



A Critical Criminological Analysis of the Reformulation of Criminal Offences in the Indonesian Criminal Code

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ABSTRACT

This study aims to analyze the reformulation of criminal offenses in the Indonesian Criminal Code (KUHP) through the perspective of critical criminology. Existing studies on the new Criminal Code have primarily focused on normative legal issues, while analyses of criminalization and social control remain limited. The novelty of this study lies in applying critical criminology to examine the reformulation of criminal offenses not merely as a legislative reform, but also as a social process that shapes the construction of crime. This research employs a normative legal research method using statutory and conceptual approaches to examine the provisions concerning morality offenses, insults against the President and the government, defamation, and restrictions on freedom of expression under Law No. 1 of 2023 on the Indonesian Criminal Code. Legal materials were collected through library research and analyzed using qualitative methods. The findings demonstrate that the reformulation of offenses in the new Criminal Code does not entirely reflect a neutral legal reform; rather, it represents a process of criminalization shaped by power relations, dominant moral values, and mechanisms of social control. Such conditions may result in restrictions on civil liberties and selective law enforcement if the relevant provisions are not interpreted and applied proportionately. This study underscores the importance of implementing the new Criminal Code in a manner that upholds human rights and substantive justice, while contributing to the development of criminal law scholarship by advancing critical criminology as an alternative analytical framework for evaluating criminal policy in Indonesia.

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1. Introduction

The criminal offenses codified in the Indonesian Criminal Code (KUHP) did not emerge spontaneously as the mere result of deliberations among legal scholars or policymakers. Rather, the formulation of these offenses is the product of a long historical process shaped by the social, political, economic, and cultural dynamics that have evolved within society. Accordingly, criminal law should not be understood solely as a body of technical legal norms, but also as a reflection of the values, interests, and power relations embedded within a particular social order.¹ In the development of Indonesian criminal law, the first codified criminal code in force prior to the enactment of Law No. 1 of 2023 was the legacy of Dutch colonial rule, commonly known as the *Wetboek van Strafrecht* (WvS), together with the historical and political context underlying its formulation.²

Despite undergoing various amendments over time, the former Criminal Code (KUHP) continued to substantively reflect a colonial legal paradigm oriented toward the interests of those in power. Within such a framework, criminal law functioned primarily as an instrument of social control designed to maintain public order in accordance with the interests of the colonial government, rather than as a means of achieving substantive justice for society as a whole.³ Consequently, criticisms of the former Criminal Code extend beyond technical deficiencies or legal gaps, encompassing the philosophical foundations upon which it was originally constructed.

This codification effort has been regarded as a process of decolonization aimed at aligning Indonesia's criminal law system with the values of Pancasila, the evolving needs of society, and the demands of the national legal system.⁴ Nevertheless, these reforms have not been free from criticism. Contemporary criminal law is considered by some scholars to no longer function as effectively as intended, or at least to remain capable of being implemented in a more effective manner.⁵ Moreover, criminal law may also reflect mechanisms of punishment embedded within unequal social structures.⁶ Indeed, the success of criminal law reform depends not only on changes to written legal norms but also on the judicial culture that shapes the interpretation and application of those norms by law enforcement

¹ Re'em Segev, "The Structure of Criminal Law," *Criminal Law and Philosophy* 18, no. 2 (2024): 497–517.

² Aditi Singh Kavia and Karan Singh Chouhan, "Crime, Morality and Decolonialization: A Critical Comparative Analysis of Criminal Law Reforms in Indonesia and India," *Jurnal Penelitian Hukum De Jure* 25, no. 1 (2025): 49–66.

³ Rico Ardiansyah and Ibrahim Fikma Edrisy, "Tinjauan Pembaruan Sistem Pemidanaan Di Indonesia Dalam KUHP Baru," *Journal Evidence Of Law* 4, no. 3 (2025): 1641–53.

⁴ Afifah Firdaus and Indra Yugha Koswara, "Pembaharuan Hukum Pidana Di Indonesia : Analisis Tentang Pidana Pengawasan Dan Asas Keseimbangan," *Lex Renaissance* 9, no. 1 (2024): 1–22.

⁵ Evan D. Bernick, "Eliminating Criminal Law," *Washington University Jurisprudence Review* 17, no. 1 (2023): 1–34.

⁶ Benjamin Levin, "After The Criminal Justice System," *Washington Law Review* 10, no. 1 (2023): 899–946.

institutions.⁷ Against this backdrop, considerable debate has emerged concerning the limits of the state's authority to criminalize conduct and the potential implications of such criminalization for the protection of human rights and civil liberties.

Scholarly studies on the new face of criminal law—or, more specifically, on the new Criminal Procedure Code (KUHP)—can so far be grouped into four trends. *First*, a cluster of studies that examine the politics of codification by analyzing ideological compromises in the transition from Dutch colonial law to national law.⁸ *Second*, research that places greater emphasis on the challenges of harmonization and policy evolution in the context of transnational criminal law.⁹ *Third*, dogmatic studies that discuss the principles of the new criminal law leading toward restorative justice and reform of the sentencing system.¹⁰ *Fourth*, studies that specifically examine the factors influencing the formulation of criminal law provisions.¹¹ Although these studies make significant contributions, the existing literature remains very limited in its consideration of the redefinition of criminal offenses as a dynamic process of criminalization—a space of contestation where the boundaries between deviance, morality, dissent, and legality are negotiated and produced in a hegemonic manner. This study aims to fill this gap by framing the reformulation of criminal offenses not merely as a static legal product, but as a socio-political tool that reflects how crime can be constructed to perpetuate specific power relations.

