting civil liberties and the cultural expression of society.

The first challenge arises from the overlap and inconsistency between the 2023 Criminal Code, the ITE Law, and the Pornography Law. Articles governing morality, insults, and the dissemination of morally charged content often have similar formulations but differ in application and sanctions. Toatubun and Djamaludin²² assessed that this caused law enforcement officials to have difficulty determining the right legal basis, thus opening up space for subjective interpretation. As a result, legal uncertainty arises that can cause feelings of injustice in society.

In practice, this overlap leads to overlapping enforcement, where a single act can be ensnared by more than one law. For example, the dissemination of digital content can be considered a violation of the morality article of the Criminal Code as well as the ITE Law or the Pornography Law. Parindo et al.²³ stated that this situation not only confuses the public, but also creates fear because the line between

²² Najarudin Toatubun and Djamaludin Djamaludin. "The Dialectics of the Principle of Legality and Living Law in the National Criminal Law System Post-Enactment of Law No. 1 of 2023." *Jurnal Ilmu Hukum Kyadire* 6, no. 1 (2024): 85-94.

²³ Dhandy Parindo, Yusuf Daeng, Anton Surya Atmaja, Hapis Reski Putra, and Hendri Berson. "Penerapan Konsep Dasar HAM dan Pembaharuan Tiga Pilar Utama Hukum Pidana dalam KUHP Baru UU No. 01 Tahun 2023." *Jurnal Hukum Indonesia* 3, no. 3 (2024): 129-142.

freedom of expression and lawlessness becomes blurred. Without uniform interpretation guidelines between institutions, law enforcement often relies on the moral perception of the authorities rather than the principle of legal certainty.

The second challenge relates to the restriction of individual freedom of expression and privacy within the framework of moralistic criminal law. Articles on insulting state institutions, blasphemy, and decency are often used to ensnare individual expressions of personal nature or social criticism. Ihsan²⁴ assessed that this shows the tension between efforts to maintain public morals and the protection of human rights, especially freedom of opinion. The ITE Law and the Pornography Law are real examples of how the law is used to regulate behavior in the public and digital spaces, but also narrow the space of personal freedom.

The phenomenon of criminalization of digital expression is a crucial challenge. Many individuals are prosecuted for uploads on social media that are considered morally or religiously offensive, even without the intention of violating. Ningrat²⁵ explained that this reflects a shift in social control from society to the state, where social norms are now formally enforced through criminal law. As a result, people experience a deterrent effect and limit themselves in self-censorship.

To illustrate, an individual uploads entertainment content that contains social criticism through humor or religious symbols. The content is then considered to violate moral norms and religious values. The law enforcement ensnared him using

²⁴ Muhammad Ihsan, Devi Oktari, Edi Kristianta Tarigan, Rinanda Purba, Fani Budi Kartika, and Amos Sitorus. “Permasalahan Hukum Di Indonesia dengan Penerapan Undang-Undang Informasi dan Transaksi Elektronik.” *Lex Justitia* 6, no. 2 (2024): 102-110.

²⁵ Shinta Ressmy Cakra Ningrat and Soni Akhmad Nulhaqim. “Pasal Karet UU ITE dan Peyelesaian Konflik Digital di Indonesia.” *Epistemik: Indonesian Journal of Social and Political Science* 4, no. 2 (2023): 38-52.

the morality article in the ITE Law and the article on insulting religion in the 2023 Criminal Code. Although the case did not lead to punishment, the legal process had significant social impacts: public anxiety, restrictions on expression, and increased self-censorship. Selajar & Martha²⁶ consider that this phenomenon shows the effectiveness of the law as a tool of social control, but at the same time shows its risks to individual freedom.

