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# Measuring the Effectiveness of the New Criminal Code in Answering Contemporary Criminal Law Challenges

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## ABSTRACT

This study aims to analyze the relevance of the Criminal Code 2023 in dealing with the development of types of crimes in the contemporary era and evaluate the extent to which the protection of Human Rights (HAM) is accommodated in the update of the Criminal Code, and to understand the relationship between the modernization of criminal law with increasingly complex social and technological challenges. This research utilizes the normative juridical method. The data is collected through literature review, analysis of rules and regulations, and study of literature relevant to the Criminal Code 2023. In the first discussion, this research examines the relevance of KUHP 2023 in responding to the types of crimes that are growing rapidly in the digital era, such as cybercrime. On the other hand, in the second discussion, this study discusses how KUHP 2023 responds to the need for human rights protection, including the principles of humane treatment, personal freedom, and security of the right to privacy in the context of criminal law. The Penal Code 2023 reform demonstrates a commitment to human rights principles, despite challenges in effective implementation.

## KEYWORDS

Effectiveness;  
KUHP 2023;  
Contemporary  
Crimes



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## INTRODUCTION

In Indonesia's legal landscape, the Criminal Code (KUHP) plays a fundamental role as the main pillar of criminal regulation and sentencing. The Criminal Code is not just a dry collection of articles but a manifestation of the principles of justice that seek to adapt and evolve in line with society's dynamics. It is one of the vital legal instruments in ensuring that the social order, security, and justice in Indonesia are well maintained.<sup>1</sup>

Criminal law in Indonesia originated from the Dutch heritage which before independence controlled Indonesia since then there has still been dualism in criminal law, namely for European groups in Indonesia and non-European groups of people. In 1918, the only codified law that applied to all groups of residents who had been in the territory of Indonesia since January 1, 1918, was called "*Wetboek Van Strafrecht*". As time progresses, social life is bound to change. In the changes in people's lives, it can be ascertained that the law will also change so positive law must also be adjusted to the changing times.<sup>2</sup>

In Indonesia, the Criminal Code has functions in law enforcement in Indonesia, social defense, namely protecting the community from crime; and as a guardian of the balance and harmony of life in society. Indonesia has been using the old Criminal Code for decades, but due to the demands of the times and the law itself, this is about to end with Law Number 1 of 2023 concerning the Criminal Code, which will be enacted in 3 years (2026).<sup>3</sup>

The new Criminal Code (KUHP) was passed on Tuesday, December 6, 2022. The reason for the establishment and ratification of the 2023 criminal law is because to realize the national criminal law of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia and the general legal principles recognized by the community of nations, it is necessary to prepare a national criminal law to replace the Criminal Code inherited from the Dutch East Indies colonial government and the national criminal law must be adjusted to legal politics, The national criminal law must be adjusted to the politics of law, the circumstances, and the development of the life of society, nation, and state which aims to respect and uphold human rights, based on God Almighty, fair and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation/representation, and social justice for all Indonesian people.<sup>4</sup>

As time goes by, people's social lives are bound to change. Along with these changes, the law must also change. As Soedarto's opinion states "Legal changes can be influenced by several factors, such as rationality, increased productivity and living standards, equal distribution of prosperity, changes in mental attitudes, and

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<sup>1</sup> M Irwansyah Saragih, Mohammad Yusuf & Fauziah Lubis, "Urgensi Kebijakan KUHP (Kitab Undang-Undang Hukum Pidana)" (2024) 11:3 YUSTISI J Huk dan Huk Islam.

<sup>2</sup> Roby Satya Nugraha & Christina Febriani Silalahi, "Pembaharuan Berlakunya Asas Legalitas dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana" (2024) 10:1 PALAR (Pakuan Law Rev.

<sup>3</sup> Asmak Ul Hosnah & Clara Auroeria Lyantina Utami, "Pemberian Sanksi Pidana Mati terhadap Pelaku Kejahatan yang Ditinjau dari Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana" (2024) 11:2 YUSTISI J Huk dan Huk Islam.