The critical criminology perspective in this study is applied as a theoretical foundation that is directly operationalized as an analytical tool to dissect the structural aspects underlying the new face of Indonesian criminal law. The concept of dominant morality is used substantively to uncover how criminal offenses are designed to legitimize the values of certain social groups and enable them to act as actors in the public sphere, while simultaneously disregarding vulnerable groups. Furthermore, the concept of selective

⁷ Angelo Petrih, “Judicial Resistance To New York’s 2020 Criminal Legal Reforms,” *The Journal of Criminal Law & Criminology* 113, no. 1 (2023): 1–64.

⁸ Alison Fischer, “Colonialism, Context and Critical Thinking: First Steps Toward Decolonizing the Dutch Legal Curriculum,” *Utrecht Law Review* 18, no. 1 (2022), <https://doi.org/10.36633/ulr.764>; Ija Suntana et al., “Ideological Distrust: Re-Understanding the Debate on State Ideology, Normalization of State-Religion Relationship, and Legal System in Indonesia,” *Heliyon* 9, no. 3 (2023), <https://doi.org/10.1016/j.heliyon.2023.e14676>; Suyuti Dahlan Rifa’i et al., “Deconstructing Colonial Law Through Critical Race Theory in Indonesian Regulations,” *Jurnal Pelita Raya* 1, no. 1 (2025): 46–60, <https://doi.org/10.65586/jpr.v1i1.12>.

⁹ Viacheslav Tuliakov, “Transnational Criminal Law, Sovereignty and International Justice: Harmonization Challenges and Policy Evolution,” *International Annals of Criminology* 63, no. 2 (2025): 1–23, <https://doi.org/10.1017/cri.2025.10076>.

¹⁰ Moch Fauzan Zarkasi, Nur Azisa, and Haeranah Haeranah, “Implications of Renewal System of Criminal Justice Based on the Principles of Restorative Justice on The Role of Probation and Parole Officer,” *Khazanah Hukum* 4, no. 1 (2022): 29–44, <https://doi.org/10.15575/kh.v4i1.17354>; Padlah Riyadi, “Reconstruction of Restorative Justice Regulations Within the Indonesian Penal System Post-Law No. 1 of 2023,” *Peradaban Journal of Law and Society* 3, no. 2 (2024): 154–67, <https://doi.org/10.59001/pjls.v3i2.241>.

¹¹ Paul H. Robinson, Hugh Rennie, and Clever Earth, “Red Codes, Blue Codes? Factors Influencing the Formulation of Criminal Law Rules,” *University of Pennsylvania Journal of Law & Public Affairs* 9, no. 3 (2024): 348–472.

protection of legal interests is applied in examining offenses of insulting the President and the government, to analyze the extent to which criminal mechanisms are used as a shield for elite power rather than to protect neutral public interests.¹² Next, the concept of the expansion of criminal control is used to analyze the scope of defamation provisions as they encroach upon citizens' private spheres.¹³ Finally, the analysis of restrictions on public expression will be examined through the theory of the "chilling effect" to evaluate how criminalization structurally imposes limitations and instills mass fear that paralyzes the spirit of democracy.¹⁴ Using this operational framework, critical criminology works to dissect the non-neutral nature of criminal law in reducing inequality and state social control.

From this perspective, the formulation of a criminal offense does not merely reflect the need to protect legal interests, but may also serve as a mechanism for preserving dominant values within society.¹⁵ Accordingly, the success of the reform of the Criminal Code is determined not only by changes to its written provisions, but also by the extent to which those reforms embody the principles of substantive justice, the protection of human rights, and a proper balance between the authority of the state and the freedoms of its citizens.

The scope and depth of this study's analysis are limited to several categories of criminal offenses that have sparked the most significant debates—both in public discourse and academic research—regarding Law No. 1 of 2023. These categories were selected based on the high intensity of public resistance, waves of protests, and petitions for judicial review filed with the Constitutional Court. These specific provisions include: Articles 218 and 219 regarding attacks on the dignity and honor of the President and Vice President; Article 240 regarding insults against the government or state institutions as examples of political offenses related to power; and Articles 263 and 264 regarding the dissemination of false news that causes public unrest as examples of restrictions on public expression. These articles were selected because they possess strong methodological justification, as these provisions serve as the central focus of academic discourse. These articles are the most representative benchmarks for examining how the state is restructuring the scope of its interventions, expanding the reach of its social control, and negotiating citizens' human rights within the framework of the new criminal law.

Based on the foregoing discussion, this study aims to analyze the reformulation of offenses in the Indonesian Criminal Code through the perspective of critical criminology in order to assess the extent to which the process of criminalization is genuinely oriented toward the protection of society's legal interests or, instead, reproduces existing power relations,

¹² Fransiska Novita Eleanora and Dwi Seno Wijanarko, *Kriminologi* (Malang: Madza Media, 2022).

¹³ Paul H Robinson, "Is It Possible to Draft a Universal Criminal Code?," *American University International Law Review* 40, no. 24 (2025): 1131–49.

¹⁴ Miranti Aparatu et al., "Konstruksi Sosial Terhadap Kejahatan : Analisis Kriminologi Kritis Social Construction of Crime : A Critical Criminology," *At-Tasyrih Jurnal Pendidikan Dan Hukum Islam* 11, no. 2 (2025): 263–73.

