



THE TRANSFORMATION OF CONSTITUTIONALISM IN THE NATIONAL CRIMINAL CODE: HARMONIZING CRIMINAL OFFENSES WITH HUMAN RIGHTS PROTECTION IN INDONESIA

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Abstract

This research analyzes the vertical synchronization between the National Criminal Code (Law Number 1 of 2023) and the 1945 Constitution of Indonesia. Employing a normative legal method, the study specifically tests Article 2 (recognition of *living law*) and Article 218 (insults against the President) against core constitutional parameters, namely Article 28D paragraph (1) on legal certainty and Article 28E paragraph (3) on freedom of expression, alongside the Constitutional Court's precedent in Decision No. 013-022/PUU-IV/2006. The findings demonstrate concrete normative conflicts rather than mere paradoxes. First, the integration of unwritten customary law in Article 2 lacks rigid statutory parameters, directly threatening the constitutional guarantee of legal certainty under Article 28D(1) and risking arbitrary regional enforcement. Second, Article 218's criminalization of presidential insults, despite its complaint-based mechanism, fails to align with the Constitutional Court's precedent and creates a *chilling effect* that disproportionately restricts freedom of expression under Article 28E(3). Consequently, the study concludes that these expanded offenses fail strict proportionality testing. It recommends the urgent formulation of objective derivative regulations for *living law*, narrow judicial interpretation of defamation provisions, and rigorous constitutional review to safeguard civil liberties from state punitive overreach.

Keywords: Constitutionalism, Human Rights, National Criminal Code



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INTRODUCTION

The promulgation of Law Number 1 of 2023 concerning the Criminal Code (KUHP) marks a fundamental milestone in Indonesia's legal history, aiming to decolonize the penal system inherited from the Dutch East Indies (Indonesia, 2023). However, the assumption that textual decolonization automatically equates to the realization of national legal sovereignty requires critical scrutiny. While the transition seeks to align criminal policy with Indonesia's pluralistic sociological realities specifically the accommodation of diverse customary norms across the archipelago it simultaneously introduces a critical gap: the risk of expanding state criminal powers beyond constitutional boundaries. Therefore, this transition must be evaluated not merely as a nationalist endeavor, but as a complex intersection where the decolonization agenda potentially conflicts with the strict limitations of constitutional law and human rights protection.

In a constitutional democracy, the state's punitive authority (*ius puniendi*) must be strictly constrained to prevent the disproportionate infringement of civil liberties. Previous studies have extensively discussed the philosophical shift and decolonization aspect of the new KUHP (Butt, 2023; Kaharuddin et al., 2025; Putra et al., 2026; Saputra et al., 2026), but there is a distinct gap in normatively testing specific expanded articles against concrete constitutional parameters. Specifically, the direct connection between the expansion of *ius puniendi* in Article 2 (recognition of living law) and Article 218 (insults against the President) with the constitutional guarantees of legal certainty and freedom of expression remains underexplored. This article addresses this gap by directly analyzing how these specific provisions operationalize state power and whether they align with the post-*reformasi* constitutional mandate.

This study specifically selects Article 2 and Article 218 as the primary subjects of analysis because they represent the most significant expansions of criminalization that directly intersect with fundamental constitutional rights. The formal recognition of *living law* (customary law) in Article 2 introduces unwritten norms into the penal system, creating a normative friction with the principle of legality. Simultaneously, the inclusion of *lese majeste* provisions in Article 218 reintroduces the criminalization of insults against the President, generating a constitutional tension with freedom of expression. Rather than prematurely categorizing these provisions, this study analytically examines the structural friction they create: how the integration of unwritten law challenges statutory predictability, and how the complaint-based mechanism in Article 218 interacts with the Constitutional Court's precedent (Decision No. 013-022/PUU-IV/2006) regarding public oversight and democratic spaces.

To resolve these normative frictions, the institutional role of the Constitutional Court as the guardian of the constitution becomes indispensable. The mechanism of judicial review serves as a vital checks and balances instrument to ensure that legislative criminal policies do not transgress absolute constitutional boundaries. Without rigorous constitutional scrutiny and the harmonization of derivative regulations, the new penal code risks being misapplied, thereby affecting the structural integrity of Indonesia's democratic state (Butt, 2023; Hidayah et al., 2025).

