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Epistemic Deconstruction of the Formulation Crimes against the State in Law Number 1 of 2023

Raja Ramadhan[a], Dhea Praja Gupta[b]

[a]*Universitas Diponegoro*
rramadhan.raja@gmail.com
[b]*Universitas Gadjah Mada*
dheaprajag@gmail.com

Abstract
This study argues that colonial rationalities continue to persist within Indonesian criminal law, particularly in the new Criminal Code (Kitab Undang-Undang Hukum Pidana), despite its formal legislative revision. This persistence demonstrates that textual reform does not automatically dismantle colonial epistemologies that are deeply embedded in the conceptual foundations of criminal law. Rather than analyzing the Criminal Code in its entirety, this research purposively examines provisions related to crimes against the state as a representative locus where colonial logic remains operative. These provisions reflect a legal construction that prioritizes the symbolic dignity of state authority over the protection of citizens, thereby reproducing asymmetrical power relations and sustaining forms of structural injustice that are incompatible with democratic rule-of-law principles. Accordingly, this research does not claim to fully "decolonize" Indonesian criminal law, but advances a project of epistemic deconstruction by critically interrogating how colonial power logic continues to shape criminalization practices in contemporary Indonesia. Situated within the critical theory paradigm articulated by Denzin and Lincoln, and grounded in the tradition of critical criminology, this study employs ontological, epistemological, and methodological tools to uncover the hidden political, ideological, and historical dynamics embedded in criminal law formulations. Ultimately, the importance of this inquiry lies not merely in the colonial origin of these provisions, but in the fact that they continue to perform colonial functions in present-day state–citizen relations.

Keywords: *critical criminology, criminal law, crimes against the state*

I. Introduction

The state possesses authority in the form of the will to regulate its society through law.[1] This is in line with Hans Kelsen's thought in his *Pure Theory of Law*, which elaborates on the notion of a coercive order. Kelsen explains that the state, as the highest institution within a modern social community, holds the authority to formulate and implement its own legal system on the basis of powers granted by the constitution. Coercion in this context is understood as an action legitimized by the prevailing normative system and executable only by authorized organs. In this framework, therefore, the state is understood as being identical with the legal system itself, functioning as a legitimate order of coercion. In other words, the state constitutes

[1] J. Asshiddiqie and M. A. Safa'at, *Teori Hans Kelsen Tentang Hukum* (Konstitusi Press dengan PT Syaamil Cipta Media, 2006), https://books.google.co.id/books?id=I2C8AQAACAAJ.

a coercive order that is normatively organized, wherein the use of coercion is limited to and regulated by law itself.

Further, coercive order is defined as a social regulatory system that prescribes certain individual behaviors and enforces compliance by attaching measured coercion, binding it to actions imposed upon violators in the form of socially organized sanctions.[2] In practice, this concept is closely related to criminal law, which regulates human conduct to ensure compliance with obligations as members of society and to safeguard the rights of others. Accordingly, the existence of sanctions is an essential element distinguishing law from social, moral, or religious norms. For Kelsen, without institutionalized coercion, a normative system cannot be considered law. In relation to this, Prof. Sudarto (as cited in Muladi & Nawawi Arief) states that punishment is "suffering imposed on a person who deliberately commits an act that fulfills certain requirements." Similarly, Prof. Roeslan Saleh asserts that "punishment is a reaction to a criminal act, manifested as a hardship intentionally inflicted by the state upon the perpetrator of the offense."[3]

Furthermore, in formulating coercive criminal law norms, another field of study plays an important role, namely criminology. Criminology functions as a critical analytical framework for understanding crime, offenders, victims, and the social consequences of criminalization. Unlike criminal law, which is normative in nature and focuses on prescribing prohibitions and sanctions, criminology explains how and why certain acts come to be constructed as crimes, who is most affected by law enforcement, and how criminal law operates within social practice. Through this approach, criminology scrutinizes the assumptions underlying the formation of criminal norms, including claims relating to order, security, and prevention. In essence, criminology serves as an evaluative tool for assessing the effectiveness and justice of criminal law, while also acting as a corrective to the state's tendency to employ criminal law merely as an instrument of control and coercion.