¹⁵ James Lee, "'Not Time to Make a Change'? Reviewing The Rhetoric of Law Reform," *Current Legal Problems* 76, no. 1 (2023): 129–172.

dominant moral values, and particular mechanisms of social control. The novelty of this study lies in its application of critical criminology to examine the reformulation of criminal offenses as a law-making process that is not merely normative in nature, but also constitutes a site in which criminalization, power relations, morality, and the protection of human rights interact. Accordingly, this article not only evaluates the substantive reforms introduced by the new Criminal Code as a legislative product, but also explores the socio-political dimensions underlying the formulation of criminal offenses and their implications for the realization of substantive justice.

2. Legal Materials and Methods

This study employs a normative legal research method to examine the reformulation of criminal offenses in the Indonesian Criminal Code (KUHP) through the perspective of critical criminology. The use of this normative method has methodological justification because this study focuses on examining the text, structure, and ratio legis of the new criminal law norms from a doctrinal perspective. This is because the sociopolitical implications and power relations criticized by critical criminology are, in fact, embedded in the normative formulation of the provisions under examination. The legal materials consist of both primary and secondary sources. The primary legal material is Law No. 1 of 2023 on the Indonesian Criminal Code, while the secondary legal materials include books, scholarly journal articles, previous research, and other academic literature on criminal law, criminal policy, and critical criminology. These materials were collected through library research by reviewing legal sources relevant to the subject of this study.

This research adopts statutory, conceptual, and analytical approaches. To define the scope, a legislative approach was used to analyze specific articles in Law No. 1 of 2023, including: Articles 218 and 240 regarding criminal offenses against the honor of the President and the government, as well as Articles 256 and 263. These articles were selected based on the level of public resistance and criticism, the potential for human rights violations, their high relevance to restrictions on freedom of expression in the public sphere, and the potential for the expansion of state criminal control into the private sphere. The conceptual approach is employed to explore the theoretical foundations of critical criminology, while the analytical approach is used to assess the rationale underlying the formulation of these offenses and to evaluate their legal and social implications.

Critical criminology serves as both the theoretical framework and the analytical lens of this study. The analysis was conducted through the concepts of criminalization, power relations, social control, dominant morality, the social construction of crime, and inequality in law enforcement to assess how these offenses are defined, whose legal interests they are intended to protect, and their potential implications for human rights and civil liberties. Furthermore, all legal materials were analyzed using a systematic qualitative descriptive analysis in five stages, namely: (1) identification and inventory of the selected articles, (2) interpretation of substantive normative elements, (3) in-depth examination of the rationale behind their formulation, (4) a critical review of constitutional principles and human rights

standards, and (5) a final synthesis using a matrix of critical criminological concepts. Through this approach, the study examines the reformulation of criminal offenses not merely as a normative legal reform, but also as a process of criminalization shaped by power relations and mechanisms of social control.

3. Results and Discussion

3.1. Reformulation of Offenses in the Criminal Code (KUHP)

The enactment of Law Number 1 of 2023 concerning the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) constitutes one of the most significant developments in the history of Indonesian law following independence. This law emerged from a decades-long process aimed at replacing the former Criminal Code inherited from the Dutch colonial government in 1915, which had served as the foundation of criminal law in Indonesia for more than a century. The introduction of the new Criminal Code reflects Indonesia's effort to detach itself from colonial legal influences and to establish a criminal justice system that is more consistent with the values of Pancasila and the evolving sense of justice within society.¹⁶

Nevertheless, this reform has not been free from debate and criticism within society. Several parties argue that a number of provisions in the new Criminal Code still have the potential to create problems, particularly those relating to freedom of expression, criticism of the government, and the possible expansion of criminalization. Therefore, in addition to representing a legal reform effort, the implementation of the new Criminal Code also requires careful supervision, prudent interpretation, and the readiness of law enforcement authorities to ensure that the objectives of establishing a legal system that is just, certain, and beneficial can truly be realized in practice. The following are several reforms of offenses introduced under Law Number 1 of 2023 concerning the Criminal Code:

- a. Offenses Against the Dignity or Honor of the President and/or Vice President
Article 218
 - (1) Any person who publicly attacks the honor, dignity, or reputation of the President and/or Vice President shall be subject to imprisonment for a maximum period of 3 (three) years or a fine not exceeding Category IV.
 - (2) An act shall not constitute an attack on honor, dignity, or reputation as referred to in paragraph (1) if it is carried out in the public interest or in self-defense.¹⁷

The reformulation of Article 218 of the new Criminal Code, which regulates the prohibition against attacking the honor or dignity of the President and/or Vice President with a maximum penalty of three years' imprisonment or a Category IV fine, is essentially intended to provide protection for the symbols and authority of the head of state, with

¹⁶ M Sirot and Bambang Soesatyo, "New Directions for Criminal Law Politics Post-National Criminal Code Law : Between Restorative and Retributive Justice," *Greenation International Journal of Law and Social Sciences* 3, no. 3 (2025): 932-40.

