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Innovative Model to Strengthen Human Rights Protection in Indonesia's 2026 National Criminal Code

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ABSTRACT

This study analyzes the legal framework for the protection of human rights within the Indonesian legal system and its reinforcement in the 2026 National Criminal Code (KUHP). It employs a normative legal research design using a literature review method, integrating both statutory and contextual approaches to enhance methodological transparency and facilitate future replication. The research adopts a qualitative approach through library research. Data are derived from primary legal materials, including the 2026 National Criminal Code, human rights related legislation, and international human rights instruments, as well as secondary legal materials such as books and relevant academic journals. The sources are selected through purposive sampling based on academic relevance. Data are analyzed using a descriptive-qualitative approach by examining the relationship between criminal law norms and human rights principles, and by comparing them with legal doctrines and practices in several countries, drawing on the theoretical frameworks of human rights, legal protection, and criminal law policy. The findings indicate that strengthening human rights principles within the Criminal Code has the potential to enhance the effectiveness of a more just and humane criminal justice system. These findings also have important implications for future legal research and policy-making, particularly in improving the implementation of human rights standards and strengthening institutional accountability in Indonesia.

Keywords: National Criminal Code 2026, Human Rights, Normative Jurisprudence, Human Rights Protection, Restorative Justice.

I. Introduction

Human rights are fundamental rights inherent to every individual and universally recognized as part of human dignity. In the context of modern law, human rights are understood not only as a normative concept but also as an operational standard that must be implemented in the practice of governance, including within the criminal justice system (Donnelly, 2013 ; OHCHR., 2020). In Indonesia, the constitutional guarantee of human rights is enshrined in the 1945 Constitution, specifically Chapter XA, and reinforced through Law No. 39 of 1999 on Human Rights. As a state governed by the rule of law, as affirmed in Article 1, paragraph (3) of the 1945 Constitution, Indonesia has an obligation to ensure that every legal policy, including criminal law, is in harmony with human rights principles. In practice, the criminal justice system is a critical arena. It directly affects individual rights, particularly personal freedom and security (Duff et al , 2018). Therefore, the

implementation of human rights in criminal law concerns not only normative aspects but also law enforcement practices, such as the treatment of suspects, access to legal aid, and guarantees of a fair trial. However, the practice of human rights protection in Indonesia still faces various challenges. A number of empirical studies have highlighted issues such as prison overcrowding, excessive use of pretrial detention, and limited access to legal aid for vulnerable groups (ICJR, 2022 ; National Commission on Human Rights., 2023). This shows a clear gap between legal norms and their actual implementation.

Historically, the previously applicable Criminal Code was a product of Dutch colonialism (*Wetboek van Strafrecht*) that placed greater emphasis on formal legal certainty and the interests of the state, with a retributive paradigm as the basis for punishment (Lindsey, 2012 ; Butt, 2014). This paradigm is considered insufficiently responsive to modern human rights developments, particularly regarding victim protection, limitations on criminalization, and the use of alternative sanctions. Since the early 2000s, Indonesia has implemented various criminal law reforms as part of its national reform agenda. These reforms include strengthening the role of the Constitutional Court in human rights protection, ratifying various international instruments such as the ICCPR and CAT, and updating sentencing policies through a restorative justice approach that is beginning to be applied in law enforcement practice (Bedner, 2016 ; ICJR, 2020). However, the implementation of these reforms remains uneven and faces various structural obstacles.

The enactment of Law No. 1 of 2023 on the Criminal Code, which will take effect in 2026, marks a significant milestone in Indonesia's criminal law reform. The National Criminal Code integrates the values of Pancasila, human rights principles, and international standards into the national criminal justice system (DPR RI, 2022). It includes various updates, such as the strengthening of alternative sanctions, the recognition of restorative justice, and greater protection for victims. Nevertheless, the existence of the National Criminal Code has also sparked debate. Several studies and reports indicate that certain provisions still have the potential to restrict civil liberties, such as articles related to morality and expression (Amnesty International Indonesia, 2023 ; National Commission on Human Rights., 2023). This suggests that criminal law reform must be evaluated not only from a normative perspective but also in terms of its potential practical implications for human rights. Against this backdrop, this study aims to analyze the extent to which the 2026 National Criminal Code integrates human rights principles, both normatively and in terms of its potential implementation. This study also seeks to contribute to the literature by combining constitutional, empirical, and comparative approaches in assessing criminal law reform in Indonesia.