This perspective aligns with Christie's assertion that "crime does not exist, only acts exist; acts are given different meanings within various social frameworks." This statement underscores that the designation of an act as a criminal offense is not natural, but rather influenced by particular social constructions and historical contexts.[4] Furthermore, the state subjectively possesses three fundamental powers as inherent rights, namely:[5]

1. The authority to determine which acts are prohibited and to stipulate the types and severity of criminal sanctions imposed upon their violation.
2. The authority to implement criminal law by prosecuting and imposing punishment on those who violate previously established criminal rules.
3. The authority to execute criminal sanctions imposed on offenders.

This demonstrates that the boundary between criminal and non-criminal acts ultimately results from decisions made by the state and society, institutionalized through criminal law. Given this inherently subjective character, an act may be criminalized in one period and subsequently decriminalized in another.

This understanding becomes particularly relevant given that Indonesia has undertaken a fundamental reform of its criminal law through Law No. 1 of 2023. Prior to this reform, the

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[2] Hans. Kelsen, *Pure Theory of Law* (UNIV OF CALIFORNIA PRESS, 2022), 356.

[3] B. N. Arief, *Teori-Teori Dan Kebijakan Pidana* (Alumni, 1984), https://books.google.co.id/books?id=d6t1GwAACAAJ.

[4] Steven Hutchinson, *Introduction To Criminology LA2010 - Module Guide (University of London)* (University of London, 202 AD; University of London, n.d.).

[5] Adami Chazawi, *Pelajaran hukum pidana / Bagian 1, Stelsel pidana, tindak pidana, teori-teori pemidanaan & batas berlakunya hukum pidana* (RajaGrafindo Persada, 2002).

prevailing criminal law was historically understood as a legacy of the Wetboek van Strafrecht, the Dutch colonial criminal code. This condition prompted various efforts to develop a national criminal law system rooted in the philosophical values of Indonesian society and inspired by the spirit of independence. In this context, Eddy O.S. Hiariej (2024) emphasizes that the rapid development of criminal law compels states, particularly postcolonial states, to adapt their criminal codes to their respective needs and social contexts. Such adaptation may be pursued through the enactment of Law No. 1 of 2023, which reflects the philosophy of an independent state, or through mechanisms of decodification. This phenomenon affirms that the state holds authoritative power in determining which acts are to be classified as criminal offenses. Nevertheless, notwithstanding the state's claims and intentions to decolonize its criminal law, the process of drafting Law No. 1 of 2023 has continued to be perceived by the public as insufficiently participatory, as reflected in the widespread opposition that emerged during its formulation in 2022.

One of the main factors triggering public resistance was the extensive regulation of crimes against the state, reflected in the predominance of norms oriented toward protecting the interests of state institutions without being accompanied by clear, objective, and measurable parameters. The absence of sufficient normative limitations opens wide space for interpretation by law enforcement authorities, thereby creating potential for misuse in practice. This condition becomes particularly problematic within a democratic state governed by the rule of law, given that the state possesses institutionalized coercive power to determine, interpret, and enforce criminal law. When criminal provisions are formulated in abstract terms and primarily oriented toward state interests, criminal law risks being employed as an instrument of criminalization against individuals or groups deemed disruptive to state stability, authority, or interests. Thus, the regulation of crimes against the state without stringent parameters not only threatens the principle of legal certainty but also risks perpetuating asymmetrical power relations between the state and its citizens, while reproducing repressive characteristics of criminal law that are incompatible with the spirit of human rights protection.

This situation indicates that the problem of regulating crimes against the state in the draft legislation does not merely concern the technical aspects of norm formulation or the potential for multiple interpretations in law enforcement practice. This situation also touches on a more fundamental issue: the manner in which criminal law constructs and legitimizes knowledge about the state, threats, and social order. When the state is positioned as a subject that must be broadly protected without strict normative parameters, criminal law no longer functions solely as an instrument of legal protection, but instead risks becoming a mechanism for the production and reproduction of power relations between the state and its citizens. In this context, crimes against the state cannot be understood in a neutral manner; rather, they must be seen as legal constructions imbued with particular political interests and security ideologies.