¹⁷ Pemerintah RI, "Kitab Undang-Undang Hukum Pidana" (2023).

exceptions where such acts are carried out in the public interest or for self-defense. Nevertheless, this provision has generated controversy because it is viewed as a “revival” of the presidential insult provision that had previously been annulled by the Constitutional Court through Decision Number 013-022/PUU-IV/2006. In that decision, the Court emphasized that although the President and Vice President deserve respect in a protocolary sense, they must not be placed in a substantively different legal position from other citizens before the law.¹⁸ Excessive special protection may instead violate the principle of equality before the law as guaranteed under Article 27 paragraph (1) of the 1945 Constitution.

Therefore, the reformulation of this provision should be accompanied by clearer, firmer, and more definitive drafting and interpretation in order to avoid multiple interpretations in its application. The phrase “attacking honor or dignity” must be provided with objective and measurable limitations so that a clear distinction can be drawn between criticism, expressions of opinion, and acts that genuinely constitute insult. Without such clarity, there is a risk that this provision may be excessively employed by law enforcement authorities to restrict freedom of expression and criminalize criticism of the government. Accordingly, interpretative guidelines are necessary to emphasize that the element of insult must satisfy certain criteria, such as the existence of intent to personally degrade one’s honor, rather than merely conveying opinions or criticism regarding public policy. In this way, criminal law reform may still achieve its purpose of protecting state symbols or the President as a representation of the state itself, without sacrificing legal principles, legal certainty, and human rights.

b. Offenses of Insult Against the Government or State Institutions

Article 240

- (1) Any person who publicly insults the government or a state institution, either orally or in writing, shall be punished with imprisonment for a maximum term of 1 (one) year and 6 (six) months or a fine not exceeding Category II.
- (2) In the event that the criminal offense as referred to in paragraph (1) results in public disorder within society, the offender shall be punished with imprisonment for a maximum term of 3 (three) years or a fine not exceeding Category IV.
- (3) The criminal offense as referred to in paragraph (1) may only be prosecuted upon a complaint by the aggrieved party.
- (4) The complaint as referred to in paragraph (3) shall be submitted in writing by the head of the government or the relevant state institution.

Article 241

¹⁸ Faridatus Sholeha, Musfianawati, and Muhammad Hoiru Nail, “Konstitusional Pasal Penghinaan Terhadap Presiden Dan / Atau Wakil Presiden Dalam Perspektif Kebebasan Berpendapat Bagi Warga Negara (Telaah Atas Pasal 217-220 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana),” *Welfare State* 2, no. 2 (2023): 194–220.

- (1) Any person who broadcasts, displays, or posts writings or images visible to the public, plays recordings audible to the public, or disseminates through information technology media any content containing insults against the government or a state institution, with the intention that such insulting content be known to the public, shall be punished with imprisonment for a maximum term of 3 (three) years or a fine not exceeding Category IV.
- (2) In the event that the criminal offense as referred to in paragraph (1) results in public disorder within society, the offender shall be punished with imprisonment for a maximum term of 4 (four) years or a fine not exceeding Category IV.
- (3) The criminal offense as referred to in paragraph (1) may only be prosecuted upon a complaint by the aggrieved party.
- (4) The complaint as referred to in paragraph (3) shall be submitted in writing by the head of the government or the relevant state institution.¹⁹

The reformulation of Articles 240 and 241 of the new Criminal Code, which regulate insults against the government or state institutions, reflects the state's effort to provide protection for the authority and dignity of public institutions, while at the same time giving rise to concerns in the context of freedom of expression. Provisions that are vaguely formulated and susceptible to overly broad interpretation may create fear within society regarding the expression of criticism. In fact, freedom of expression constitutes a fundamental right recognized internationally. Therefore, provisions that have the potential to create such problems need to be examined more carefully to ensure that restrictions on freedom of expression do not become excessive and do not hinder the development of democracy in Indonesia.²⁰

Article 240 stipulates that any person who publicly insults the government or a state institution, either orally or in writing, may be subjected to criminal sanctions, with heavier penalties imposed where such acts result in public disorder. The offense is further classified as a complaint-based offense, meaning that prosecution may only proceed upon an official complaint submitted by the head of the relevant institution. This provision is expanded under Article 241, which encompasses various forms of dissemination, including through information technology media, thereby reflecting a legal response to the development of digital spaces. Although normatively these provisions are intended to maintain public order and stability and to protect state institutions from degrading attacks, in practice they carry the potential for multiple interpretations, particularly in distinguishing between legitimate criticism within a democratic state and punishable insult. Furthermore, although these provisions are structured as complaint-based offenses to limit potential abuse, the complaint mechanism vested in the heads of state institutions may instead strengthen institutional positions in responding to public criticism. Even though the explanation of Article 240

¹⁹ RI, Kitab Undang-Undang Hukum Pidana.

²⁰ Ahmad Fatih Karomi and Rizky Ahadyan Ardyansyah, "Tinjauan Yuridis Terhadap Pasal 217 Dan 240 Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP," *Merdeka Law Journal* 6, no. November (2025): 93–104.

emphasizes that the notion of “insult” differs from criticism, the provision still has the potential to create a chilling effect on society in expressing opinions. Within a democratic framework, the government and state institutions should remain open to various forms of public response as part of public accountability, rather than being excessively protected through criminal law instruments. Therefore, the existence of Articles 240 and 241 of the new Criminal Code must be carefully examined to ensure that criminal law does not shift into an instrument for restricting freedom of expression, but instead remains consistent with the principles of a constitutional state that upholds human rights and public participation.