Therefore, this article aims to critically analyze the vertical synchronization between the expanded criminal offenses in the new KUHP and the 1945 Constitution. Specifically, it evaluates the constitutional legitimacy of Article 2 (living law) against the principle of legal certainty (Article 28D paragraph (1)), and Article 218 (presidential insult) against the right to freedom of expression (Article 28E paragraph (3)) and Constitutional Court Decision No. 013-022/PUU-IV/2006. By employing a normative legal approach, this study seeks to provide a concrete constitutional compass for the implementation of the national criminal code, ensuring that the relationship between state punitive authority and civil rights remains anchored in democratic constitutionalism.

RESEARCH METHOD

Research Design

This study employs a doctrinal legal research design, moving beyond general qualitative normative descriptions to specifically utilize a norm conflict analysis and vertical synchronization approach. The research is grounded in a statute approach to systematically analyze legislative texts and a conceptual approach rooted in constitutional law doctrines. Rather than merely describing the law, this design is structured to identify hierarchical inconsistencies between statutory criminal norms and supreme constitutional mandates, specifically focusing on the limitation of state punitive power (*ius puniendi*) and the protection of fundamental human rights.

Research Target/Subject

The primary object of this research is the expanded criminal offenses stipulated in the newly enacted Criminal Code (Law No. 1 of 2023), specifically narrowed down to Article 2 (recognition of *living law*) and Article 218 (insults against the President). The unit of analysis comprises the constitutional parameters that govern these provisions, namely Article 28D paragraph (1) (the right to legal certainty), Article 28E paragraph (3) (freedom of expression) of the 1945 Constitution, and the Constitutional Court's binding precedent in Decision No. 013-022/PUU-IV/2006. The method of interpretation applied in this study combines grammatical, systematic, and teleological interpretation, coupled with a proportionality test framework to evaluate the legitimacy of rights restrictions.

Research Procedure

To ensure the legal material selection process is traceable and rigorous, the research follows a systematic five-step procedure: 1) Inventory: Collecting legal materials spanning the literature period from 2014 to 2026, focusing on post-*reformasi* constitutional discourse and the legislative history of the 2023 Criminal Code. The criteria for selecting Constitutional Court decisions were restricted to binding precedents that explicitly address the boundaries of freedom of expression and the strict principle of legality. 2) Classification: Categorizing the inventoried materials into primary legal materials (the 1945 Constitution, Law No. 1 of 2023, and relevant MK decisions), secondary materials (peer-reviewed journals, legal doctrines, and academic books), and tertiary materials (legal dictionaries and encyclopedias). 3) Interpretation: Applying systematic and teleological interpretation to uncover the underlying intent of the new penal provisions and to map their conceptual boundaries against constitutional rights. 4) Comparison: Conducting a norm conflict analysis by juxtaposing the operationalization of Articles 2 and 218 of the new KUHP against the constitutional parameters (Articles 28D and 28E) and MK jurisprudence to identify vertical disharmonies. 5) Drawing Conclusions: Synthesizing the comparative analysis to provide prescriptive recommendations for derivative regulation harmonization and judicial oversight.

Instruments

In doctrinal legal research, the researcher acts as the primary instrument for data processing and legal reasoning. To support objective analysis, the researcher utilizes specific analytical tools, namely the vertical synchronization framework to test hierarchical compliance, and the proportionality test matrix (assessing legitimate purpose, necessity, appropriateness, and balance) to evaluate whether the expansion of criminal offenses constitutes a justified limitation on constitutional rights.

Data Collection Techniques

Data collection was conducted through systematic literature searching and document analysis, surpassing traditional unstructured library reviews. Primary and secondary legal materials were retrieved using authoritative legal databases, including the Constitutional Court of the Republic of Indonesia (MKRI) database, the State Gazette (*Lembaran Negara*), and

accredited national and international legal journal repositories (e.g., SINTA and Scopus-indexed databases). The inclusion criteria for literature required materials to be peer-reviewed, directly relevant to constitutional criminal law, and published within the specified timeframe to ensure the currency of the legal arguments.