Nevertheless, previous studies on the reform of Law No. 1 of 1946 concerning the Criminal Code have tended to position the issue of crimes against the state within a normative juridical framework and within the broader agenda of criminal law reform, focusing on recodification, the harmonization of Pancasila values, and shifts in punishment paradigms. Studies such as Antony and Situmeang (2025), for instance, emphasize that Law No. 1 of 2023 represents a form of decolonization through the elimination of colonial characteristics and the normative–conceptual strengthening of the national criminal law system. Similar emphases may also be found in other works that view the reform of the Criminal Code as a project of modernizing criminal law and consolidating constitutional values. While these approaches are undoubtedly important, they have not sufficiently examined the epistemological dimension of criminal law, particularly how the formulation of offenses against the state reflects, or even reproduces, colonial perspectives that position the state as a superior entity requiring protection from its citizens. These studies have also not extensively employed a critical criminological

lens to uncover how criminal law may function as an instrument of social control and as a mechanism for criminalizing political expression, criticism, or dissent.

Accordingly, a research gap remains in the absence of studies that systematically connect the decolonization of criminal law epistemology with a critical criminological analysis of the formulation of crimes against the state in Law No. 1 of 2023. As of the time of writing, there has been no study that explicitly questions whether the reformulation of crimes against the state in Law No. 1 of 2023 genuinely signifies a break from repressive colonial epistemology, or whether it instead perpetuates such logic in a more constitutional and covert form. Therefore, this study seeks to fill that gap by analyzing crimes against the state as an arena of contestation over knowledge, power, and legitimacy within Indonesia's postcolonial criminal law.

II. Legal Materials and Research Method

This study adopts a Critical Theory paradigm, which views law and crime as socially constructed and historically shaped by power relations rather than neutral categories. Ontologically it is grounded in historical realism, and epistemologically it adopts a transactional and value-laden stance. Guided by this paradigm, the research applies a critical criminology approach and uses qualitative doctrinal analysis to examine primary legal materials, policy documents, and relevant scholarly works.

Furthermore, this study adopts a research strategy commonly employed in qualitative research, with critical analysis serving as its overarching framework. Specifically, the research employs several complementary approaches. A conceptual approach is employed to clarify and systematize the core concepts relevant to this study, particularly those concerning criminal law, criminalization, the state, and citizen–state relations. This involves critically examining doctrinal writings, policy arguments, and scholarly debates on crimes against the state in order to construct a coherent analytical framework through which the formulation of such crimes in Law No. 1 of 2023 can be assessed.

A philosophical approach is applied to interrogate the foundational assumptions underlying the formulation of criminal law norms, especially in relation to rationality, legitimacy, and the purposes of punishment. This is undertaken by situating criminal law as a form of knowledge embedded in relations of power and ideology, and by evaluating whether the justifications used in the formulation of crimes against the state reflect democratic, rights-respecting, and postcolonial legal reasoning or instead reproduce colonial logics of state protection and control.

A historical approach is employed to trace the genealogy and development of criminal law norms, particularly in relation to colonial legacies and their transformation within the post-independence national legal framework across three key periods: (1) their original formulation under the Dutch colonial penal code (Wetboek van Strafrecht voor Nederlandsch-Indië/WvS), (2) their retention and adaptation in the post-independence KUHP, and (3) their reformulation in Law No. 1 of 2023. By examining legal texts, legislative debates, and doctrinal interpretations across these periods, this method enables the study to identify continuities, ruptures, and reconfigurations of colonial epistemology within contemporary criminal law. Finally, a hermeneutic approach is used to interpret the relevant legal texts critically and contextually. By attending to the interaction between text, history, and social meaning, this approach enables interpretations that go beyond literal readings and uncover the interests, values, and power relations embedded in the formulation of these provisions.