c. Offenses Against Public Order and Public Peace

Article 256

Any person who, without prior notification to the competent authority, organizes a parade, protest, or demonstration on a public road or in a public place that results in disruption to the public interest, public disturbance, or disorder within society, shall be punished with imprisonment for a maximum term of 6 (six) months or a fine not exceeding Category II.²¹

The provision of Article 256 of the new Criminal Code, which imposes criminal sanctions on any person organizing a parade, protest, or demonstration without prior notification to the competent authorities, particularly where such activities result in disruption to the public interest, public disturbance, or disorder, reflects the state’s emphasis on public order in the exercise of freedom of expression. This provision has drawn criticism because it is considered to have the potential to criminalize and restrict freedom of expression. Civil society coalitions have also pointed out that, in practice, law enforcement authorities frequently complicate the process of obtaining permission to conduct demonstrations.²²

Normatively, the obligation to provide prior notification may be understood as an administrative mechanism intended to ensure that activities conducted in public spaces proceed in an orderly manner and do not harm the broader public interest. Nevertheless, the imposition of criminal sanctions for violations of such obligations raises significant concerns, as it has the potential to undermine the constitutional right to express opinions in public as guaranteed under Law Number 9 of 1998. In practice, this provision may create broad room for interpretation, particularly regarding the notions of “disruption to the public interest” or “public disturbance,” both of which are inherently relative and contextual in nature. Such conditions risk giving rise to inconsistent, or even selective, enforcement against certain groups within society. Furthermore, the threat of criminal sanctions under this article may create a chilling effect on the public in exercising their right to voice

²¹ RI, Kitab Undang-Undang Hukum Pidana.

²² Marwan Suliandi and Gusti Adjie Aditama, “Politik Hukum Dalam Pembuatan Kitan Undang-Undang Hukum Pidana Baru,” *Jurnal Hukum Staatsrechts* 6, no. 2 (2023): 99–119.

aspirations, thereby potentially hindering public participation in democratic life. Therefore, although the objective of maintaining public order is legitimate, the approach adopted should be more proportionate and should not position freedom of expression as an object of criminalization, but rather as a right that must be protected while still observing reasonable and democratic limitations.

d. Offenses of Broadcasting or Disseminating False News or Information

Article 263

Any person who broadcasts or disseminates news or information, while knowing that such news or information is false, resulting in public disorder, shall be liable to imprisonment for a term of up to six (6) years or to a fine not exceeding Category V.²³

From the perspective of criminal law, this provision contains several elements that must be established cumulatively: (1) the act of broadcasting or disseminating news or information; (2) the offender's knowledge that such news or information is false, thereby requiring intent (*dolus*) in the form of actual knowledge; and (3) the dissemination results in public disorder. Accordingly, not every dissemination of inaccurate information constitutes a criminal offense; rather, criminal liability arises only where the information is knowingly false and is proven to have a causal connection with the occurrence of public disorder. In practice, this may create legal uncertainty, particularly in distinguishing between misinformation, opinion, criticism, or other forms of legitimate expression and conduct that genuinely warrants criminal punishment. Furthermore, the *Memorie van Toelichting* does not provide a comprehensive explanation regarding the philosophical foundation of this provision, apart from the assumption that society is easily influenced by false information, even information that is in fact unreasonable.²⁴

Nevertheless, from the standpoint of the principle of legality (*lex certa*), this provision raises several concerns. The phrase "false news or information" is not accompanied by clear legal parameters defining what constitutes falsity. In practice, distinguishing between entirely false information, incomplete or misleading information, opinions, satire, and factual errors is often far from straightforward. The absence of a precise statutory definition creates room for divergent interpretations by law enforcement authorities, thereby undermining legal certainty.

A similar concern arises with respect to the element "resulting in public disorder." The provision does not define the meaning of *public disorder*, leaving unclear whether it requires acts of physical violence, disruptions to public security and order, or merely widespread public unrest. Furthermore, establishing the causal link between the dissemination of false information and the occurrence of public disorder presents a

²³ RI, Kitab Undang-Undang Hukum Pidana.

²⁴ Kemal Fikri Royadi and Monte Carlo Faza Harissa, "Research Misconduct Sebagai Suatu Tindak Pidana Penyebaran Berita Bohong : Sebuah Tinjauan Hukum Pidana," *Jurnal Hukum & Pembangunan* 55, no. 1 (2025): 231–46, <https://doi.org/10.21143/jhp.vol55.no.2.1786>.

significant evidentiary challenge, particularly within the digital information ecosystem, where multiple and interacting factors may contribute to the emergence of a particular event.

3.2. The Perspective of Critical Criminology on the Reformulation of Offenses in the Criminal Code (KUHP)

Critical criminology did not emerge spontaneously, but developed as a reaction to the dominance of legal positivism and traditional criminology, which primarily focused on individual behavior, statistical data, and the assumption that the state acts neutrally in enforcing the law. In contrast, critical criminology views crime within a broader social context, in which criminal law is not regarded as a neutral reflection of societal consensus, but rather as the product of power relations that define and limit what is considered crime. Drawing upon Marxist thought, conflict theory, and postmodern structural approaches, critical criminology rejects the notion that law is neutral and detached from history. Within this perspective, criminal law is perceived as an instrument used to preserve social inequality, maintain the dominance of particular groups, and reinforce the legitimacy of state power.²⁵ Based on this view, critical criminology also pays close attention to the process through which certain acts are designated as crimes and to identifying those who most frequently become targets of law enforcement. Not all harmful acts are treated equally, since such determinations are heavily influenced by dominant interests and power structures within society.

