

## The Formulation of Morality Crimes in Law No. 1 of 2023: A Criminal Law Study of the Risk of Overcriminalization and Legal Certainty

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### ABSTRACT

*Law No. 1 of 2023 on the Criminal Code brings fundamental reforms to Indonesia's criminal justice system, including the reclassification of moral crimes. The formulation of offenses such as adultery and cohabitation has sparked debate regarding the rational limits of criminalization in a state governed by the rule of law. This study aims to analyze the normative formulation of moral crimes in Law No. 1 of 2023, examine the potential for overcriminalization, and assess its implications for the principle of legal certainty. This study uses a qualitative descriptive method with a normative juridical approach through the analysis of legislation and a conceptual approach. The primary legal material is Law No. 1 of 2023, while the secondary legal material includes current literature and scientific articles. The results of the study show that the expansion of the scope of moral offenses has the potential to expand state intervention in the private sphere, even though it is formulated as a complaint offense. Several provisions still leave room for multiple interpretations that can affect the consistency of the application of the principles of legality and legal certainty. This study emphasizes the importance of limiting criminalization based on the principles of proportionality and ultimum remedium so that criminal law reform remains in line with the values of legal certainty and the protection of citizens' rights.*

**Keywords :** *Moral crimes, Overcriminalization, Legal certainty, Principle of legality, 2023 Criminal Code.*

### A. Introduction

Law Number 1 of 2023 concerning the Criminal Code marks a significant reform in Indonesia's criminal justice system. This regulation replaces the colonial-era Criminal Code, which for decades served as the basis for national criminal law. The reform aims to establish a codified criminal law that better aligns with Indonesia's social, political, and constitutional values. This change also reflects the state's efforts to strengthen the rule of law through a more modern and systematic criminal justice system .<sup>1</sup>

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<sup>1</sup> RRS Prameswari, "Review of Law Number 1 of 2023 concerning the Criminal Code," *Sostech* , 2026. [Online]. Available: <https://sostech.greenvest.co.id/index.php/sostech/article/view/32706>

One prominent aspect of the reforms is the re-regulation of criminal acts related to social morality. The new Criminal Code expands the provisions for acts deemed to violate morality, including adultery and cohabitation. This provision has sparked debate among academics and legal practitioners because it touches on the boundary between the public interest and the private sphere of citizens. Several studies have assessed that the criminalization of private behavior requires rigorous testing to ensure it does not exceed the rational limits of criminal policy.<sup>2</sup>

The formulation of the article on cohabitation positions the act of living together without the bonds of marriage as a potential criminal offense. This provision has given rise to debate about the extent to which the state can regulate citizens' personal relationships. In practice, the unclear elements of the crime also have the potential to lead to varying interpretations in law enforcement. Differences in social acceptance of cohabitation practices across regions demonstrate that moral norms have complex social dimensions.<sup>3</sup>

Changes also occurred in the provisions for the crime of adultery, which were expanded compared to the formulation in the old Criminal Code. This expansion was intended to strengthen protection for the institution of marriage. However, several academics criticized the criminalization of consensual adult private relationships, which potentially increased the scope for state intervention in people's private lives. This criticism emphasized the importance of proving that criminalization was necessary to protect real legal interests.<sup>4</sup>

From a modern criminal law perspective, criminalization should be considered a last resort in addressing social behavior deemed deviant. The principle of *ultimum remedium* asserts that criminal law should be used only after other legal mechanisms have been ineffective. If criminalization is carried out without a clear rational basis, criminal law can become a mere instrument of moral enforcement. This situation has the potential to lead to a disproportionate expansion of criminal penalties.<sup>5</sup>

This phenomenon is often explained through the concept of overcriminalization, namely the tendency to excessively expand the scope of criminalization. Overcriminalization can arise when criminal legislation classifies too many behaviors as criminal offenses without adequate analysis of social needs. The impact is not only seen in

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<sup>2</sup> RS Nugraha, "Transformation of the Criminal Law System in Indonesia," *Journal of Legal Reform*, 2025. [Online]. Available: <https://ojs.uid.ac.id/index.php/jrh/article/download/1169/405>