II. Literature Review and Hypothesis Development

2.1. The Concept of Human Rights

Human rights are intrinsic entitlements possessed by every individual from birth, characterized by their universality, inalienability, and the obligation of the state to uphold and respect them (Donnelly, 2003). HAM encompasses civil, political, economic, social, and cultural rights that are interrelated, including the right to life, freedom of expression, legal protection, education, and health (An-Na'im, 1992). From the standpoint of national law, human rights constitute the fundamental basis of the criminal justice system. Criminal legislation extends beyond the regulation of penalties and procedural matters, encompassing the obligation to safeguard the fundamental rights of all individuals, including both suspects and victims, thereby ensuring that the principles of due process and the respect for human dignity are fully integrated into law enforcement practices (Arief & Mauladi, 2010). Recent studies further emphasize that the implementation of human rights in criminal justice systems requires not only legal recognition but also effective institutional mechanisms, accountability, and oversight to ensure that these rights are upheld in practice, particularly through judicial monitoring, independent oversight bodies, and transparent legal procedures that ensure accountability in law enforcement practices.

2.2. The Evolution of Human Rights Protection in the Criminal Code

Since the implementation of the Dutch colonial Criminal Code, human rights protection in Indonesia has been fragmented and limited to certain offenses, such as abuse and murder (Arief, 2014). The retributive paradigm that dominated the old Criminal Code emphasized punishment, so that protection for victims and restrictions on punishment were not adequately accommodated (Arief, 2014). Indonesian criminal law reform since the early 2000s has emphasized the need for a Criminal Code based on the values of Pancasila, the 1945 Constitution, and modern human rights. This approach seeks to align the national criminal justice framework with international standards, including the International Covenant on Civil and Political Rights and the Convention against Torture, which obligate states to ensure the protection of the civil and political rights of all individuals (Morsink, 1999; Nowak, 2005).

More recent developments, particularly the enactment of the new National Criminal Code, reflect a stronger commitment to integrating human rights principles into substantive and procedural criminal law, including safeguards against excessive punishment and the recognition of victims' rights (Butt, 2023; Lindsey, 2022). For example, the new Criminal Code introduces provisions that emphasize proportional sentencing, the protection of suspects' rights during legal proceedings, and the recognition of victims' interests, reflecting the incorporation of international human rights standards into domestic law. which in practice aims to reduce arbitrary sentencing and enhance fairness in judicial decision-making processes.

2.3. Modern Punishment Paradigm and Human Rights

In modern criminal law theory, there has been a paradigm shift from retributive justice (punishment as retribution) to a humanistic paradigm that emphasizes victim protection, offender rehabilitation, and social reintegration (Braithwaite, 2002). These paradigms are not mutually exclusive; rather, they are theoretically interconnected within an integrative framework that seeks to balance retributive, restorative, and rehabilitative objectives in criminal justice. The retributive paradigm provides the foundation for accountability and proportional punishment, while the humanistic paradigm introduces the importance of dignity, rehabilitation, and social harmony. The concept of restorative justice has become an important instrument because it places victims as active subjects in the criminal justice process and encourages real recovery of losses (Boven, 2010).

Within this theoretical framework, restorative justice serves as a bridge between retributive and rehabilitative approaches by integrating accountability with victim recovery and offender reintegration, thereby creating a more holistic and human rights-oriented model of justice. In practice, restorative justice has been increasingly implemented in Indonesia through diversion mechanisms and mediation processes, particularly in minor offenses, demonstrating its potential to reduce incarceration rates and promote fairer outcomes (UNODC, 2021). However, there is ongoing debate regarding the effectiveness of restorative justice in practice. Some scholars argue that its outcomes may vary depending on the balance of power between victims and offenders, while others point out challenges in ensuring consistency and legal certainty within formal criminal justice systems.