Theoretically, the framework of critical criminology may be understood through the ideas advanced by Richard Quinney. He asserted that crime is essentially the result of a process of defining human behavior carried out by those who possess authority within a particular political system. From this perspective, crime is not viewed as an act that is inherently evil or universally harmful, but rather as a social construct emerging from political and economic power relations. Accordingly, an act is categorized as a crime because it has been defined as such by groups holding authority within the social and political structure. The state, through its legal instruments such as the police, prosecutorial institutions, and courts, plays a significant role in determining legal norms, including deciding who will be subjected to legal processes and who, in practice, may avoid the reach of the law.²⁶

The central idea of critical criminology in understanding and categorizing crime is grounded in the existence of socio-political power relations, and in this regard conflict theory provides a clearer explanation of such dynamics. According to conflict theory, the

²⁵ Zul Khaidir Kadir, "Islamisme Dan Kriminologi Kritis : Ketegangan Antara Moralitas Ilahiah Dan Kritik Struktural Dalam Kebijakan Kriminal," *Jurnal Litigasi Amsir* 12, no. 3 (2025): 279–91.

²⁶ Aparatu et al., "Konstruksi Sosial Terhadap Kejahatan: Analisis Kriminologi Kritis Social Construction of Crime : A Critical Criminology."

fundamental assumption within society is the existence of competing interests, whereby society is more appropriately understood as an arena of conflict rather than as a unified order entirely based on consensus.²⁷ Within the perspective of critical criminology, the meaning of crime is heavily shaped by the historical, political, cultural, and economic conditions prevailing within society during a particular period. Crime is not something that naturally exists, but rather something determined and defined by those in power. This view demonstrates that the process of designating certain conduct as criminal cannot be separated from political interests, particularly those related to the distribution and control of power.²⁸

Critical criminology seeks to demonstrate that various social problems are the result of inequalities and disparities that develop within society. Critical criminology positions itself as an approach that scrutinizes and challenges the exercise of power within the criminal justice system. Accordingly, the term *critical* extends beyond the mere critique of existing policies or practices it encompasses a systematic analysis of the power relations that shape and sustain them.²⁹ Theoretically, crime is viewed not as an isolated phenomenon, but as a consequence of class divisions within a capitalist social system. From this perspective, the Criminal Justice System is not regarded as a wholly independent and neutral institution, but rather as part of the social forces that support the existing socio-political, economic, and cultural structures.³⁰ Such a line of thought inevitably raises questions concerning the reform of criminal law in Indonesia through the enactment of Law Number 1 of 2023 concerning the Criminal Code, particularly with regard to the various new offenses introduced therein.

To clearly distinguish between the normative-descriptive dimension and critical criminological analysis, the following table maps out the legal elements, ambiguities, and legal loopholes, as well as the criminological implications of the provisions of the selected articles.

Table 1. Matrix of Critical Criminological Analysis of Expression Offenses in Law No. 1 of 2023

Article	Legal Elements and Penalties	Protected Interests	Ambiguities and Legal Loopholes	Criminological Implications
Article 218 (Attack on the Dignity of the President)	Publicly attacking the dignity or honor of the President is punishable by a maximum of 3 years in prison	Symbolic-Protocol Functions of the Head of State	The phrase “attacking honor” is vague; the “public interest” exception is subjective	Selective protection of the head of state’s authority: restoring elite immunity and reproducing power relations
Articles 240–241 (Insulting State Institutions)	Insulting the government or state institutions in public or online is	Institutional reputation of the power structure	The distinction between “accountability criticism” and	Criminalization of dissent: Strengthening the hegemonic position of institutions

²⁷ Paulus Hadisuprpto, *Teori Kriminologi: Latar Belakang, Intelektual Dan Paramaternya* (Malang: Selaras, 2011).

²⁸ Besse Patmawanti, *Kriminologi* (Purbalingga: CV. Eureka Media Aksara, 2023).

²⁹ Yu-Hsuan Chao, “Critical Criminology: Past, Present, and Future,” *Contemporary Challenges: The Global Crime, Justice and Security Journal* 3 (2022): 28–44, <https://doi.org/10.2218/ccj.v3.7032>.

³⁰ Eko Mukminto, “Rekonseptualisasi Kejahatan Kekerasan Dalam Masyarakat Kontemporer Berbasis Kriminologi Kritis Dan Psikoanalisis-Marxisme Slavoj Žižek” (Universitas Diponegoro Semarang, 2013).

		punishable by 1.5 to 4 years in prison		“insult” is blurred in the Explanatory Memorandum	through complaint-based offenses
Article 256 (Parades or Demonstrations Without Notice)	Demonstrations held without notice that result in public disturbance are punishable by up to 6 months in prison	Public order and public comfort (administrative)		The concept of “disturbance of the public interest” is relative and contextual	Regulation of public participation: Controlling civic space; shifting the realm from administrative to coercive criminal measures
Article 263 (Dimensions of False News)	Broadcasting false news that one knows to be false, coupled with causing public unrest, is punishable by a maximum of 6 years in prison	Accuracy of information and sociopolitical stability		Conceptual parameters of the “falsity” of information and the causal relationship to “public unrest” in the digital sphere	Control of public discourse: Authorities monopolize the truth; they generate mass fear

Source: *The Author's Analysis, 2026.*

The reformulation of offenses in the new Criminal Code does not merely constitute a technical improvement of criminal law, but also forms part of a broader social and political process shaped by power relations. Various provisions concerning insults against the President and/or Vice President, insults against the government or state institutions, restrictions on demonstrations, and regulations regarding the dissemination of false information indicate a tendency on the part of the state to expand its control over public space, particularly with respect to freedom of expression, the delivery of criticism, and public participation.