RESULTS AND DISCUSSION

Constitutional Legitimacy of Criminal Offense Expansion

The enactment of Law Number 1 of 2023 concerning the Criminal Code represents a significant expansion of criminal offenses in Indonesia's legal system. This expansion includes the formal recognition of living law or customary law within the national criminal framework, which fundamentally alters the traditional understanding of legal certainty. From a constitutional law perspective, this development raises critical questions about the balance between state authority and individual rights protection. The principle of legality, enshrined in Article 28D paragraph (1) of the 1945 Constitution, requires that all criminal provisions be clearly defined in written legislation. However, the integration of unwritten customary law creates potential tensions with this constitutional mandate.

The implementation of Article 2 of the new Criminal Code regarding customary law generates substantial concerns about legal certainty, which serves as a fundamental pillar of the rule of law state. Without established parameters in regional regulations as derivatives of the Criminal Code, the attribution of punitive power risks becoming uncontrolled and arbitrary. Within the checks and balances mechanism, the judicial institution must maintain rigid testing standards against the application of customary offenses to prevent extreme sentencing disparities across Indonesian regions. This requires careful calibration between respecting sociological diversity and maintaining constitutional safeguards against arbitrary state power.

Table 1. Comparison of Legal Certainty Principles Between Old and New Criminal Code

Aspect	Old Criminal Code (WvS)	New Criminal Code (UU No. 1/2023)	Constitutional Implication
Legal Source	Written law exclusively	Written law + Living law	Potential conflict with Article 28D(1)
Legal Certainty	High - codified norms	Moderate - includes unwritten norms	Requires strict judicial oversight
Regional Variation	Minimal	Significant - customary law varies	Risk of sentencing disparity
Judicial Review	Standard constitutional test	Enhanced scrutiny needed	Increased MK responsibility

The table above illustrates the fundamental shift in legal certainty principles between the colonial-era Criminal Code and the newly enacted national code. The introduction of living law as a legitimate source of criminal liability represents a paradigmatic change that requires careful constitutional monitoring. Regional authorities must develop clear implementing regulations that establish objective criteria for identifying and applying customary law provisions. Without such safeguards, the expansion of criminal offenses through customary law recognition could undermine the constitutional guarantee of equal treatment before the law and create unacceptable legal uncertainty for Indonesian citizens.

Checks and Balances in Criminal Law Expansion

To operationalize the principle of checks and balances in the expansion of criminal offenses, the proportionality test must be rigorously applied to specific provisions, such as Article 218 (presidential insult) and Article 2 (living law). When evaluating these expanded offenses against constitutional rights, the analysis must traverse four cumulative elements.

First, the legitimate purpose test examines whether criminalizing these acts serves a compelling state interest; while protecting state dignity has symbolic value, it must not override democratic accountability. Second, the necessity (or least restrictive means) test questions whether criminal sanctions are strictly required, or if civil defamation and administrative remedies could adequately address the harm. Third, the appropriateness (suitability) test assesses whether the criminalization effectively achieves its stated goal without being counterproductive. Finally, the balance (proportionality *stricto sensu*) test weighs the severity of the criminal penalty against the extent of the rights restriction. Applying this framework reveals that the broad formulation of Article 218 and the open-ended nature of Article 2 often fail the necessity and balance tests, as they impose severe punitive burdens that disproportionately chill freedom of expression and legal certainty.

The legislative process for the new Criminal Code should have incorporated meaningful public participation as a constitutional requirement for democratic lawmaking. However, analysis reveals that the formation process often prioritized political power interests over genuine public deliberation and constitutional values. This creates legitimacy deficits that can only be remedied through robust judicial review by the Constitutional Court as the guardian of constitutional principles. The court must examine whether expanded criminal provisions exceed the legislature's constitutional authority or violate protected fundamental rights. Such judicial oversight ensures that criminal law remains a tool for justice rather than an instrument of political oppression.