<sup>4</sup> Iwan Rasiwan, *Suatu Pengantar Prinsip Hukum Pidana* (Purbalingga: Sketsa Media, 2024).



democracy. Because of the direct relationship between social change and legal change, there is a need for reform in the legal field".<sup>5</sup>

Law Number 1 Year 2023 on the Criminal Code (the new Criminal Code) marks a major reform in Indonesia's criminal law system. These changes are not only structural but also conceptual, adopting a more modern and progressive approach to punishment.<sup>6</sup> The renewal of the concept of punishment in the National Criminal Code that will take effect in 2026 is expected to answer the current conditions to replace the colonial concept that is outdated and no longer answers new problems that arise.

The ratification of Law Number 1 Year 2023 on the Criminal Code (the new Criminal Code) is a breath of fresh air for law enforcement efforts in Indonesia, after all this time the country has used the Dutch Criminal Code which is no longer relevant to the times. The new Criminal Code is expected to answer modern legal challenges, provide better justice, and improve the criminal justice system in Indonesia. By replacing the colonial Criminal Code that has been in force for more than a century, this law reflects an effort to renew and adjust the Indonesian criminal law to human values, social development, and the needs of the community today. This legal reform process is also expected to improve the effectiveness and fairness of law enforcement, which in turn will strengthen public confidence in the Indonesian legal system.<sup>7</sup>

The enactment of Law Number 1 Year 2023 on the new Criminal Code is expected to be a solution to address these challenges. However, the effectiveness of the new KUHP in addressing contemporary criminal law issues still needs to be analyzed further. Some issues of concern include the extent to which the new Criminal Code can provide better legal protection for the community, how it accommodates technological developments and cybercrime, and how it aligns with human rights principles in the context of criminal law.

## METHOD

This research is a normative juridical research, which aims to analyze laws and regulations as well as legal concepts related to the topic discussed. This research relies on primary and secondary legal materials as the main source of information. Primary legal materials used include laws, government regulations, and other official documents that have a binding legal position. Secondary legal materials include books, scientific articles, journals, and previous research relevant to the research topic. In addition, information obtained from credible websites is also used as a source to complement the data needed in this research.<sup>8</sup> This research process begins with the collection of relevant legal materials, then the materials are systematized to facilitate processing and analysis. After that, the analysis is carried out using a descriptive approach, to describe the applicable legal situation in detail and clearly.

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<sup>5</sup> Michael Adyhaksa Padang & Billi J Siregar, "Keberpihakan Pemidanaan Dalam Undang-Undang Nomor 1 Tahun 2023" (2024) 4:2 Locus J Konsep Ilmu Huk.

<sup>6</sup> Nugraha & Silalahi, *supra* note 2.

<sup>7</sup> Padang & Siregar, *supra* note 5.

<sup>8</sup> Derita Prapti Rahayu & Sesi Ke, *Metode Penelitian Hukum* (Yogyakarta: Thafa Media, 2020).



## RESULT & DISCUSSION

One of the fundamental differences between the old and new Criminal Code is the approach to punishment and the underlying legal philosophy. The old KUHP was more repressive in nature with a focus on punishment, while the new KUHP emphasizes a more restorative and rehabilitative approach. The new Criminal Code also places more emphasis on the protection of human rights and restorative justice which aims to restore the relationship between the perpetrator, the victim, and the community.

The new Criminal Code introduces clearer and more specific definitions of various types of criminal offenses. This includes more detailed provisions on corruption, terrorism, cybercrime, and human rights violations. In addition, the new Criminal Code also adopts modern concepts that allow companies or corporations to be criminally prosecuted.