First, with regard to the offense concerning the honor of the President and/or Vice President under Article 218, critical criminology views the criminalization of acts deemed insulting toward the head of state as essentially reflecting an effort to protect symbols of power. The state places the honor of the President in a position that requires protection through criminal law instruments, thereby rendering the position of the head of state more protected than that of ordinary citizens. This demonstrates that law is not entirely neutral, but may instead reflect the interests of those who possess power. Although the provision contains exceptions for acts carried out in the public interest or for self-defense, the boundaries of such exceptions remain unclear and are potentially open to multiple interpretations. This ambiguity may create difficulties in practice, particularly in distinguishing between legitimate criticism within a democratic system and conduct considered insulting. As a consequence, members of society may become hesitant or fearful in expressing their opinions, due to concerns that their criticism may instead be regarded as a criminal offense.

Under such conditions, criminal law has the potential to be used not merely as an instrument for protecting the public interest, but also as a means of safeguarding elite interests from public criticism. Critical criminology views this phenomenon as part of an unequal power relationship, in which groups possessing political authority tend to determine

the boundaries of what is considered “crime” and what is not. Consequently, expressions of criticism, which fundamentally constitute part of freedom of expression, may be reduced to acts potentially subject to criminal sanctions. This issue becomes even more problematic when linked to the considerations of the Constitutional Court in Decision Number 013-022/PUU-IV/2006, which affirmed that every person must be treated equally before the law and that there should be no excessive special protection afforded to the President, as such protection may instead create inequality in legal protection.

From the perspective of critical criminology, provisions such as these demonstrate that the determination of certain conduct as a criminal offense is not always neutral or purely objective, but is influenced by social and political interests. The state, through the legislative institution as the authority empowered to enact laws, possesses the power to determine what may and may not be done, including the ability to restrict criticism through criminal law. A fundamental principle of criminal justice is that criminal punishment may be imposed only for conduct that has been committed, or that the offender has demonstrably intended to commit, and that the penalty imposed must be proportionate to the gravity of the offense.³¹ In this regard, criminal law is not only employed as a mechanism for combating crime, but may also function as an instrument of social control. Accordingly, criminalizing acts deemed insulting toward state symbols may be understood as a means of preserving the stability of power while simultaneously reducing criticism that could weaken public trust in the government.

Second, the regulation of offenses concerning insults against the government or state institutions, as stipulated in Articles 240 and 241, demonstrates a tendency aligned with the protection of symbols of power. Under these provisions, what is protected is not merely the dignity of individual officials, but also state institutions as representations of public authority. From the perspective of critical criminology, such regulation may be understood as a form of expanded symbolic protection afforded to the structure of state power. In other words, criminal law is not solely directed toward protecting concrete legal interests, but also toward preserving the authority and legitimacy of state institutions. This condition raises questions regarding the boundary between legitimate public interests deserving protection and the interests of power that tend to preserve themselves through legal instruments.

Third, the provisions of Article 256 regulating the obligation of prior notification in the organization of demonstrations indicate that the state seeks to regulate the sphere of public participation through criminal law. Fundamentally, the notification requirement is intended to maintain public order and to enable authorities to provide security arrangements. However, when such an obligation is accompanied by criminal sanctions against demonstrators who fail to comply with procedural requirements, the regulation no longer remains merely administrative in nature, but instead enters the domain of criminal

³¹ Cynthia V. Ward, “Criminal Justice Reform and the Certainty of Intent,” *Villanova Law Review* 2, no. 3 (2023): 51–95.

punishment. In this context, criminal law is utilized as an instrument to control how and to what extent society may express opinions within the public sphere.

From the perspective of critical criminology, the criminalization of demonstrators who fail to provide prior notification may be understood as a form of control over social movements, particularly those considered capable of disrupting the stability of power. Although the objective of maintaining public order is frequently invoked as a justification, the concept of “public order” itself is not always neutral. Order may be interpreted according to the perspective of those in authority, thereby reflecting interests aimed at preserving conditions regarded as secure for the government. Consequently, actions that fundamentally constitute part of freedom of expression may instead be treated as unlawful when deemed inconsistent with such interests.

Fourth, the regulation concerning the dissemination of false information under Article 263 must be understood not only in terms of its objective, but also in relation to its formulation. Normatively, this provision is intended to protect society from the harmful effects of disinformation that may cause unrest or public disorder. Such an objective is fundamentally legitimate and important, particularly amid the development of information technology that enables information to spread rapidly and extensively. From the perspective of critical criminology, Article 263 of the Indonesian Criminal Code should not be understood solely as a legal instrument for protecting public order from the harmful effects of disseminating false information, but also as a manifestation of the power relations embedded in the process of criminalization. Critical criminology maintains that criminal law is not an entirely neutral system; rather, it is produced through political processes shaped by the interests of the state and dominant social groups. In this context, the criminalization of the dissemination of false information pursues a legitimate objective, namely preventing public disorder resulting from disinformation. However, the formulation of the provision, particularly the phrase “false news or information,” fails to provide clear legal criteria for determining falsity, thereby creating the potential for an expansive exercise of discretion by law enforcement authorities. Likewise, the element “resulting in public disorder” raises conceptual concerns regarding both the definition of *public disorder* and the causal relationship that must be established between the dissemination of information and the resulting harm. Such ambiguities create the possibility of divergent interpretations, thereby opening the door to inconsistent enforcement and undermining legal certainty.