Criticism of the moralistic tendencies of criminal law was conveyed by Arifin et al.²⁷ who assessed that the 2023 Criminal Code and the ITE Law have the potential to violate the principles of civil liberties as guaranteed in international human rights instruments. When morality is used as the main basis for law enforcement, law loses its objectivity and becomes a means of value hegemony. However, Hendri and Marlina²⁸ emphasized that the recognition of living law is intended to strengthen social justice based on local values, even though without proper supervision, local norms can be used to justify social discrimination.

The urgency of this issue is even higher in the digital era, when the boundaries between private and public spaces are increasingly blurred, while law is still oriented towards traditional moral categories. Hehanussa et al.²⁹ emphasized that Indonesian

²⁶ Sophian Yahya Selajar and Aroma Elmina Martha. "Indonesian criminal code, living law and control in law enforcement in Indonesia." *SASI* 29, no. 4 (2023): 705-716.

²⁷ Ridwan Arifin, Riska Alkadri, Robert Brian Smith, Nucharee Nuchkoom Smith, and Wahyudin Wahyudin. "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?" *Lex Scientia Law Review* 8, no. 1 (2024): 561-594.

²⁸ Hendri, S., MSI SH, and S. H. Marlina. *Pembaharuan hukum terkait kebebasan berpendapat dalam bermedia sosial di Indonesia*. Yogyakarta: Deepublish, 2022.

²⁹ Deassy JA Hehanussa, Kukun Abdul Syakur Munawar, Muh Fadli Faisal Rasyid, Arianti A. Ogotan, and Arief Fahmi Lubis. "A Critical Review of Restorative Justice Policy in the Indonesian Criminal Justice System Post Law No. 1 of 2023 concerning the Criminal Code." *Journal Equity of Law and Governance* 6, no. 1 (2024): 121-129.

law must be able to adapt to social developments without losing its moral character. Without interpretive reform, the law will continue to face a gap between written norms and societal social practices.

From a legal political perspective, Magala³⁰ states that the balance between social order and civil liberties is urgent. Laws that are too repressive create formal obedience without freedom of thought, while laws that are too loose weaken public morals. Thus, the biggest challenge for criminal law reform is not only the formulation of the law, but how to enforce it fairly, consistently, and based on human rights.

Based on the whole, the implementation of the 2023 Criminal Code, the Pornography Law, and the ITE Law presents a dilemma between the function of social control and the protection of individual freedom. The overlap of regulation and morality institutionalized in law demonstrates the need for uniform enforcement guidelines based on substantive justice. The urgency lies in the need to build a criminal law system that not only maintains public morals, but also protects the fundamental rights of citizens so that the law functions as a means of social justice, not a tool to limit freedom.

4. Conclusion

Criminal law reform through the 2023 Criminal Code, the ITE Law, and the Pornography Law marks significant changes in Indonesia's national legal system.

³⁰ Anugrah Sahtia Magala. "Akomodasi Hukum Yang Hidup Dalam Kuhp Baru Indonesia Menurut Perspektif Hukum Progresif." *Spektrum Hukum* 20, no. 2 (2023): 115-127.

The three laws not only serve to update the formal legal aspects, but also to establish a mechanism of social control that reflects the moral and cultural values of society. The application of criminal law is now moving in a more complex direction, where moral norms, customs, and positive laws interact to maintain social order. However, this update also presents a dilemma between efforts to preserve public morality and the need to protect individual freedoms.

This research found that the implementation of the 2023 Criminal Code strengthens the recognition of the law that lives in society, but still faces challenges in uniformity of enforcement and the potential abuse of moralistic articles. The ITE Law and the Pornography Law extend the role of criminal law to the digital space, but also have the potential to limit freedom of expression and create a social effect in the form of self-censorship. Thus, Indonesia's current criminal law system shows a duality of function: as a protector of public morality as well as a tool of social control that can affect civil rights. The direction of criminal law reform in the future must be directed at a balance between legal certainty, social justice, and respect for human rights. Only with a proportionate, inclusive, and humanist legal approach can criminal law function not only as a tool of control, but as a means of fostering a just and civilized society.

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