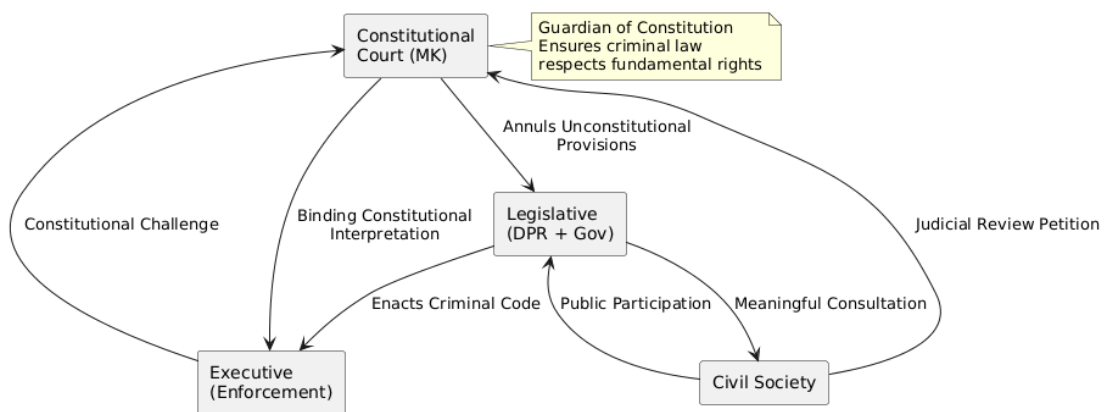


Figure 1. Constitutional Checks and Balances Framework for Criminal Law

The diagram above demonstrates the complex interplay between state institutions and civil society in maintaining constitutional balance in criminal law. The Constitutional Court occupies a central position as the ultimate arbiter of constitutional conformity, receiving inputs from both formal state institutions and civil society organizations. This multi-layered oversight mechanism ensures that criminal law expansion remains within constitutional boundaries and serves public interest rather than narrow political objectives. Effective functioning of this system requires active participation from all stakeholders, particularly robust judicial independence and vibrant civil society engagement in monitoring law implementation.

Synchronization of Presidential Defamation Provisions with Freedom of Expression

The new Criminal Code contains provisions criminalizing insults against the President and Vice President, creating significant tension with constitutional guarantees of freedom of expression. Article 218 of the National Criminal Code attempts to distinguish between "insults" that attack personal dignity and "criticism" conducted for public interest purposes. However, this distinction proves problematic in practice, as the boundary between legitimate criticism and criminal insult remains highly subjective and susceptible to arbitrary enforcement. The Constitutional Court, through Decision Number 013-022/PUU-IV/2006, previously annulled similar provisions in the old Criminal Code because they were deemed to impede freedom of

expression. Therefore, while the new Code's conversion of this offense into a complaint-based delict represents a moderating step, it theoretically continues to generate debate regarding special protection for state officials.

From a constitutional law perspective, while freedom of expression is a fundamental right heavily protected under Article 28E paragraph (3) of the 1945 Constitution, it is not classified as a non-derogable right under Article 28I paragraph (1). Instead, it is a restrictable right, meaning any limitation must be strictly assessed and justified under Article 28J paragraph (2), which mandates that restrictions must be regulated by law to guarantee the recognition of the rights of others and to meet the just demands of a democratic society. Therefore, the proportionality principle becomes the ultimate parameter to evaluate whether the criminalization of presidential insults constitutes a permissible restriction or an unconstitutional overreach. In this context, it is crucial to clarify the boundary between legitimate criticism and criminal insult. Criticism directed at public policy or government performance must enjoy absolute presumptive protection, whereas insults that merely attack personal dignity without public interest justification may be subject to regulation. However, declaring an absolute constitutional violation without considering interpretive boundaries is premature; rather, the provision poses a *potential* risk of unconstitutionality if applied broadly without strict judicial narrowing. Furthermore, it is essential to distinguish the principle of criminal law as an *ultimum remedium* (the ultimate remedy, meaning criminal sanctions should only be invoked when other legal branches fail to maintain order) from restorative justice (a mechanism focusing on repairing harm and mediating between parties). While *ultimum remedium* limits the *entry* of criminal law, restorative justice guides its *resolution*. In the context of presidential defamation, invoking criminal law should be the absolute last resort, and even then, the resolution should prioritize restorative approaches rather than serving as a tool for retaliation against political opposition. Proper synchronization requires guaranteeing that these provisions will not be weaponized to criminalize opposition, as such application would contradict the democratic rule of law. Without strict judicial oversight, the existence of these provisions creates a chilling effect that may suppress legitimate public discourse.