Overall, the reformulation of offenses in the new Criminal Code demonstrates a tendency toward the expansion of criminalization over various forms of expression and public participation. From the perspective of critical criminology, this reflects how criminal law may function as an instrument for maintaining existing power structures. The determination of certain conduct as a criminal offense is not based solely on the degree of its social harm, but is also influenced by political, moral, and ideological interests. The implications of this condition include the potential restriction of civil liberties, the emergence of legal uncertainty, and selective law enforcement directed at particular groups.

From the perspective of critical criminology, the reformulation of criminal offenses in the new Criminal Code should not be understood merely as a matter of normative or technical legislative reform. Rather, criminal law must also be viewed as a product of power relations, dominant moral values, and mechanisms of social control that influence who is criminalized, what conduct is defined as harmful, and whose interests are ultimately protected by the state.³² Increasingly, scholars and legal commentators have criticized the criminal justice system, arguing that it functions not only as an instrument of law enforcement but also as a mechanism that may perpetuate structural inequality, racial discrimination, and forms of violence carried out through state institutions.³³ In this regard, critical criminology provides an important analytical framework for assessing whether the new Criminal Code genuinely advances social justice and the protection of citizens' rights or, instead, risks functioning as an instrument of state power that constrains democratic freedoms.

The reform of the criminal justice system needs to be carried out comprehensively across four main areas in order to effectively address its most serious weaknesses. These four areas include: (1) the reform of substantive criminal law governing what conduct is criminalized, (2) the reform of the sentencing system, (3) the reform of criminal procedure or procedural mechanisms, and (4) the reform of law enforcement institutions.³⁴ Through improvements in these four areas, the criminal justice system is expected to become more effective, fair, and efficient. To properly understand the boundaries of criminal justice reform that are acceptable to society, it is first necessary to examine how society forms its views and preferences regarding the criminal justice system. In addition, it is important to take into account any conditions, limitations, or qualifications that may accompany the opinions and preferences they express. In this way, reform policies can be formulated in a manner that is more aligned with the values, needs, and expectations of society.³⁵

Therefore, it is important to place the reformulation of offenses in the new Criminal Code within a framework of critical and continuous evaluation. Critical criminology offers an important contribution by revealing that criminal law is not an entirely neutral instrument, but rather a product of power dynamics within society. Through this approach, it is hoped that the formulation and implementation of criminal law may become more sensitive to the principles of social justice, the protection of human rights, and the balance between state interests and individual freedoms within democratic life.

³² Keith N. Hylton, "Whom Should We Punish, and How? Rational Incentives and Criminal Justice Reform.," *William & Mary Law Review* 59, no. 6 (2018): 2513–74.

³³ Benjamin Levin, "Criminal Law Exceptionalism," *Virginia Law Review* 108, no. 6 (2022): 1381–1448, <https://doi.org/10.2139/ssrn.4098101>.

³⁴ Terry Skolnik, "Criminal Justice Reform: A Transformative Agenda," *Alberta Law Review* 59, no. 2 (2022): 631–68.

³⁵ Kevin H. Wozniak, "Public Discussion about Critical Issues in Criminal Justice Reform," *Journal of Qualitative Criminal Justice & Criminology* 8, no. 4 (2020): 401–29, <https://doi.org/10.21428/88de04a1.7dfc6a5c>.

4. Conclusion

The reformulation of criminal offenses in the new Indonesian Criminal Code (KUHP) constitutes a significant component of Indonesia's criminal law reform, as it seeks to establish a criminal justice system that is more closely aligned with the values of Pancasila, the needs of Indonesian society, and contemporary social developments. However, the main finding of this study confirms that these reforms still leave crucial issues unresolved, as regulations concerning offenses against the President's dignity, insults to state institutions, public order, and the dissemination of false news actually reveal a pattern of expanding criminalization of criticism, expression, and public participation. Such a tendency may strengthen state control over the public sphere, restrict civil liberties, and create opportunities for selective and discriminatory law enforcement. From a critical criminological perspective, the reformulation of criminal offenses in this new Criminal Code ultimately does not reflect a substantive decolonization of Indonesian criminal law, but rather a reorganization of the state's criminal control framed within a new national legal landscape.

Therefore, the implementation of the new Criminal Code must be carried out with great caution, in a balanced manner, and in accordance with the principles of a democratic state governed by the rule of law. Specific recommendations that are important to implement include: (1) drafting more detailed, clear, and specific implementing regulations to eliminate vague provisions; (2) developing strict interpretation guidelines for law enforcement officials to prevent the criminalization of political criticism; (3) the establishment of an effective and independent institutional oversight system; and (4) the provision of strong legal protections for freedom of expression and civil society participation. The success of Criminal Code reform depends not only on the substance of its provisions but also on the state's ability to ensure that criminal law is enforced fairly, proportionally, and without discrimination, while maintaining the proper balance between the interests of the state, public order, and individual freedoms in a democratic society.

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