Empirical findings also suggest that while restorative justice can reduce recidivism and case backlogs, its success depends heavily on institutional support, trained facilitators, and clear legal frameworks. In addition, integrative sentencing theory emphasizes a balance between retribution, prevention, and rehabilitation. This integrative approach demonstrates how different theoretical perspectives are systematically connected, forming a comprehensive framework that underpins the development of modern criminal law policies. Nevertheless, the practical application of this integrative approach also raises critical questions, particularly in balancing punitive and rehabilitative objectives within rigid legal structures, which may limit its overall effectiveness.

This approach forms the basis for the 2026 National Criminal Code to formulate penalties that are not merely repressive but also oriented towards the protection of human rights and substantive justice (Muladi,

1995). These ongoing debates highlight that the success of these paradigms largely depends on the institutional capacity, legal culture, and consistency of implementation, indicating that their effectiveness cannot be fully understood without considering real-world challenges. Therefore, the theoretical interconnection among these paradigms provides a coherent foundation for the formulation of a criminal justice system that is both effective and aligned with human rights principles.

2.4. International Instruments and State Commitments

As a signatory to international human rights instruments, Indonesia bears the responsibility to incorporate these standards into its domestic legal framework. The framework for respecting, protecting, and fulfilling human rights underscores the state's duty to honor individual rights, safeguard citizens from violations, and realize fundamental entitlements through effective legal policies (Eide, 1995). Harmonizing the national criminal code with international standards is important to prevent rights violations such as torture, arbitrary detention, and procedural injustice (Nowak, 2005). Contemporary human rights discourse also highlights the importance of monitoring mechanisms and judicial accountability to ensure that international standards are effectively translated into everyday law enforcement practices (OHCHR, 2022). For instance, Indonesia's ratification of the ICCPR through Law No. 12 of 2005 and the Convention against Torture through Law No. 5 of 1998 demonstrates formal legal alignment with international standards. However, challenges remain in implementation, including limited institutional capacity, inconsistent law enforcement practices, and gaps between legal provisions and their application in practice, which may reduce the effectiveness of these international commitments in ensuring substantive human rights protection at the operational level.

2.5. Alternative Sanctions and the Ultimum Remedium Principle

The literature shows that the use of alternative sanctions, such as probation, community service, and fines, can reduce human rights violations arising from prison overcapacity (Arief, 2010; United Nations, 1990). Recent empirical studies indicate that prison overcapacity remains a significant issue in many countries, including Indonesia, and has contributed to various human rights concerns such as inadequate living conditions and limited access to rehabilitation programs (UNODC, 2021). Data from correctional institutions in Indonesia show that prison occupancy rates often exceed capacity, highlighting the urgency of adopting non-custodial measures as part of criminal justice reform. The principle of ultimum remedium emphasizes imprisonment as a last resort, making non-custodial approaches an important instrument for strengthening the right to liberty and human dignity in the criminal justice system.

In practice, alternative sanctions such as community service and probation have demonstrated effectiveness in reducing recidivism, lowering correctional costs, and facilitating offender reintegration into society, particularly in cases involving minor offenses. However, their effectiveness varies across different contexts, depending on factors such as institutional readiness, supervision mechanisms, public acceptance, and the availability of rehabilitation programs. In Indonesia, the implementation of alternative sanctions still faces challenges, including limited infrastructure, lack of trained personnel, and inconsistencies in judicial application, which may hinder their optimal impact. These challenges may weaken the potential of alternative sanctions to simultaneously enhance human rights protection and reduce recidivism, particularly when monitoring and evaluation mechanisms are not effectively implemented.