### **I. The Relevance of the Criminal Code 2023 in Facing the Development of Crimes in the Contemporary Era**

Changes in criminal law thinking call for modernization, which involves replacing traditional criminal law paradigms, frameworks, and content with fresher and more contemporary elements. In a rapidly changing society, the law must adapt to achieve its ideal goals. The development of technology and information also drives the urgency to regulate several new offenses, as well as amend and revise existing offenses so that the Criminal Code remains relevant to be applied.<sup>9</sup>

The importance of Law No. 1 of 2023 in law enforcement in Indonesia, is that the new Criminal Code provides a clearer and more comprehensive legal basis for dealing with criminal acts so that law enforcement officials can more easily and effectively take action and punish the perpetrators of criminal acts and the new Criminal Code adapts to the times and challenges faced by law enforcement in Indonesia. The new Criminal Code regulates new criminal offenses arising from the development of technology and information, as well as regulates stricter and fairer sanctions in dealing with criminal offenses that harm the community.<sup>10</sup>

Although on the one hand, it has positive implications, technological development also has negative implications, namely the increase in criminal acts or criminal acts related to technology and information systems, which are commonly referred to as cyber crimes. In general, cybercrime is a criminal offense committed through media that is the result of the development of technology and information systems. This means that cyber crimes occur in the virtual realm, to distinguish its locus from criminal offenses in general that occur in the factual world.<sup>11</sup>

Indonesia has the highest number of cybercrime cases in the world. Cybercrime against children is said to have become a new trend in many countries, including Indonesia. The almost uncontrolled use of the internet increases the likelihood of children becoming victims of various online crimes. Crimes committed

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<sup>9</sup> Anugrah Sahtia Magala, "Akomodasi Hukum yang Hidup dalam KUHP Baru Indonesia menurut Perspektif Hukum Progresif" (2023) 20:2 SPEKTRUM Huk.

<sup>10</sup> Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023" (2023) 5:1 Al-Manhaj J Huk dan Pranata Sos Islam 837-844.

<sup>11</sup> Henny Saida Flora et al, "Keadilan Restoratif dalam Melindungi Hak Korban Tindak Pidana Cyber: Manifestasi dan Implementasi" (2023) 8:2 J Ius Const 169-184.



online, including sexual crimes, pornography, trafficking, bullying, and other types of crimes, are increasingly threatening the country's young generation.<sup>12</sup>

Cybercrime against children is said to have become a new trend in many countries, including Indonesia. The almost uncontrolled use of the internet increases the possibility of children becoming victims of various online crimes. Crimes committed online, including sexual crimes, pornography, trafficking, bullying, and other types of crimes, are increasingly threatening the country's younger generation. In addition, ensuring that perpetrators can be held accountable for their actions so that cyber crimes can be prevented through criminal law, including the evidentiary system.

Cybercrime is a criminal activity committed in cyberspace by utilizing computer networks as a device and internet networks as a medium. In a broad sense, cybercrime includes all illegal acts committed through computer networks and the internet to gain profit at the expense of others. In a narrower sense, cybercrime is all illegal actions aimed at attacking computer security systems and data processed by computer systems.

The high mobility of crime does not only occur within one region but also between regions, even across regions and across national borders and the mode of operation uses complex technological equipment to take full advantage of legal system weaknesses and management system opportunities. Information technology crimes with the sophistication of the internet and various applications to hack networks and/or computer systems or other digital tools allow crimes on computer systems and networks.<sup>13</sup>

Cybercrime, although virtual in nature, is categorized as real legal actions and deeds. Juridically, in terms of cyberspace, it is no longer appropriate to categorize something with a measure in conventional legal qualifications to be used as objects and actions, because if this method is taken, there will be too many difficulties and things that escape the law. Cyber activities are virtual activities that have a very real impact, even though the evidence is electronic. The subject of the perpetrator must also be qualified as a person who has performed a real legal act.<sup>14</sup>

Cybercrime is a phenomenon that requires quick and accurate countermeasures. Therefore, as a state of law, all actions taken by both citizens and state officials must be based on existing laws and must not deviate from the rules of law that have been made. Amendments to several provisions contained in the Criminal Code are one of the ways that can be used to overcome new types of crimes.