<sup>3</sup> W. Kurniawan, "Cohabitation in the 2023 Criminal Code Apparently Does Not Need to be Criminalized," *Journal of Legal Journalism*, 2024. [Online]. Available: <https://journals.usm.ac.id/index.php/jj/article/view/10491>

<sup>4</sup> "Policy on Renewal of the Concept of Adultery in Article 411 of Law Number 1 of 2023 of the Indonesian Criminal Code," *ResearchGate*, 2026. [Online]. Available: [https://www.researchgate.net/publication/396297440\\_Kebijakan\\_Pembaharuan\\_Konsep\\_Perzinahan\\_Pasal\\_411\\_Undang-Undang\\_Nomor\\_1\\_Tahun\\_2023\\_KUHP\\_Indonesia](https://www.researchgate.net/publication/396297440_Kebijakan_Pembaharuan_Konsep_Perzinahan_Pasal_411_Undang-Undang_Nomor_1_Tahun_2023_KUHP_Indonesia)

<sup>5</sup> S. Nurhadi, "Formulation of Adultery Criminalization Policy in the Draft Criminal Code," *Jurnal Kapita Selekt Administrasi Publik*, 2023. [Online]. Available: <https://jurnal.peneliti.net/index.php/JIWP/article/download/5291/4316>

the increased burden on the criminal justice system, but also in the potential for legal uncertainty and disparities in law enforcement .<sup>6</sup>

Beyond the issue of excessive criminalization, reform of the Criminal Code must also be tested against the principle of legality, the primary foundation of modern criminal law. This principle requires that every criminal act be clearly defined and written, without being open to overly broad interpretation. Unclear elements of a crime can lead to multiple interpretations and potentially undermine protection of citizens' rights .<sup>7</sup>

The clarity of normative formulation is also closely related to the principle of legal certainty. In a state governed by the rule of law, citizens must be able to predict the legal consequences of every action. When criminal norms are not clearly formulated, law enforcement can be inconsistent. Therefore, the quality of legislative techniques in formulating moral offenses is a crucial aspect to analyze .<sup>8</sup>

Several previous studies have discussed Criminal Code reform from the perspective of legal politics and the protection of social values. However, most studies are still descriptive in nature and have not systematically examined the relationship between the formulation of moral offenses and the concept of overcriminalization and its implications for the principles of legality and legal certainty. These limitations indicate that there is room for further research in the study of national criminal law .<sup>9</sup>

Based on this background, this study analyzes the formulation of morality crimes in Law Number 1 of 2023 and assesses the potential for overcriminalization. This study also examines the implications of these regulations for the principle of legal certainty in the Indonesian criminal justice system .

#### **a. Formulation of the problem**

1. What is the normative formulation of moral crimes in Law Number 1 of 2023?
2. Does the regulation of moral crimes have the potential to give rise to *overcriminalization* ?
3. What are the implications of this regulation for the principle of legal certainty in criminal law?

#### **b. Research purposes**

1. Analyzing the construction of norms of criminal acts of morality in Law No. 1 of 2023.
2. Testing the potential for overcriminalization based on modern criminal law theory
3. Assessing the consistency of regulations with the principles of legality and legal certainty

#### **c. Benefits of research**

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<sup>6</sup> "Criminalization of Cohabitation in Article 412 of Law ...," *ResearchHub* , 2025. [Online]. Available: <https://researchhub.id/index.php/Khatulistiwa/article/download/5837/3284/17609> .

<sup>7</sup> DM Putri, "Legal Analysis of Cohabitation as a Criminal Act," *Islamic Law Magazine* , 2025. [Online]. Available: <https://ojs.daarulhuda.or.id/index.php/MHI/article/download/2553/2716>

<sup>8</sup> NS Putri, "Moral Offenses Under Indonesian Criminal Code 2023 in Perspective of Religious Minority," *Journal of Human Rights* , vol. 16, no. 1, 2025. [Online]. Available: <https://www.lawpolicyjournal.id/index.php/ham/article/view/4938>

<sup>9</sup> D. Iskandar, "Development of Theory and Application of the Principle of Legality in Criminal Law," *JIMMI* , 2024. [Online]. Available: <https://jurnal.fanshurinstitute.org/index.php/jimmi/article/download/147/98/812> .