Table 2. Constitutional Tension Between Presidential Protection and Freedom of Expression

Constitutional Principle	Presidential Dignity Protection	Freedom of Expression	Resolution Mechanism
Legal Basis	Article 218 KUHP Baru	Article 28E(3) UUD 1945	Constitutional Court Review
Nature of Right	Derivative - official position	Fundamental - non-derogable	Proportionality test
Democratic Function	Limited - symbolic protection	Essential - public control	Strict scrutiny standard
Application Standard	Complaint-based delict	Presumptive protection	Narrow interpretation
Risk Assessment	Potential abuse for political ends	Chilling effect on criticism	Judicial oversight required

The table demonstrates the inherent constitutional tension between protecting presidential dignity and safeguarding freedom of expression in a democratic society. The fundamental nature of expression rights as non-derogable constitutional guarantees must weigh heavily against derivative protections for official positions. Democratic theory suggests that public officials, particularly those holding temporary mandates from the people, should be subject to greater scrutiny and criticism rather than enhanced legal protection. The complaint-based mechanism provides some procedural safeguard but does not resolve the substantive constitutional conflict between these competing values.

Institutional Mechanisms for Constitutional Oversight

The Constitutional Court's role as the guardian of the constitution becomes absolutely crucial in testing any articles deemed ambiguous or potentially unconstitutional. The judicial review mechanism must be viewed as an essential effort to refine the criminal law system within the framework of checks and balances. Without strong synchronization between criminal provisions and constitutional principles, the implementation of the Criminal Code risks becoming an instrument of absolute power that threatens universally guaranteed constitutional rights. Historical precedent demonstrates that several articles in the old Criminal Code were annulled by the Constitutional Court for being unconstitutional, establishing the court's vital function as a brake against potential legislative arbitrariness in criminal law formation.

Law enforcement officials require comprehensive constitutional literacy to properly implement criminal provisions that intersect with human rights protections. The research indicates that without adequate understanding of constitutional principles, police, prosecutors, and judges may apply criminal provisions in ways that unnecessarily restrict fundamental freedoms. Training programs must emphasize the constitutional hierarchy that places human rights protections above mere administrative convenience or political expediency. Restorative justice approaches should be prioritized over punitive measures, particularly in cases involving freedom of expression or peaceful assembly. This requires ongoing education and sensitivity training for all criminal justice system actors to ensure constitutional values permeate daily law enforcement practice.

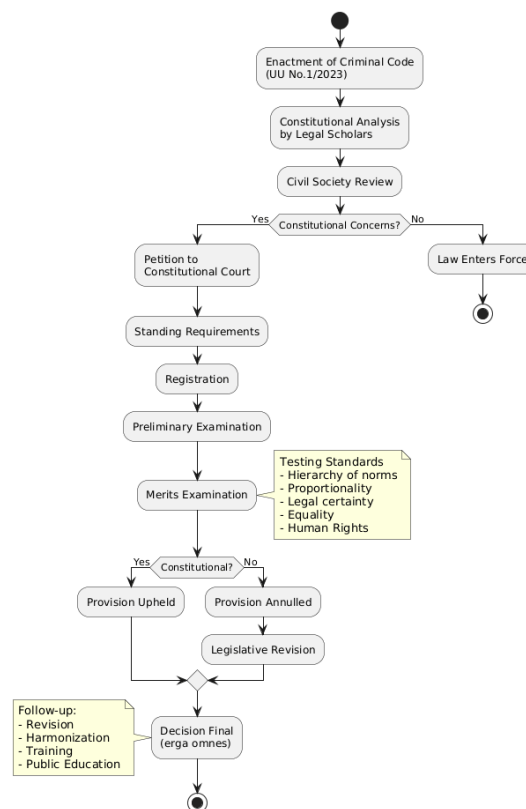


Figure 2. Constitutional Review Process for Criminal Law Provisions

The flowchart above illustrates the comprehensive process through which criminal law provisions undergo constitutional scrutiny, from initial enactment through potential judicial review and implementation. This process ensures multiple opportunities for identifying and correcting constitutional defects before they cause irreparable harm to fundamental rights. The

Constitutional Court's binding decisions create precedent that guides future legislative drafting and law enforcement practice, gradually building a more constitutionally compliant criminal justice system. Active civil society participation at each stage strengthens democratic accountability and ensures that constitutional review remains responsive to evolving societal needs and rights protections.