Digital crime, more commonly known as cybercrime, has an official definition in various legal sources in Indonesia. Based on Law Number 11/2008 on Electronic Information and Transactions (UU ITE), cybercrime is described as unlawful acts committed using computers, computer networks, and/or other electronic media.

In the context of the new Penal Code, cybercrime involves various forms of illegal activities committed using information and communication technology,

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<sup>12</sup> Waliadin, "Waliadin, "Pengaturan Tindak Pidana Mayantara (Cyber Crime) dalam Sistem Hukum Indonesia" (2024) 9:2 J Thengkyang 80–86.

<sup>13</sup> April Laksana, "Pelanggaran Digital Sebagai Tindak Kejahatan dalam Hukum Pidana pada Undang-Undang ITE" (2024) 8:2 J Tambusai.

<sup>14</sup> Faiz Emery Muhammad & Beniharmoni Harefa, "Pengaturan Tindak Pidana Bagi Pelaku Penipuan Phisning Berbasis Web" (2023) 6:1 J USM Law Rev.



including computers, computer networks, and other electronic media. However, in Law No. 1 of 2023, there is no specific definition that explicitly includes the term “cybercrime”. Instead, the law regulates various illegal acts that can be categorized as cybercrime, focusing on aspects such as illegal access, data tampering, and the use of technology for criminal purposes.<sup>15</sup>

Based on Law Number 1 Year 2023, the types of cybercrime electronic crime, or internet-based crime (which is by the international definition of cybercrime as well as based on the ITE Law<sup>13</sup>) in the Criminal Code can only be known in the Fifth Section “Criminal Offenses against Informatics and Electronics” including:

- a. Illegal access (Article 332)
- b. Cyber attacks on information systems and infrastructure of the state, government, and society (Article 333)
- c. Cyber attacks on finance, banking, and government (Article 33 and Article 335).

Thus, the various forms of cybercrime regulated in Law Number 1 of 2023 align with the international definition of cybercrime as criminal activity involving the internet, computer systems, or computer technology. This law establishes severe sanctions for these offenses to protect the security and integrity of electronic systems and information in Indonesia.

## II. Protection of Human Rights under the Criminal Code 2023

Human rights are basic rights or basic rights that humans have from birth as a gift from God Almighty. Human rights are a gift from God Almighty, so no one can take them away or violate them. John Locke proposed the idea that all individuals are endowed by nature with an inherent right, namely the right to life, liberty, and ownership which is their own and cannot be revoked and handed over to the state. If the state violates these natural rights then the people are free to remove the ruler and replace him with a government that is willing to respect these rights.<sup>16</sup>

One of the important elements in the new Criminal Code is the protection of human rights. This is reflected in various provisions governing the protection of children, women, and other vulnerable groups. The new Criminal Code also expressly regulates the prohibition against torture and inhumane treatment and provides a protection mechanism for victims of crime. In addition, the new Criminal Code also introduces modern concepts such as corporate criminal liability which allows companies or corporations to be criminally prosecuted. This reflects an awareness of the importance of regulating corporate entities that often wield great influence and have the potential to commit serious violations of the law.

By reasoning *in concreto* that the role of corporations in criminal offenses is increasing, establishing liability for corporations together with their management. This is because corporate officers as individuals who have a role in the management structure have the power to represent, make decisions, and control the corporation,

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<sup>15</sup> Yosua Hia, “Analisa Yuridis Pasal-Pasal Khusus terkait Kejahatan Siber dalam KUHP Baru (UU 1/2023)” (2024) 10:1 Selisik.

<sup>16</sup> Rooza Meilia Anggaraini & Muh Maksum, “Perspektif HAM dan Maqashid Syari’ah dalam Meninjau Kebijakan Hukum Mati dalam Undang-Undang No. 1 Tahun 2023 tentang KUHP” (2024) 3:2 El-Dusturie J Huk dan Perundang-undangan.





as well as commit criminal acts for the benefit of the corporation, both personally and on behalf of the company. Thus, there is decision-making power, where the intent (*mens rea*) of the corporate management is considered as the intent of the corporation.