The data used in this study consist of primary, secondary, and tertiary legal materials. Primary materials include relevant legislation, particularly criminal law provisions and related regulations. Secondary materials comprise scholarly literature such as books, journal articles,

conference proceedings, and academic works addressing criminal law, and critical criminology. Tertiary materials are used to support conceptual clarification and include general dictionaries, legal dictionaries, and encyclopedias. Data collection is conducted through library research, employing systematic techniques of identification, inventory, and classification of legal materials. The collected legal materials are analyzed qualitatively through doctrinal analysis, thematic analysis, and critical discourse analysis. Doctrinal analysis is used to examine the structure and normative justification of the relevant provisions. Thematic analysis identifies key recurring concepts such as state dignity, sovereignty, public order, dissent, and citizen–state relations. Critical discourse analysis is then employed to categorize how these themes construct and normalize particular power relations, including (1) prioritization of state protection over individual rights, (2) legitimization of criminalization through security and moral narratives, and (3) continuities with colonial modes of control. This analytical design ensures that the assessment of legal norms is systematic, verifiable, and replicable.

III. Results and Discussion

A. Critical Criminology Review of Criminal Law

Criminology as a scientific discipline that studies crime can be traced through a long intellectual tradition, as reflected in various classic works and textbooks that developed in Europe and America.6 Since its emergence as a scientific study of crime, criminology has grown as a response to social conditions characterized by instability and disorder in European countries in the 18th and 19th centuries. In this context, criminology was expected to be a rational instrument capable of finding social "natural laws", in order to support the project of modernity in realizing order and social welfare. Such a situation raises the premise that all forms of behavior that is seen as hindering this goal will be constructed as a violation of the natural order that should be maintained by law. Along with the times, critical thinking rooted in various disciplines, such as philosophy, sociology, politics, and economics, has begun to emerge in recent decades. This school of thought no longer focuses on the classic debate over whether human behavior is free or determined, but rather seeks to understand the social processes through which humans construct, give meaning to, and reproduce the social world in which they live.

It is within this framework that critical criminology was born, especially when the classical and positivistic paradigms are no longer considered adequate to explain the phenomenon of crime, which is increasingly laden with political dimensions and power relations. Critical criminology is tasked with examining how certain actions and subjects are stigmatized or labeled as "evil" through social, legal, and institutional mechanisms. As stated by Richard Quinney, critical criminology studies no longer place criminals as the center of analysis, but rather direct attention to social structures, power relations, and legal systems that determine what is referred to as crime and who is constructed as an offender (cited in Wozniak et al., 2014).7 According to Sykes, criminal law has a tendency to regulate poor and minority groups through law enforcement officers who aim to:8

1. Impose standards of morality and standards of behavior on the whole society;
2. Protect property and physical security from deprivation; and
3. Extend the definition of illegal or criminal acts to anyone who threatens the *status quo*.

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[6] Topo Santoso and Eva Akhyani Zulfa, *Kriminologi* (PT RajaGrafindo Pesada, 2001).

[7] John F. Wozniak et al., "Richard Quinney's the Social Reality of Crime: A Marked Departure from and Reinterpretation of Traditional Criminology," *Social Justice*, September 22, 2015, https://www.semanticscholar.org/paper/Richard-Quinney's-the-Social-Reality-of-Crime:-A-of-Wozniak-Cullen/aadb3d6c5b471988c2a8e168709da2ac688b9fca.

[8] Gresham M. Sykes, "The Rise of Critical Criminology," *The Journal of Criminal Law and Criminology (1973-)* 65, no. 2 (1974): 206, https://doi.org/10.2307/1142539.

Based on this understanding, critical criminology asserts that actions categorized as crimes are not inherent, but are the result of social and political constructions shaped by power relations, and depend on parties who have the authority to determine and define crimes so that the objectivity of criminal law becomes blurred. In addition, critical criminology also focuses on the process of criminalization of a person, in contrast to conventional criminology which focuses more on the question "why does someone commit a crime?". Critical criminology is more often concerned with questions such as "Why are certain acts categorized as crimes, and why are certain groups more often criminalized?" which indicates that the focus of investigation shifts from the individual offender to the social and political processes that label an act as criminal.9 This is important to note considering that the state has a monopoly power in social construction through the creation of crime through the criminalization process which is dominantly influenced by interests and power relations. That is, according to this view, crime is the result of a criminalization process shaped by power relations, political interests, and selective law enforcement practices, not merely because the behavior is dangerous or morally wrong. Groups or institutions that have power have the capacity to determine which actions are considered threatening to their interests that they want to defend, then criminalize them through criminal law. As a result, acts that are more often committed by marginalized groups will tend to be more easily criminalized, while harmful acts committed by powerful groups are less criminalized.