Living Law Integration and Legal Certainty Challenges

The recognition of *living law* within the national criminal code represents an ambitious attempt to reconcile positive law with Indonesia's sociological diversity and customary legal traditions. However, interpreting Article 2 of the Criminal Code requires a nuanced reading that goes beyond the oversimplified assumption that unwritten norms automatically contradict the principle of legality. The provision must be read in conjunction with its strict boundaries of applicability, which mandate that the *living law* in question must not conflict with Pancasila, the 1945 Constitution, human rights standards, and general legal principles. Consequently, the constitutional challenge must be clearly distinguished into three dimensions. First, the normative risk lies in the theoretical tension between unwritten customs and the strict statutory requirement of legality. Second, the application requirements dictate that any customary norm enforced must pass a rigorous substantive test against constitutional values and human rights, effectively filtering out discriminatory or oppressive customs. Third, the issue with implementing regulations emerges as the most critical practical hurdle: without clear, objective regional regulations (*Peraturan Daerah*) that formally identify and codify the specific customs to be enforced, the attribution of punitive power risks becoming arbitrary. Thus, the threat to legal certainty does not stem merely from the unwritten nature of the law, but from the potential absence of rigid procedural and substantive safeguards in its regional implementation.

Regional governments bear the responsibility of developing implementing regulations that establish clear, objective criteria for the application of living law provisions within their jurisdictions. These regulations must balance respect for local customary practices with constitutional guarantees of equal treatment and legal certainty for all citizens. The research findings indicate that without such regulatory frameworks, the attribution of punitive power based on unwritten customary law could lead to extreme disparities in criminal liability and sentencing across different regions. This would violate the constitutional principle of equality before the law and undermine public confidence in the fairness and predictability of the criminal justice system.

Table 3. Regional Implementation Challenges for Living Law Provisions

Constitutional Principle	Presidential Dignity Protection	Freedom of Expression	Resolution Mechanism
Legal Basis	Article 218 KUHP Baru	Article 28E(3) UUD 1945	Constitutional Court Review
Nature of Right	Derivative - official position	Fundamental - non-derogable	Proportionality test
Democratic Function	Limited - symbolic protection	Essential - public control	Strict scrutiny standard
Application Standard	Complaint-based delict	Presumptive protection	Narrow interpretation
Risk Assessment	Potential abuse for political ends	Chilling effect on criticism	Judicial oversight required

The table highlights the multifaceted challenges that regional authorities face in implementing living law provisions while maintaining constitutional compliance. Each challenge category requires specific regulatory and institutional responses to prevent constitutional violations and protect fundamental rights. National oversight mechanisms must ensure that regional variations in customary law application do not create unconstitutional

disparities in criminal liability or undermine the unity of the national legal system. The Constitutional Court must remain vigilant in reviewing both national and regional regulations implementing living law provisions to ensure they conform to constitutional principles and human rights standards.

The findings of this study regarding the constitutional legitimacy of the new Criminal Code (Law No. 1 of 2023) can be critically contextualized through recent legal literature and statutory developments, specifically the reconstruction of Indonesian criminal law principles proposed by Atmasasmita (2021) and the comprehensive analysis of Indonesia's penal reform by Butt (2023). This current research aligns with Atmasasmita's (2021) foundational argument that the transition from the colonial *Wetboek van Strafrecht* to the national KUHP must be rooted in the decolonization of legal principles rather than merely a textual replacement (Dahlan Rifa'i et al., 2025; Faisal et al., 2024; Nugraha et al., 2025). Both this study and Faisal et al (2024) and Tongat (2022) emphasize that the new codification represents a manifestation of national legal sovereignty, asserting that criminal policy must be directed by indigenous values and contemporary sociological realities while remaining strictly subordinate to the supreme constitutional framework. The similarity between this study and Butt's analysis lies in their shared focus on the Indonesian post-colonial context; however, a critical difference emerges in their analytical lens: while Butt primarily examines the democratic and indigenizing dimensions of the reform, this study specifically foregrounds the **constitutional tension** between decolonization ambitions and human rights limitations, an angle that requires deeper normative testing against the 1945 Constitution.