From a human rights perspective, these measures contribute to the protection of fundamental rights by minimizing unnecessary detention, preventing overcrowding, and ensuring more humane treatment of offenders within the justice system. Empirical studies further indicate that offenders subjected to non-custodial sanctions tend to exhibit lower recidivism rates compared to those who undergo imprisonment, primarily due to their continued social integration and access to community based rehabilitation programs. Therefore, the expansion of non-custodial sanctions is increasingly viewed as a practical strategy to ensure a more humane and rights-based criminal justice system (OHCHR, 2022), while also requiring comprehensive

policy support and institutional strengthening to ensure their effectiveness in practice. while also requiring comprehensive policy support, institutional strengthening, and evidence-based evaluation to maximize their effectiveness in reducing reoffending and safeguarding human rights

III. Research Method

The research method used is normative legal research with a qualitative approach. This study aims to analyze legal norms and formulate a model for strengthening the protection of Human Rights (HR) within the national criminal law system. Research data was collected through a literature review using primary legal sources such as the 2026 National Criminal Code, legislation related to human rights, and international human rights instruments ratified by Indonesia. The sampling method for selecting primary legal sources also employed a purposive sampling approach, focusing on legal instruments that are most relevant, authoritative, and directly related to criminal law and human rights protection. This approach ensures a clear scope of analysis while acknowledging the limitations in the selection of legal materials. The selection of these legal texts was based on specific criteria, namely: (1) their formal legal status and binding authority within the Indonesian legal system; (2) their direct relevance to issues of criminal law and human rights protection; and (3) their applicability to contemporary legal developments in Indonesia.

These primary legal sources are directly used to address the research objective by identifying and evaluating the extent to which existing criminal law norms incorporate and protect human rights principles within the national legal framework. In addition, this study also considers relevant case law (court decisions) to examine how human rights principles are interpreted and applied in judicial practice, thereby enriching the normative analysis with practical legal insights. In addition, secondary legal materials such as books, scientific journals, and previous research relevant to the research topic were also used. The sampling technique for literature sources was purposive sampling, which involves selecting sources that have academic relevance and scientific authority regarding the study of criminal law and human rights protection (Marzuki, 2017 ; Soekanto dan Mamudji, 2015). These secondary sources support the research by providing theoretical perspectives, comparative insights, and previous findings that are essential for analyzing the research problem and formulating a model for strengthening human rights protection in criminal law. Furthermore, selected empirical studies were included to provide contextual understanding of how human rights protection is implemented in practice, particularly in relation to the effectiveness of criminal law enforcement.

Data analysis was conducted using a descriptive-qualitative approach by examining the relationship between criminal law norms and human rights protection principles, and comparing them with concepts of human rights protection in legal doctrine and practice in several countries. The findings of this study will be presented systematically in the results and discussion section by organizing them into key thematic areas, namely: (1) the analysis of criminal law norms related to human rights protection; (2) the evaluation of the alignment between national legal provisions and human rights principles; and (3) the formulation of a model for strengthening human rights protection within the criminal law system. Each theme will be discussed by integrating legal analysis, theoretical perspectives, and comparative insights to ensure a coherent and comprehensive interpretation of the research findings. This study employs both a statutory approach and a conceptual approach. The statutory approach is used to examine and analyze relevant laws and regulations governing criminal law and human rights protection. Meanwhile, the conceptual approach is applied to explore legal doctrines, theories, and scholarly perspectives on human rights and legal protection. These two approaches are complementary, as the statutory approach provides a normative legal foundation, while the conceptual approach offers analytical frameworks to interpret, evaluate, and contextualize the legal norms within broader human rights discourse.

The theoretical framework employed includes human rights theory, legal protection theory, and criminal law policy theory to explain the relationship between the criminal justice system and human rights protection. The research design was structured systematically to ensure that the research procedures can be replicated by other researchers, clearly outlining the types of data used, the data collection process, and the

analytical techniques applied. Thus, this research method provides adequate information regarding the research procedures, the analytical tools used, and the types of data recorded and measured in normative legal studies (Asshiddiqie, 2016 ; Arief, 2014). The literature review was conducted through a systematic process consisting of several stages. First, relevant legal materials were identified through database searches, legal document repositories, and official government publications. Second, the collected sources were screened based on predefined inclusion criteria, such as relevance to criminal law and human rights protection, and exclusion criteria, such as outdated or non-authoritative sources. Third, the selected materials were classified and organized according to key themes, including criminal law norms, human rights principles, and legal protection frameworks. Finally, the data were analyzed and synthesized to identify patterns, gaps, and relationships among the legal concepts examined.