Before the new Criminal Code was enacted in 2023 (Law No. 1 of 2023), many environmental activists or environmental law experts criticized Law No. 11 of 2020, especially in the environmental cluster in the law, which one of the legal norms eliminates criminal sanctions as a punishment for companies or corporations that commit environmental pollution, illegal disposal of hazardous waste, and so on, which is considered a setback. Criminal sanctions are still considered effective as general prevention to protect the environment from damage due to industrial activities, compared to administrative sanctions.<sup>17</sup> However, 3 years later since Law No. 1 of 2020 was passed, the dimension of criminal sanctions that was omitted from the law was answered and appeared in Law No. 1 of 2023, or the new Criminal Code, which regulates corporate liability, as explained in the paragraph above earlier. So the new Criminal Code at this point is once again a development, as well as participating in protecting human rights because as is known, one of the human rights is the right to a healthy environment and the right to be protected from natural disasters (environmental disasters).<sup>18</sup>

In terms of its development, currently, the regulation on gross human rights violations is not only regulated in Law No. 26 of 2000 but also in the Criminal Code 2023. The regulation is based on one of the objectives of the 2023 Criminal Code which can be found in the explanation section, namely consolidation. The consolidation mission itself means reorganizing criminal law legislation both inside and outside the Criminal Code with its various peculiarities so that it is by the framework of criminal law principles stipulated in Book I of the Criminal Code.

The mission is then realized in the form of recodification (General Elucidation of KUHP 2023). Codification is a collection of certain laws that are arranged in an organized, systematic, and comprehensive manner into one book. Where the main objectives of the codification include: (a) to provide convenience for the wider community to access it, (b) to provide explanation related to a terminology consistently, and (c) to provide legal certainty. About the criminal law politics of the Criminal Code 2023, as stated in the General Elucidation, it is known that the reconsolidation effort is carried out due to the increasing number of new laws that are born outside the Criminal Code and tend to be uncontrollable. Even in the context of the formulation of criminal law norms, laws outside the Criminal Code show a tendency to no longer refer to Book I of the Criminal Code as a general provision, which certainly results in duplication of criminal law norms. Therefore, the consolidation effort through recodification is expected to prevent the issuance of criminal laws outside the Criminal Code that can potentially violate human rights, so that in the future the 2023 Criminal Code, which is the foundation of the Indonesian criminal law system, can provide legal certainty and strengthen the idea

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<sup>17</sup> Dhandy Parindo et al, "Penerapan Konsep Dasar HAM dan Pembaharuan Tiga Pilar Utama Hukum Pidana dalam KUHP Baru UU No. 01 Tahun 2023" (2024) 3:3 J Huk Indones 129–142.

<sup>18</sup> *Ibid.*



of forming a complete national criminal law as a parameter of justice in the field of criminal law (General Elucidation of Criminal Code 2023).<sup>19</sup>

It should be appreciated that the Criminal Code 2023 has corrected the mistranslation of “persecution” in Law No. 26/2000 to “persecution”. However, KUHP 2023 does not further explain what is meant by the term “persecution”. In KUHP 2023, there is a decrease in the duration of criminal punishment for perpetrators of gross human rights violations in KUHP 2023, which was originally regulated by Law No. 26 of 2000 for a minimum of 10 (ten) years and a maximum of 25 (twenty-five) years to a minimum of 5 (five) years and a maximum of 20 (twenty) years.

The 2023 Penal Code reform adopts various international concepts and norms relating to human rights. One of them is the emphasis on the protection of the rights to life, personal freedom, and non-discriminatory treatment. In the new Criminal Code, some provisions ensure that criminal actions must not violate basic human rights principles, for example by removing several criminal provisions that are considered to have the potential to harm individual rights without valid reasons. Thus, Indonesian criminal law now prioritizes the balance between law enforcement and the protection of individual rights.