This is in line with Michel Foucault's thinking in understanding post-structuralism10 through his explanation of the power-knowledge relation.11 Foucault views power as a network of relations that are multiple and dispersed, and actively produce social order as well as knowledge.12 Within this framework, it is believed that law does not stand outside of power, but is the result of various forms of interlocking power. At the level of modern societies, law operates alongside mechanisms of power in a variety of social spaces, thereby expanding practices of surveillance, knowledge production, and the recording of individuals for institutional purposes. Legality, along with techniques of knowledge and control, functions as a defining tool in relation to empirical knowledge in every dimension of social life. Through its interplay with other discourses, legality shapes the individual as a key node in a n increasingly complex network of administrative control.13 Foucault's methodological approach in examining this issue is developed through his work "Madness and Civilization",14 which traces the historical process when rationality and science become the dominant framework in defining and regulating human behavior that is then categorized as "madness".15 By identifying these historical transition points, Foucault reveals social relations and forms of experience before they are constructed through the

[9] Sykes, "The Rise of Critical Criminology."
[10] Post-structuralism is the antithesis of structuralism which views social reality and meaning as stable, universal, and determined by a fixed structure. Post-structuralism negates this view by emphasizing that meaning is fluid, contextual, and always open to reinterpretation. Structure is not considered as the sole determinant, but rather as a temporary result of discursive practices and power relations that are constantly changing.
[11] John J. McManmon, "Formalism, Structuralism, Poststructuralism, and Text," *Christianity & Literature* 40, no. 1 (1990): 57–67, https://doi.org/10.1177/014833319004000107.
[12] Gerald Turkel, "Michel Foucault: Law, Power, and Knowledge," *Journal of Law and Society* 17, no. 2 (1990): 170–93, JSTOR, https://doi.org/10.2307/1410084.
[13] Turkel, "Michel Foucault: Law, Power, and Knowledge."
[14] Michel Foucault, *Madness and Civilization*, 0 ed. (Routledge, 2003), https://doi.org/10.4324/9780203164693.
[15] The term "madness" is not understood merely as a natural or purely medical condition, but rather as a social category historically constructed when rationality and modern science were established as the primary standards for evaluating human behavior. Behaviors deemed irrational, deviant, or inconsistent with dominant norms are subsequently labeled as "mad," leading those who bear this label to lose legitimacy over their voices and actions. Through this labeling process, institutions such as the state, science, and medicine acquire the authority to regulate, supervise, and even confine such individuals, thereby rendering "madness" a mechanism of social control rooted in the relationship between knowledge and power.

discourses of psychology, psychiatry, and law, while showing how observation, factuality, and objective rationality are formed in a broader social context. In this context, law enforcement can be understood as a concrete practice of power-knowledge relations at work in social life. In line with Foucault's thinking, law enforcement operates through mechanisms of normalization, surveillance, and discipline that target individuals as objects of knowledge as well as subjects to be controlled. Law enforcement does not only enforce rules, but also plays a role in producing categories such as "normal", "deviant", or "dangerous" through legally and scientifically legitimized recording, classification, and observation procedures.