1. Theoretical Benefits : Contributing to the development of criminalization limitation theory in national criminal law. Strengthening the study of the relationship between criminal policy and the principle of legality in the context of the reform of the Criminal Code .
2. Practical Benefits : Provides normative recommendations for lawmakers in formulating morality offenses. Serves as an academic reference for further research and serves as evaluation material for the implementation of the new Criminal Code in law enforcement practice .

## 1. Literature Review And Theoretical Framework

### a. Overcriminalization Theory

The concept of *overcriminalization* developed as a critique of the disproportionate expansion of criminal law in modern rule-of-law states. This discourse highlights the tendency of legislators to expand offenses without clear rational boundaries. In the Indonesian context, this debate intensified following the enactment of Law Number 1 of 2023, which expands the provisions for morality crimes. Recent national literature assesses that the expansion of criminalization must be tested based on the rationality of criminal policy and the principle of limiting state power. Without clear parameters, criminal law has the potential to lose its protective function and become an instrument of moral enforcement. The concept of *overcriminalization* becomes relevant for examining the legitimacy of morality crimes in the new Criminal Code.<sup>10</sup>

Douglas Husak's thinking provides an important theoretical basis for this issue. Husak emphasizes that any criminalization must meet strict standards of moral and rational justification. The state is obliged to prove a concrete danger to the public interest before criminalizing an act. Indonesian literature over the past five years has adopted this framework to assess the limitations of criminalization in the reform of the Criminal Code. This approach links the principles of harm, proportionality, and *necessity* as rational limits for criminal punishment. Thus, Husak's theory provides an analytical tool for assessing the potential for excessive criminalization within moral norms.<sup>11</sup>

From a constitutional perspective, the rational limits of criminalization are related to the principle of *ultimum remedium*. Criminal law is positioned as a last resort after administrative or civil instruments are ineffective. Several national studies have emphasized that expanding offenses without evaluating social needs risks creating *overpenalization* . This phenomenon results in a proliferation of cases and potential disparities in enforcement. The theory of *overcriminalization* serves as a check on

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<sup>10</sup> [1] M. Yofarrel, "Overcriminalization in Indonesian Criminal Law Policy," *Unes Law Journal* , 2025. [Online]. Available: <https://review-unes.com/index.php/law/article/view/2504>

<sup>11</sup> D. Tomayahu et al., "A Criminological Review of the Causal Factors of Overcriminalization in Indonesia," *Terang: Journal of Social, Political and Legal Studies* , 2025. [Online]. Available: <https://journal.appihi.or.id/index.php/Terang/article/view/1027>

criminal policy in the Indonesian legal system. This framework is crucial for assessing whether morality regulations meet modern criminal limitation standards.<sup>12</sup>

### b. Principle of Legality in Criminal Law

The principle of legality is a fundamental foundation of modern criminal law. The principle of *nullum crimen sine lege* asserts that no act can be punished without pre-existing rules. Current Indonesian criminal law literature positions this principle as the primary guarantee of protecting citizens' rights from arbitrary state power. Legality ensures that punishment can only be carried out based on clear, written norms. In the context of the new Criminal Code, testing this principle becomes crucial due to the expansion of moral offenses.<sup>13</sup>

The principle of legality has four main dimensions: *lex praevia*, *lex scripta*, *lex certa*, and *lex stricta*. Literature over the past five years confirms that *lex certa* demands a clear and unambiguous formulation of crimes. Meanwhile, *lex stricta* prohibits analogies in the interpretation of criminal law. Multiple interpretations of norms have the potential to undermine legal certainty and open up room for abuse. In the context of moral crimes, clarity of the elements of the act and the boundaries of the legal subject are the primary parameters for testing. This analysis ensures that the reform of the Criminal Code remains aligned with the principle of classical legality.<sup>14</sup>

The prohibition on analogy and uncontrolled expansion of interpretation is a crucial concern in Indonesian criminal law doctrine. Recent academic studies emphasize that judges must not expand the meaning of norms beyond the statutory formulation. If the formulation of a crime is too general, the potential for subjective interpretation increases. This situation has implications for inconsistent law enforcement across regions. Therefore, the principle of legality serves as a limiting mechanism against the expansion of criminalization. This framework serves as an evaluation instrument in research into morality crimes in the new Criminal Code.<sup>15</sup>