In addition, the 2023 Criminal Code also includes changes aimed at improving the criminal justice system to make it more fair and humane. For example, changes in the regulation of the death penalty and other penalties that prioritize recovery and rehabilitation for criminal offenders. This is in line with human rights principles that emphasize the importance of humane treatment of every individual, including those involved in criminal acts. The application of punishment that is more oriented towards rehabilitation is also a form of human rights protection in the criminal context.<sup>20</sup>

On the other hand, the 2023 Penal Code also includes articles that explicitly regulate freedom of speech and the right to privacy. For example, actions that harm freedom of speech, such as insulting certain individuals or groups, cannot be resolved with penalties that violate a person's human rights. In addition, the protection of personal data and privacy is something that needs to be done, given the rapidly growing digital era. The new Criminal Code pays more attention to potential violations of the right to privacy and freedom of speech that may occur in society.<sup>21</sup>

Overall, the 2023 Criminal Code seeks to maintain a balance between the protection of human rights and the enforcement of criminal law. This reform is an effort to create a legal system that is more humane, inclusive, and in line with the times. The 2023 Criminal Code is not only a tool to enforce the law, but also an

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<sup>19</sup> Larasati Dwi Rizqiqa, Widati Wulandari & Nella Sumika Putri, “Implikasi Pengaturan Pelanggaran HAM Berat dalam KUHP 2023 terhadap Keberlakuan Asas-Asas Khususnya: Penguatan atau Pelemahan?” (2024) 25:1 LITIGASI 21–60.

<sup>20</sup> Lambang Siswandi, Putut Hadi Suprayitno & Mohamad Sholahuddin, “Tinjauan Yuridis tentang Eksistensi Pidana Mati dalam Penegakan Hukum di Indonesia Tinjauan Undang-Undang No. 1 Tahun 2023 tentang KUHP dengan KUHP (Wetboek Van Strafrecht)” (2024) 14:2 Actual 83–91.

<sup>21</sup> Nafi' Mubarak, “Sejarah Perkembangan Hukum Pidana di Indonesia: Menyongsong Kehadiran KUHP 2023 dengan Memahami dari Aspek Kesejarahan” (2024) 27:1 Al-Qānūn J Pemikir dan Pembaharuan Huk Islam.





instrument to ensure that every individual, without exception, receives protection for their basic human rights.

Thus, the new Criminal Code is expected to provide a stronger and more comprehensive legal foundation to address various forms of contemporary crimes. As the new Criminal Code comes into force, improvements in the quality of law enforcement in Indonesia are expected. Law enforcement officials, including police, prosecutors, and judges, need to be trained and empowered to understand and apply the new provisions effectively. Legal education for the public is also important so that they can understand their rights and obligations and respect the law.<sup>22</sup>

## CONCLUSION

In this study, it can be concluded that the 2023 Criminal Code has good relevance in dealing with the development of types of crimes in the contemporary era. The changes contained in the new Penal Code reflect a response to social dynamics, technology, and global challenges affecting Indonesian society. The Criminal Code 2023 introduces provisions that are more adaptive to transnational and technology-based crimes, such as cybercrime, terrorism, and corporate crime. This demonstrates that Indonesia's criminal law system seeks to be more responsive to increasingly complex and diverse forms of crime.

On the other hand, the protection of human rights in the 2023 Criminal Code is also one of the main aspects emphasized. The 2023 Criminal Code reform adopts more modern and relevant human rights principles, such as better regulation of the death penalty, as well as increased attention to the basic rights of individuals, including the rights to personal freedom, privacy, and freedom of expression. Nonetheless, challenges remain in the consistent implementation and enforcement of human rights principles in Indonesia's criminal law system.

## DECLARATION OF CONFLICTING INTERESTS

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