IV. Result and Discussion

4.1. Human Rights Protection Regulations in Indonesia

The protection of human rights in Indonesia has a strong constitutional foundation, particularly in Chapter XA of the 1945 Constitution (Articles 28A–28J), which guarantees various fundamental rights, such as the right to life, personal freedom, and protection from torture (Constitution of the Republic of Indonesia, 1945). Jimly Asshiddiqie asserts that these provisions establish human rights as the highest legal norm binding all branches of state power (Asshiddiqie, 2005). Consequently, every legal policy, including criminal law, must be subject to these human rights principles. In this context, Furthermore, the principle of the rule of law, as stipulated in Article 1, paragraph (3) of the 1945 Constitution, reinforces the state's obligation to guarantee the protection of human rights as a means of limiting state power (Asshiddiqie, 2005). From the perspective of modern constitutional theory, the constitutionalization of human rights constitutes the transformation of universal moral values into directly binding legal norms (Manan, 2001). This constitutional framework aligns with international human rights standards, particularly those contained in the ICCPR, indicating that Indonesia has formally integrated global human rights norms into its legal system. However, previous studies (Asshiddiqie, 2005; Isra, 2010) highlight that the challenge lies not only in normative recognition but also in effective implementation within criminal law practices.

Compared to the old Criminal Code, which was largely detached from constitutional human rights guarantees, the 2026 National Criminal Code demonstrates a stronger alignment with constitutional norms by explicitly incorporating human rights principles as a foundation for criminal law policy. Therefore, the 2026 National Criminal Code must be understood as a legal instrument that not only regulates public order but also serves as a mechanism for the protection of human rights. Moreover, the Constitutional Court serves as the guardian of the constitution through its authority to conduct judicial review. In its various rulings, the Court has emphasized that restrictions on human rights must comply with the principles of legality, necessity, and proportionality in a democratic society (Constitutional Court of the Republic of Indonesia, 2022 ; Isra, 2010). These principles are also consistent with international human rights standards, particularly those recognized in the ICCPR, indicating that Indonesia's constitutional framework aligns with global norms in assessing the legitimacy of criminal law provisions.

4.2. Human Rights Protection in Law No. 39 of 1999 on Human Rights

Beyond the constitutional framework, the protection of human rights in Indonesia is comprehensively regulated (Law Number 39 Concerning Human Rights, 1999). This law guarantees civil and political rights, including the prohibition of arbitrary arrest, the right to a fair trial, and the presumption of innocence. These provisions align with international standards, particularly the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), which have been ratified through Law No. 12 of 2005 (Nowak, 2005). A number of scholars (Nowak, 2005; Boven, 2010) argue that although Indonesia has

adopted international standards at the normative level, gaps remain in their operationalization within national criminal law, particularly in ensuring due process and protection for vulnerable groups. This indicates the need for stronger integration between human rights law and criminal law policy.

Compared to previous criminal law regulations, this alignment shows a significant development, as earlier legal frameworks did not systematically integrate international human rights instruments into domestic criminal law. From a theoretical perspective, a state's obligations regarding human rights encompass three main aspects: respecting, protecting, and fulfilling human rights (Eide, 1995). In this regard, the 2026 National Criminal Code represents an attempt to operationalize these obligations, moving beyond symbolic compliance toward more substantive protection mechanisms within the criminal justice system. Therefore, the drafting of the 2026 National Criminal Code must be viewed as part of the state's efforts to fulfill these obligations. However, several studies indicate that the implementation of human rights norms in Indonesia still faces challenges, particularly regarding law enforcement and the protection of vulnerable groups (Boven, 2010). This underscores the need for a more comprehensive approach to criminal law reform.