### c. Theory of Legal Certainty

The concept of legal certainty is heavily influenced by the thinking of Gustav Radbruch. Radbruch placed certainty as one of the fundamental values of law, alongside justice and expediency. Recent Indonesian literature reexamines the relevance of this theory in the reform of the national Criminal Code. Legal certainty is seen as a prerequisite for citizens to predict the consequences of every action. Without

<sup>12</sup> S. Nurhadi, "Formulation of Criminalization Policy in the Reform of the Criminal Code," *Journal of Law and Public Policy*, 2023. [Online]. Available: <https://jurnal.peneliti.net/index.php/JIWP/article/download/5291/4316>

<sup>13</sup> D. Iskandar, "Development of Theory and Application of the Principle of Legality in Criminal Law," *JIMMI*, 2024. [Online]. Available: <https://jurnal.fanshurinstitute.org/index.php/jimmi/article/download/147/98/812>

<sup>14</sup> DM Putri, "Legal Analysis of Cohabitation as a Criminal Act in the 2023 Criminal Code," *Islamic Law Magazine*, 2025. [Online]. Available: <https://ojs.daarulhuda.or.id/index.php/MHI/article/download/2553/2716>

<sup>15</sup> RF Mahbub, "Critical Analysis of the Constitutional Court Decision and Its Implications for the Principle of Legality," *Jurnal Demokrasi*, 2025. [Online]. Available: <https://journal.appihi.or.id/index.php/Demokrasi/article/view/878>

certainty, the legitimacy of criminal punishment is weakened. Radbruch's theory is relevant for examining the quality of formulated moral norms.<sup>16</sup>

Legal certainty in criminal law has stricter dimensions than in other branches of law. Criminalization involves restrictions on individual freedoms and rights. Academic studies over the past five years have emphasized that criminal norms must be formulated clearly and unambiguously. Ambiguity has the potential to create disparate decisions and inconsistent enforcement. In the context of morality offenses, the boundary between the private sphere and the public interest must be clearly defined. This analysis ensures that the expansion of offenses remains within the framework of the rule of law.<sup>17</sup>

Legal certainty is also related to systematic consistency between provisions in the Criminal Code. Criminal reform must ensure harmonization between Books I and II. Recent literature suggests that systemic inconsistencies can trigger interpretive conflicts. This study assesses the alignment between general principles of criminal punishment and the formulation of morality offenses. This evaluation is crucial for maintaining the legitimacy of the national criminal law system.<sup>18</sup>

#### d. Previous Research and Research Gaps

National studies from 2023 to 2025 have extensively discussed legal politics in the reform of the Criminal Code. Some studies highlight the orientation of Pancasila values and the integration of customary law. Others criticize the expansion of morality offenses from a human rights perspective. However, the majority of studies remain descriptive and have not systematically examined the risk of *overcriminalization*. This limitation highlights the need for more in-depth and integrated analysis.<sup>19</sup>

Internationally, criminal law reform and the regulation of moral offenses have long been debated. Comparative studies show a trend toward decriminalizing consensual adult private behavior. Recent Indonesian literature has begun to adopt this comparative perspective in analyzing the new Criminal Code. However, the integration of overcriminalization theory with the doctrines of legality and legal certainty remains limited. This opens up significant academic opportunities for contribution.<sup>20</sup>

Thus, there is a gap in research integrating *overcriminalization theory* with normative analysis of the morality articles in the Indonesian Criminal Code. No study

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<sup>16</sup> RS Nugraha, "Transformation of the Criminal Law System from the Perspective of Legal Certainty," *Journal of Legal Reform*, 2025. [Online]. Available: <https://ojs.uid.ac.id/index.php/jrh/article/download/1169/405>

<sup>17</sup> NS Putri, "Moral Offenses under Indonesian Criminal Code 2023 in Perspective of Human Rights," *Journal of Human Rights*, 2025. [Online]. Available: <https://www.lawpolicyjournal.id/index.php/ham/article/view/4938>

<sup>18</sup> RS Nugraha, "Transformation and Implications of the New Criminal Code," *Kertha Desa*, 2025. [Online]. Available: <https://ojs.unud.ac.id/index.php/kerthadesa/article/download/120652/58369>