Furthermore, the recognition of *living law* in Article 2 of the 2023 Law finds resonance in the scholarship of Masyhar et al (2025), Simanjuntak et al (2025), and Valerina & Rismana (2024), who analyze the prospects and challenges of integrating customary law into modern penal systems. These studies share a common concern with this research: the risk of legal pluralism undermining the principle of legality. However, while Masyhar et al (2025) tend to view the *living law* integration optimistically as a reclaiming of indigenous legal identity, this study adopts a more cautious constitutional stance, arguing that without rigid statutory parameters, such integration threatens the absolute guarantee of legal certainty under Article 28D paragraph (1) of the 1945 Constitution. The contextual similarity is clear as all studies operate within Indonesia's pluralistic legal landscape but the analytical divergence lies in the weighting between sociological legitimacy and constitutional predictability. This study prioritizes the latter, warning against the potential for legal fragmentation that previous reconstruction theories have not sufficiently addressed.

The expansion of criminal offenses in the 2023 Law presents a complex dynamic when compared to recent statutory trajectories and theoretical expectations. The current study identifies that the new KUHP's expansion, particularly concerning offenses against state institutions and the President, risks creating a *chilling effect* on democratic participation. This finding resonates with Atapattu et al (2021), Budiyanto & Pondayar (2026), and Saefudin et al (2025), who examine the communal justice dimensions of environmental offenses in the new code, and Athirah et al (2025), who specifically analyze the rebirth of long-repealed insult provisions. The similarity across these studies is their shared concern about the regression of democratic space through criminal law expansion. However, this study distinguishes itself by providing a concrete constitutional test through the proportionality framework, whereas previous studies have largely focused on policy critique without systematically mapping the normative conflict against specific constitutional articles.

Regarding the synchronization of criminal norms with constitutional rights, this study's findings on the Presidential insult provisions (Article 218) offer a critical counter-narrative to the legislative intent of the 2023 Law. Although the legislature attempted to moderate this offense by converting it into a complaint-based delict (*klachtdelict*), a detailed comparative analysis reveals that such a mechanism alone is insufficient to prevent the weaponization of

criminal law against political opposition. To substantiate this claim, it is necessary to compare the elements of the old and new offenses systematically.

Table 4. Comparative Analysis of Presidential Insult Provisions: Old vs. New Criminal Code

Element of Offense	Old Criminal Code (Articles 134, 136, 137) - Annulled by MK Decision No. 013-022/PUU-IV/2006	New Criminal Code (Article 218-219 of Law No. 1/2023)	Constitutional Assessment
Protected Object	Dignity of President/ Vice President	Dignity of President/ Vice President	Similar symbolic protection of state office
Actus Reus	Insulting the President publicly	Attacking honor/reputation of President publicly or via media	Similar verbal/written attacks
Complainant	Public Prosecutor (ex officio)	Only the President/Vice President personally (complaint-based delict)	Significant improvement prevents automatic state prosecution
Public Interest Exception	None absolute criminalization	Article 219(2): No criminal liability if the act is done "in the public interest or for self-defense"	Significant improvement provides statutory defense for legitimate criticism
Maximum Penalty	6 years imprisonment	1 year 6 months imprisonment or Category II fine	Significant reduction more proportionate

The comparative analysis above demonstrates that the new formulation under Article 218 introduces three substantial improvements over the old provisions: (1) the conversion to a complaint-based delict, which prevents the public prosecutor from initiating cases without the President's direct consent; (2) the explicit public interest exception under Article 219 paragraph (2), which provides a statutory defense for legitimate criticism; and (3) the significant reduction of maximum penalties. These modifications address some of the constitutional concerns raised in the Constitutional Court's Decision No. 013-022/PUU-IV/2006. However, the Constitutional Court's annulment of the old provisions does not automatically render the new formulation unconstitutional, because the design of the offense has been fundamentally altered. The critical question is whether these procedural and substantive safeguards are sufficient to pass a strict proportionality test.