As Foucault points out in Discipline and Punish (2019), modern law enforcement practices tend to be selective because they operate within institutional networks that more intensely monitor certain social groups, especially those in marginalized positions. Law enforcement will produce a "criminal class" and reproduce social inequality, instead of eliminating it. In the power/knowledge framework, law and policing practices simultaneously create knowledge about who is considered dangerous or criminal, so that repressive actions gain scientific and moral legitimacy. As such, law enforcement serves to manage populations and "protect society" at the expense of certain groups, making it an inherently non-neutral and power-laden tool of social control.[16] Thus, it can be understood that according to the view of critical criminology, criminal law is part of a network of disciplines extensive. Criminal law works alongside other institutions such as prisons, schools, hospitals, and the military to discipline the body and regulate individual behavior. Through mechanisms of surveillance, classification, and normalization, criminal law produces compliance and social order. Selectivity arises because the primary orientation of criminal law is population management and the maintenance of social order, not the achievement of equal individualized justice for all citizens. This is supported by Foucault's view, which explains that prison is a sign of success in carrying out its power function, which is to selectively manage and distribute illegality.[17] Criminal law tends to tolerate forms of illegality committed by powerful groups, such as economic crime, corporations, or the state, while systematically cracking down on illegality committed by the lower classes. Thus, the selectivity of criminal law is a strategy of power that allows the state to control certain groups while allowing other forms of violations to continue to operate.

B. The Reproduction of Colonial Logic in the Formulation of Crimes against the State in Indonesian Criminal Law

Within a critical criminological perspective, the function of criminal law in relation to crimes against the state cannot be separated from the state's need for social control. Criminalization is used to establish the limits of criticism that the state is willing to tolerate.[18] Actions representing political conflict and social discontent are treated as disturbances to public order rather than as expressions of democratic participation. This function mirrors colonial legal practices, in which criminal law served to preserve the stability of power. Criminal law is not directed toward substantively resolving conflict, but toward suppressing and containing potential resistance. It operates preventively and symbolically to reaffirm state authority. This rationality of control illustrates the continuity of colonial logic in criminal law reform, demonstrating that normative change does not automatically transform the ideological function of criminal law.

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[16] Foucault, *Madness and Civilization*.

[17] David Garland, "Foucault's 'Discipline and Punish'--An Exposition and Critique," *American Bar Foundation Research Journal* 11, no. 4 (1986): 847–80, JSTOR.

[18] Zul Khaidir Kadir, "Kriminalisasi Tanpa Batas: Mengurai Penyalahgunaan Kekuasaan Dalam Legislasi Kodifikasi Hukum Pidana Modern," *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 2, no. 2 (2025): 01–18, https://doi.org/10.62383/presidensial.v2i2.665.

In order to determine whether the formulation of crimes against the state reproduces colonial logic, it is first necessary to clarify what is meant by "*colonial logic*" in criminal law. Colonial logic is not understood merely as the historical legacy of colonial law, but as a rationality of power that continues to operate after independence through hegemonic residues shaping how the state and society understand identity, authority, and power relations.[19] Within this logic, state order and stability are positioned as supreme values, while citizens' rights and freedoms are subordinated. Citizens are not regarded primarily as autonomous political subjects, but also as potential objects of control capable of disrupting order. Criminal law within this framework functions primarily to protect state power rather than to protect citizens' rights.[20] Moreover, the relationship between the state and citizens is considered hierarchical and asymmetrical. These criteria serve as analytical tools for assessing whether the formulation of crimes against the state continues to operate within colonial rationality, even when articulated through the language of a modern national legal system.

The construction of crimes against the state as offences intended to protect the "dignity of the state" is a legacy of the WvS, a colonial criminal code translated and adapted from Dutch law into the Indonesian legal system. Article 134 of the WvS provided that "intentional insult against the President or the Vice President shall be punishable by imprisonment of up to six years or a fine of up to four thousand five hundred rupiahs." The notion of "insult" under this provision covered acts committed outside the presence of the person insulted, whether performed publicly or privately, orally or in writing, as long as they were expressed in front of more than four persons or before a third party who, without consent, felt offended. Furthermore, Article 137(1) stipulated that "any person who disseminates, displays, or posts in public any writing or image containing insult against the President or Vice President, with the intention that such insult be known or become more widely known by the public, shall be punishable by imprisonment of up to one year and four months or a fine of up to four thousand five hundred rupiahs." In its subsequent development, the Constitutional Court, through Decision No. 013-022/PUU-IV/2006, declared these provisions unconstitutional. The Court reasoned that Articles 134, 136 bis, and 137 of the WvS generated legal uncertainty (*rechtsonzekerheid*) because they were highly susceptible to subjective interpretation as to whether a protest, expression of opinion, or criticism constituted legitimate political expression or punishable insult against the President and/or Vice President.