4.3. Human Rights Protection in the Criminal Justice System Prior to the National Criminal Code

The old Criminal Code, which was a product of Dutch colonialism, was more oriented towards formal legal certainty and state interests than human rights protection (Arief, 2014). In contrast to contemporary international standards, such as the United Nations guidelines on fair trial and humane treatment, the old Criminal Code lacked mechanisms to ensure proportionality, rehabilitation, and victim protection. Barda Nawawi Arief stated that the criminalization paradigm in the old Criminal Code was retributive in nature and did not accommodate developments in modern criminalization theory (Arief, 2010). As a result, protection for victims, restrictions on imprisonment, and the principle of proportionality were not adequately regulated (Muladi, 2000). Historically, the old Criminal Code, which was derived from the *Wetboek van Strafrecht*, reflected a classical paradigm that emphasized formal legality and legal certainty, but was less responsive to the development of modern human rights (Arief, 2014). In this context, the criminal justice system emphasizes retribution rather than rehabilitation or social reintegration of offenders (Muladi, 2000). Criticism of the old Criminal Code also arose due to the lack of provisions regarding the rights of victims and non-prison alternatives to punishment, thereby contributing to over-criminalization and overcrowding in correctional institutions (Arief, 2010). This situation has implications for human rights issues in correctional practices, including inhumane treatment due to overcapacity (World Drug Report (World Drug Report., 2013).

4.4. Model for Strengthening Human Rights Protection in the 2026 National Criminal Code

a. Change in the Paradigm of Punishment

One form of strengthening human rights protection in the 2026 National Criminal Code is a change in the paradigm of punishment (UU Hukum Pidana., 2023). Unlike the old Criminal Code, which emphasized retribution, the 2026 National Criminal Code adopts a more balanced approach that integrates retribution, rehabilitation, and restoration, in line with international human rights principles. The National Criminal Code no longer places punishment as a means of retribution, but as a means of protecting society, rehabilitating perpetrators, and restoring victims (DPR RI, 2022) Muladi emphasizes that this paradigm is in line with the concept of humanistic punishment oriented towards human rights (Muladi, 1995). The paradigm shift reflects the reorientation of criminal law policy toward a more human rights-based approach, particularly in emphasizing rehabilitation and social reintegration (Muladi, 1995; Arief, 2010).

The paradigm shift in punishment in the 2026 National Criminal Code is also reflected in the formulation of the objectives of punishment, which emphasize a balance between the interests of the perpetrator, the victim, and society (Criminal Code., 2023). This concept is in line with the integrative theory of punishment, which combines the elements of retribution, prevention, and rehabilitation in a proportional

manner (Muladi, 1995) With this approach, punishment is no longer seen solely as a means of repression, but as an instrument for the protection of human rights in the criminal justice system.

b. Strengthening Alternative Sanctions

The 2026 National Criminal Code introduces alternative sanctions such as probation, community service, and fines as substitutes for imprisonment.⁹ This policy aims to reduce prison overcrowding and minimize human rights violations associated with excessive incarceration (United Nations, 1990; Arief, 2010). This approach is also in line with the United Nations recommendations on non-custodial measures (United Nations, 1990). The application of alternative sanctions also reflects the principle of *ultimum remedium* in criminal law, namely the use of imprisonment as a last resort (Arief, 2010). This principle is important from a human rights perspective because excessive imprisonment has the potential to violate the right to freedom and human dignity (United Nations, 1990). Thus, the policy of non-custodial measures in the National Criminal Code is a progressive step in the reform of Indonesian criminal law. The use of alternative sanctions further demonstrates a shift toward a more proportionate and rights-oriented criminal justice system (Muladi, 1995).

c. Protection of Victims' Rights

The National Criminal Code pays greater attention to victims of crime through mechanisms of restitution and recovery (DPR RI, 2022). This development indicates a policy shift toward victim-oriented justice, which is increasingly recognized in international human rights frameworks (Boven, 2010; United Nations, 2005). This demonstrates a shift in orientation from offender-centered justice to a more balanced and HA-oriented criminal justice system (Boven, 2010). Strengthening victims' rights through restitution and recovery mechanisms also reflects the growing restorative justice approach in modern criminal justice systems (Boven, 2010). Restorative justice places victims as active subjects in the case resolution process and emphasizes tangible recovery of losses. This approach is in line with human rights principles that recognize victims' rights to justice, truth, and recovery (United Nations, 2005).