Applying the proportionality test to Article 218 reveals a mixed result. On the legitimate purpose test, protecting the dignity of the head of state may serve a symbolic function, but in a democratic republic, the President's dignity should be protected through civil defamation mechanisms rather than criminal sanctions. On the necessity test, the complaint-based mechanism and public interest exception reduce the necessity concern, but the mere existence of criminal sanctions still creates a *chilling effect* that may deter legitimate political criticism. On the appropriateness test, the provision is arguably suitable for protecting personal dignity, but it is inappropriate when applied to policy-related criticism. Finally, on the balance test, the reduced penalty (1 year 6 months) is more proportionate than the old provision, but the symbolic weight of criminalizing presidential insult still disproportionately burdens freedom of expression under Article 28E paragraph (3) of the 1945 Constitution. Therefore, while the new

formulation is not automatically unconstitutional, it remains conditionally vulnerable and requires narrow judicial interpretation to prevent abuse.

Ultimately, the comparison between this study's findings and the recent legal frameworks underscores the indispensable role of constitutionalism as the ultimate compass for criminal law enforcement. While Atmasasmita (2021), Butt (2023), and Saputra et al. (2026) provide the theoretical groundwork for reconstructing national criminal principles, and the 2023 Law provides the positive legal reality, this research bridges the gap by insisting on a rigorous *checks and balances* mechanism. The findings conclude that without continuous harmonization of derivative regulations and enhanced constitutional literacy among law enforcement, the new KUHP risks becoming an instrument of authoritarianism rather than a tool for justice. Therefore, the integration of constitutional law perspectives is not merely complementary but absolutely mandatory to ensure that the reconstruction of Indonesian criminal law truly serves the protection of human rights and democratic sovereignty.

CONCLUSION

This study concludes that the constitutional legitimacy of the expanded criminal offenses in the new Criminal Code (Law No. 1 of 2023), particularly the recognition of *living law* and the protection of state dignity, remains highly contingent upon strict adherence to the principles of *checks and balances* and proportionality. While the integration of customary law and the conversion of presidential insult provisions into complaint-based delicts represent attempts to reconcile positive law with sociological realities and moderate state power, they inherently risk undermining legal certainty and creating a *chilling effect* on democratic participation. Ultimately, the protection of public officials' dignity must never supersede the constitutional guarantees of popular sovereignty, equality before the law, and freedom of expression, necessitating that the application of these expanded delicts be highly restrictive and continuously subjected to rigorous constitutional scrutiny to prevent authoritarian regression.

To mitigate these normative conflicts and prevent the potential weaponization of criminal law, it is strongly recommended that the government and the legislature urgently formulate clear, objective implementing regulations to govern the application of *living law*, thereby preventing legal disparity and arbitrary enforcement at the regional level. Furthermore, comprehensive constitutional literacy training must be mandated for law enforcement officials to ensure they prioritize restorative justice and safeguard fundamental human rights when handling offenses that intersect with civil liberties. Finally, civil society must maintain its critical role as a democratic watchdog by actively utilizing the *judicial review* mechanism before the Constitutional Court to challenge any provisions or implementations of the new Criminal Code that threaten to violate the universally guaranteed constitutional rights of Indonesian citizens.

DECLARATION OF AI AND AI ASSISTED TECHNOLOGIES IN THE WRITING PROCESS

The author declares that Artificial Intelligence (AI) and AI-assisted technologies were utilized during the preparation of this manuscript solely for the purposes of language editing, grammatical refinement, and structural formatting. The core intellectual contributions, including the conceptualization of the research, critical legal analysis of the new Criminal Code (Law No. 1 of 2023), evaluation of constitutional principles, and the formulation of the final arguments, were entirely generated and verified by the author. The author assumes full responsibility for the accuracy, integrity, and originality of the final content, confirming that no AI tool was employed to fabricate data, generate research findings, or substitute the author's independent scholarly reasoning and legal judgment.

AUTHOR CONTRIBUTIONS

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

Author 3: Data curation; Investigation.

DECLARATION OF COMPETING INTEREST

The author declares that there are no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper. This research was conducted independently as part of academic scholarship, and the author has no relevant financial or non-financial interests to disclose regarding the analysis of the new Criminal Code and constitutional principles.

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