<sup>19</sup> RRS Prameswari, "Review of Law Number 1 of 2023 concerning the Criminal Code," *Sostech*, 2026. [Online]. Available: <https://sostech.greenvest.co.id/index.php/sostech/article/view/32706>

<sup>20</sup> W. Kurniawan, "Cohabitation in the 2023 Criminal Code and Comparative Perspective," *Journal of Legal Journalism*, 2024. [Online]. Available: <https://journals.usm.ac.id/index.php/jj/article/view/10491>

has systematically linked Husak's thinking to the construction of elements of crimes in the new Criminal Code. Furthermore, the integration of the legality principle and legal certainty theory as a comprehensive testing tool is still rare. This research aims to fill this gap through a structured normative juridical approach. This theoretical framework is then used to analyze the formulation of morality crimes in depth.<sup>21</sup>

## B. Research Methods

### 1. Types of Research

This research is a normative legal study focusing on the analysis of positive legal norms. The primary object of the study is the formulation of morality crimes in Law Number 1 of 2023. Normative research positions law as a system of rules that is analyzed systematically and coherently. This approach does not examine empirical behavior but rather assesses the consistency, structure, and legitimacy of norms. The legal methodology literature of the past five years confirms that normative research is appropriate for testing the conformity of norms to the principles of legality and the rule of law.<sup>22</sup>

Normative legal research also emphasizes analysis of the hierarchy and systematics of laws and regulations. In the context of the new Criminal Code, the analysis focuses on the relationship between Books I and II. The study aims to assess whether the formulation of morality offenses aligns with general provisions on criminal punishment. This approach allows for an evaluation of the rationality and proportionality of criminalization. Thus, the research can test the normative validity of the newly formulated criminal policy.<sup>23</sup>

### 2. Approach

This research uses a legislative approach. This approach is carried out by comprehensively examining the articles concerning adultery and cohabitation in the new Criminal Code. The analysis includes the normative structure, elements of the offense, and the formulation techniques used by lawmakers. This approach also considers the relationship with the principle of legality and the principle of limiting criminalization. Recent national literature emphasizes the importance of a legislative approach in assessing the quality of criminal legislation.<sup>24</sup>

Furthermore, this research employs a conceptual approach. This approach is based on the theory of overcriminalization, the principle of legality, and the theory of legal certainty. These concepts serve as parameters for evaluating positive norms. The conceptual approach helps assess whether the expansion of moral offenses meets the

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<sup>21</sup> "Criminalization of Cohabitation and the Challenges of Legal Certainty," *Legal Perspectives*, 2026. [Online]. Available: <https://ejournal.appisi.or.id/index.php/Perspektif/article/download/903/659/5109>

<sup>22</sup> RS Nugraha, "Normative Legal Research Methodology in Criminal Code Reform," *Journal of Legal Reform*, 2025. [Online]. Available: <https://ojs.uid.ac.id/index.php/jrh/article/download/1169/405>

<sup>23</sup> RRS Prameswari, "Systematic Review of Law Number 1 of 2023 concerning the Criminal Code," *Sostech*, 2026. [Online]. Available: <https://sostech.greenvest.co.id/index.php/sostech/article/view/32706>

<sup>24</sup> W. Kurniawan, "Legislative Analysis of Cohabitation in the 2023 Criminal Code," *Journal of Legal Journalism*, 2024. [Online]. Available: <https://journals.usm.ac.id/index.php/jj/article/view/10491>

principles of *ultimum remedium* and proportionality. The integration of these approaches strengthens the legal argument systematically and theoretically.<sup>25</sup>

### 3. Sources of Legal Materials

The primary legal material in this study is Law Number 1 of 2023 as the primary source of positive law. Provisions regarding morality crimes are the focus of the analysis. The research also refers to general provisions governing the principles of legality and criminalization in Book I. Primary legal material serves as the basis for normative interpretation and evaluation. The analysis is conducted by reading norms textually and systematically.<sup>26</sup>

Secondary legal materials include scientific journals from 2021 to 2026, criminal law books, and academic documents related to the reform of the Criminal Code. This literature was used to strengthen theoretical analysis and identify current academic debates. Recent national journals served as references in assessing the risk of *overcriminalization* and its implications for legal certainty. Modern criminal law books were used to test the consistency of norms with general doctrine. These secondary sources enriched the legal arguments in the research.<sup>27</sup>