d. Recognition of Living Law and Human Rights Challenges

The recognition of living law in society in the National Criminal Code is a form of respect for Indonesia's cultural (Criminal Code, 2023). However, Jimly Asshiddiqie emphasizes that the recognition of customary law must be limited by the constitution and universal human rights principles so as not to cause discrimination (Asshiddiqie, 2005). Amnesty International also warns that the application of living law must be closely monitored (Amnesty International Indonesia, 2023). However, its implementation raises significant human rights concerns, particularly regarding the potential for discriminatory practices if not properly regulated. Therefore, continuous monitoring and evaluation are essential to ensure that the application of living law remains consistent with constitutional and international human rights standards (Amnesty International Indonesia, 2023).

The acknowledgment of customary law within the 2026 National Criminal Code necessitates the establishment of rigorous oversight mechanisms to ensure alignment with the principles of non-discrimination and equality before the law (Asshiddiqie, 2005). From a legal pluralism perspective, customary law is recognized as long as it does not violate the constitution and international human rights standards. Therefore, harmonizing customary law and human rights is an important challenge in the implementation of the National Criminal Code. Periodic evaluation of the application of living law is necessary to ensure that the norms applied truly reflect substantive justice and are not used to justify discriminatory practices (Amnesty International Indonesia, 2023). Thus, strengthening human rights protection in the National Criminal Code lies not only in the formulation of norms, but also in consistent oversight and implementation mechanisms.

This study contributes to the existing literature on human rights in Indonesia by offering a comprehensive and integrative analysis of the 2026 National Criminal Code from a human rights perspective. While previous studies have generally focused on normative evaluations or specific aspects of criminal law reform, this research provides a more holistic approach by combining statutory analysis, conceptual

frameworks, case law, and empirical insights. Furthermore, this study proposes a structured model for strengthening human rights protection within the national criminal law system, which not only evaluates existing legal provisions but also integrates theoretical and practical dimensions. This contribution is expected to enrich academic discourse and provide a more systematic framework for future research and policy development in the field of human rights and criminal law in Indonesia.

e. Counterarguments and Criticisms of the 2026 National Criminal Code Reform

Despite its progressive approach, the 2026 National Criminal Code has raised several criticisms. The recognition of living law may risk legal uncertainty and potential discrimination if not properly regulated. The effectiveness of alternative sanctions is also questioned due to limited institutional readiness. In addition, the implementation of victims' rights may face practical barriers, such as limited access to legal support. From an international perspective, some provisions are considered potentially inconsistent with human rights standards. These concerns highlight the need for effective oversight and continuous evaluation to ensure alignment with human rights principles.

V. Conclusion

This study finds that the 2026 National Criminal Code reform constitutes a significant advancement in strengthening human rights protection in Indonesia. The key findings indicate three main developments: (1) a shift in the paradigm of punishment from retributive to humanistic and restorative approaches, (2) the expansion of alternative sanctions aimed at reducing over-reliance on imprisonment, and (3) increased recognition of victims' rights through restitution and recovery mechanisms. These changes demonstrate a clearer alignment of Indonesia's criminal law with international human rights standards, particularly in terms of proportionality, restorative justice, and non-custodial measures. The study also reveals that, despite these normative improvements, substantive challenges remain in the practical implementation of the National Criminal Code. These include the potential inconsistency between living law and universal human rights principles, limitations in the application of alternative sanctions, and the need for stronger protection of victims in practice.

In terms of implications, this research underscores the importance of strengthening legal institutions, improving law enforcement capacity, and ensuring consistent oversight mechanisms to guarantee the effective realization of human rights protections. Additionally, the integration of constitutional values, national legislation, and international human rights obligations is essential for developing a more just and accountable criminal justice system. Overall, this study contributes by providing a comprehensive and integrative framework for understanding criminal law reform in Indonesia from a human rights perspective, while also offering practical directions for policymakers and future research in enhancing the effectiveness of human rights protection within the national criminal justice system.

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