### 4. Analysis Techniques

This research uses qualitative descriptive analysis. The analysis is conducted by systematically describing the content of the norms and linking them to modern criminal law theory. The qualitative approach allows for the identification of the meaning and normative implications of each element of the offense. The research does not use quantitative data, but relies on the construction of legal arguments. This method aligns with the characteristics of normative research, which focuses on doctrinal evaluation.<sup>28</sup>

Interpretation is conducted using grammatical and systematic methods. Grammatical interpretation is used to understand the meaning of words and phrases within the formulation of articles. Systematic interpretation is used to assess the relationships between provisions within the structure of the Criminal Code. This technique ensures that the analysis remains within the context of the entire criminal law system. Literature over the past five years has emphasized the importance of a combination of interpretative methods to maintain legal certainty.<sup>29</sup>

The legal argument is built on an integration of *overcriminalization theory*, the principle of legality, and the theory of legal certainty. Each conclusion is drawn from the

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<sup>25</sup> D. Tomayahu et al., "Conceptual Approach in Overcriminalization Analysis," *Terang: Journal of Social, Political and Legal Studies*, 2025. [Online]. Available: <https://journal.appihi.or.id/index.php/Terang/article/view/1027>

<sup>26</sup> DM Putri, "Legal Analysis of Cohabitation as a Criminal Act," *Islamic Law Magazine*, 2025. [Online]. Available: <https://ojs.daarulhuda.or.id/index.php/MHI/article/download/2553/2716>

<sup>27</sup> NS Putri, "Moral Offenses under Indonesian Criminal Code 2023 in Perspective of Human Rights," *Journal of Human Rights*, 2025. [Online]. Available: <https://www.lawpolicyjournal.id/index.php/ham/article/view/4938>

<sup>28</sup> M. Yofarrel, "Excessive Criminalization and Its Implications for the Justice System," *Unes Law Journal*, 2025. [Online]. Available: <https://review-unes.com/index.php/law/article/view/2504>

<sup>29</sup> D. Iskandar, "Methods of Interpretation in Contemporary Criminal Law," *JIMMI*, 2024. [Online]. Available: <https://jurnal.fanshurinstitute.org/index.php/jimmi/article/download/147/98/812>

relationship between positive norms and theoretical parameters. The analysis is directed at assessing the legitimacy and rationality of the criminalization of morality. This approach produces normative recommendations based on doctrine and current literature. Using this technique, the research makes a systematic contribution to the development of national criminal law.<sup>30</sup>

## C. Results and Discussion

### 1. Normative Construction of Criminal Acts of Morality in Law No. 1 of 2023

The regulation of morality crimes in Law Number 1 of 2023 defines adultery and cohabitation as crimes against morality. The formulation of the elements of the crime includes sexual intercourse outside of marriage and living together as husband and wife without a legal bond. Normatively, the objective element lies in the physical act, while the subjective element relates to intent. This formulation represents an expansion compared to the previous provisions in the old Criminal Code. Recent national literature assesses that this change reflects a shift in moral values within criminal law policy.<sup>31</sup>

Morality offenses in the new Criminal Code are classified as complaint-based offenses. This means that the prosecution process relies on a complaint from a specific party with a legal relationship with the perpetrator. This provision is intended to limit state intervention in the private sphere. However, academic studies show that the complaint-based nature of offenses does not always eliminate the risk of overcriminalization. In practice, potential social pressure and domestic conflict can trigger the strategic use of criminal instruments.<sup>32</sup>

The legal subject in morality crimes includes any person who fulfills the elements of an act. The scope of application applies to citizens and individuals within Indonesian jurisdiction. The formulation of the norm does not differentiate between religious backgrounds or social status. Recent studies highlight that the universality of the legal subject must be balanced with clarity of the elements to avoid discriminatory application. Therefore, the normative construction must be read systematically in conjunction with the general provisions of the Criminal Code.<sup>33</sup>

### 2. Overcriminalization Risk Analysis

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<sup>30</sup>"Criminalization of Cohabitation and Legal Certainty in the New Criminal Code," *Legal Perspectives*, 2026. [Online]. Available: <https://ejournal.appisi.or.id/index.php/Perspektif/article/download/903/659/5109>

<sup>31</sup> RRS Prameswari, "Review of Law Number 1 of 2023 concerning the Criminal Code," *Sostech*, 2026. [Online]. Available: <https://sostech.greenvest.co.id/index.php/sostech/article/view/32706>

<sup>32</sup> W. Kurniawan, "Cohabitation in the 2023 Criminal Code and the Challenges of Complaint Offenses," *Journal of Legal Journalism*, 2024. [Online]. Available: <https://journals.usm.ac.id/index.php/jj/article/view/10491>

<sup>33</sup> DM Putri, "Legal Analysis of Cohabitation as a Criminal Act," *Islamic Law Magazine*, 2025. [Online]. Available: <https://ojs.daarulhuda.or.id/index.php/MHI/article/download/2553/2716>

Indicators of *overcriminalization* in morality crimes can be seen in the expansion of criminalization into the private sphere. Literature from the past five years has shown that the expansion of crimes without evidence of a clear public danger risks undermining criminal legitimacy. This expansion increases the potential for case inflation and burdens the justice system. This analysis aligns with criticisms of overly moralistic criminal policies, where indicators of rationality and necessity are the primary evaluation parameters.<sup>34</sup>

From a proportionality perspective, criminal sanctions must be commensurate with the level of danger of the act. Several national studies have assessed that criminalization of consensual adult private behavior requires rigorous testing. The principle of limited criminalization requires that sanctions not exceed the need to protect legal interests. Otherwise, the policy could be categorized as overpenalization. This analysis positions proportionality as the benchmark for the legitimacy of criminalization.<sup>35</sup>

Comparison with the principle of *ultimum remedium* demonstrates that criminal law should be a last resort. Indonesian criminal law literature emphasizes that *non-penal approaches* should be prioritized before using criminal instruments. In the context of morality, alternatives such as mediation or social approaches can be considered. If criminal sanctions are continued without evaluating alternatives, the risk of *overcriminalization* increases. Therefore, the principle of *ultimum remedium* is an important basis for this analysis.<sup>36</sup>

### 3. Implications for Legal Certainty

General formulations of norms have the potential to lead to multiple interpretations. Recent literature highlights that certain terms in morality crimes require clear operational definitions. Ambiguity in phrasing can open up differing interpretations among law enforcement officials. This can lead to inconsistent decisions and disparities in sentencing. Therefore, clarity in legal language is a key prerequisite for certainty.<sup>37</sup>

Harmonization with the principle of legality requires that article formulations conform to the principles of *lex certa* and *lex stricta*. Academic studies over the past five years have emphasized that criminal norms must be formulated explicitly to avoid analogies. If the formulation is open to broad interpretation, protection for citizens is diminished. This evaluation demonstrates the importance of synchronizing Books I and

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<sup>34</sup> M. Yofarrel, "Excessive Criminalization in Criminal Law Policy," *Unes Law Journal*, 2025. [Online]. Available: <https://review-unes.com/index.php/law/article/view/2504>

<sup>35</sup> D. Tomayahu et al., "A Criminological Review of the Causative Factors of Overcriminalization," *Terang*, 2025. [Online]. Available: <https://journal.appihi.or.id/index.php/Terang/article/view/1027>

<sup>36</sup> S. Nurhadi, "Formulation of Criminalization Policy in the Reform of the Criminal Code," *Journal of Law and Public Policy*, 2023. [Online]. Available: <https://jurnal.peneliti.net/index.php/JIWP/article/download/5291/4316>

<sup>37</sup> D. Iskandar, "Methods of Interpretation in Contemporary Criminal Law," *JIMMI*, 2024. [Online]. Available: <https://jurnal.fanshurinstitute.org/index.php/jimmi/article/download/147/98/812>

II of the Criminal Code. Thus, legal certainty becomes a parameter for testing the consistency of moral norms.<sup>38</sup>

In law enforcement practice, unclear norms can trigger variations in application between regions. Empirical literature shows that differences in interpretation often arise in offenses that touch on moral values. The impact can include selective criminalization and social pressure on certain groups. This situation has the potential to undermine the principle of *equality before the law*. Therefore, implications for enforcement practice are an important part of normative evaluation.<sup>39</sup>

#### D. Conclusion And Recommendations

The formulation of moral norms in the new Criminal Code demonstrates an expanded definition of crimes compared to previous regulations. The elements of the act are formulated more broadly and extend to the private sphere of citizens. The nature of the offense as a complaint does limit state intervention, but it does not completely eliminate the risk of excessive criminalization. Recent national literature assesses that the consistency of norms still requires testing against the principles of legality and legal certainty.<sup>40</sup>

An analysis of the *overcriminalization theory* reveals significant indicators of the expansion of criminalization. Proportionality and the principle of *ultimum remedium* are not fully reflected in the formulation of moral offenses. If not balanced with strict interpretative guidelines, these norms have the potential to lead to *overpenalization*. This evaluation emphasizes the importance of rational limitations in criminal policy. Thus, the potential for *overcriminalization* remains a central issue in the reform of the Criminal Code.<sup>41</sup>

From the perspective of legal certainty, the formulation of norms still leaves the potential for multiple interpretations. Harmonization with the principle of legality needs to be strengthened through more precise legislative techniques. Certainty is a prerequisite for the legitimacy of criminal punishment in a state based on the rule of law. Without clear norms, the risk of disparity and abuse increases. Therefore, the level of compliance with the principle of legal certainty still requires normative strengthening.<sup>42</sup>

First, official interpretative guidelines are needed to ensure consistent application of the morality articles. These guidelines could take the form of implementing regulations or a Supreme Court circular. The goal is to narrow the scope for multiple interpretations and

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<sup>38</sup> RF Mahbub, "Analysis of the Principle of Legality in Criminal Code Reform," *Jurnal Demokrasi*, 2025. [Online]. Available: <https://journal.appihi.or.id/index.php/Demokrasi/article/view/878>

<sup>39</sup> NS Putri, "Moral Offenses under Indonesian Criminal Code 2023," *Human Rights Journal*, 2025. [Online]. Available: <https://www.lawpolicyjournal.id/index.php/ham/article/view/4938>

<sup>40</sup> RS Nugraha, "Transformation and Implications of the New Criminal Code," *Kertha Desa*, 2025. [Online]. Available: <https://ojs.unud.ac.id/index.php/kerthadesa/article/download/120652/58369>

<sup>41</sup> D. Tomayahu et al., "Overcriminalization Approach in the New Criminal Code," *Terang*, 2025. [Online]. Available: <https://journal.appihi.or.id/index.php/Terang/article/view/1027>

<sup>42</sup> D. Iskandar, "The Principle of Legality and Legal Certainty in the 2023 Criminal Code," *JIMMI*, 2024. [Online]. Available: <https://jurnal.fanshurinstitute.org/index.php/jimmi/article/download/147/98/812>

maintain uniform law enforcement. Recent literature shows that interpretative guidelines are effective in reducing disparities. This step can strengthen legal certainty.<sup>43</sup>

Second, lawmakers need to clarify the limits of criminalization based on the rationality of criminal law. An evaluation of proportionality and necessity must be the basis for any revision of penal policy. The principle of *ultimum remedium* must be emphasized as a policy foundation. This approach will prevent the uncontrolled expansion of criminal law. Reformulation based on modern theory will strengthen the legitimacy of the national penal system.<sup>44</sup>

Third, the direction of future penal policy reform needs to integrate preventive and restorative approaches. *Non-penal alternatives* must be considered in addressing issues of private morality. Literature over the past five years shows a trend of strengthening restorative justice within the Indonesian criminal justice system. Integrating this approach will maintain a balance between moral values, rights protection, and legal certainty. Thus, criminal law reform can be more rational and proportional.<sup>45</sup>

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<sup>43</sup> RF Mahbub, "Guidelines for Interpretation and Consistency of Decisions," *Jurnal Demokrasi*, 2025. [Online]. Available: <https://journal.appihi.or.id/index.php/Demokrasi/article/view/878>

<sup>44</sup> M. Yofarrel, "The Rational Limits of Criminalization in a State of Law," *Unes Law Journal*, 2025. [Online]. Available: <https://review-unes.com/index.php/law/article/view/2504>

<sup>45</sup> RRS Prameswari, "Penal Policy Reform and Restorative Justice," *Sostech*, 2026. [Online]. Available: <https://sostech.greenvest.co.id/index.php/sostech/article/view/32706>

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