Unfortunately, this formulation was reintroduced in Law No. 1 of 2023 under Chapter II. Article 218(1) of Law No. 1 of 2023 stipulates that "any person who publicly attacks the honor or dignity of the President and/or Vice President shall be punished with imprisonment of up to three years or a fine of up to Category IV." The explanatory provision clarifies that "attacking honor or dignity" refers to acts that demean or damage reputation or self-worth, including defamation or slander. Based on this construction, the subject explicitly protected is the "honor," "dignity," and "self-worth" of the President and Vice President. This formulation demonstrates that criminal law positions the head of state and the vice president as figures possessing a special symbolic value that must be safeguarded, rather than merely as public officials who may be openly criticized. The narrative constructed here is one of vertical protection, which seeks to maintain the symbolic superiority of executive power. However, paragraph (2) introduces a seemingly corrective narrative by providing exceptions on the grounds of "public interest" and "self-defense." Textually, this appears to create space for public expression, criticism, or actions motivated by rational democratic considerations. Nevertheless, the formulation of "public

[19] Robertus Wijanarko, "POSKOLONIALISME1 DAN STUDI TEOLOGI Sebuah Pengantar," *Studia Philosophica et Theologica* 8, no. 2 (2008): 123–33, https://doi.org/10.35312/spet.v8i2.102.
[20] Syahriza Alkohir Anggoro, "Politik Hukum: Mencari Sejumlah Penjelasan," *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 77–86, https://doi.org/10.26905/idjch.v10i1.2871.

interest" remains problematic due to its open-ended nature and its dependence on the interpretation of law enforcement authorities. Rather than dismantling power relations, paragraph (2) ultimately reinforces them, as the state remains the sole arbiter of what constitutes legitimate public interest. Accordingly, this provision continues to reproduce asymmetric power relations by prioritizing the protection of the state, while positioning citizens defensively and requiring them to prove that their expression genuinely serves the public interest. Additonally, viewed from Article 219, it is still stipulated that an offense exists concerning attacks on the honor or dignity of the President and/or Vice President. The provision states that: "Any person who broadcasts, displays, or posts writings or images so that they are visible to the public, plays recordings so that they are audible to the public, or disseminates them through information technology media containing an attack on the honor or dignity of the President and/or Vice President with the intention that the content becomes known or better known by the public, shall be subject to a maximum imprisonment of four (4) years or a maximum fine of category IV."

Those formulation constructs and reproduces a regime of truth concerning what is meant by "state dignity," in which dignity is not understood as the result of an open social consensus, but rather as a normative construction produced and maintained by the state through criminal law.21 Within this regime, the state positions itself as the sole authority entitled to define the boundary between legitimate criticism and punishable insult. Consequently, "dignity" no longer functions as an ethical concept that is reflective and dialogical, but becomes a coercive category used to discipline public discourse. Thus, criminal law does not merely regulate behavior; it actively participates in controlling the production of meaning and truth concerning power, while simultaneously marginalizing citizens' experiences, interpretations, and critical voices from the realm of legal legitimacy.

C. The Failure of Rationalization in Indonesia's Crimes Against the State

This asymmetric protection structure demonstrates that such provisions designed to discipline political expression. Such offenses cannot be separated from the state's need for social control. It is reinforces a fundamental asymmetry because it does not open the possibility for the state to be positioned as a subject capable of committing crimes. The state is presented solely as an entity that must be protected, while citizens are placed as the only subjects who can be criminalized. This normative configuration implicitly constructs a narrative that threats always come "from below," not "from above." In fact, as previously explained, the state possesses far greater capacity to exercise structural violence, commit human rights violations, employ criminal law repressively, and criminalize legitimate political expression. The absence of a conceptual mechanism to position the state as a perpetrator indicates that criminal law does not operate neutrally; instead, it sides with the preservation of power relations and the interests of those in authority.[22] This asymmetry simultaneously reproduces colonial rationality, which historically placed rulers beyond the reach of criminal accountability while situating the people as objects of control and discipline. By rendering the state an entity that is normatively "incapable of wrongdoing," criminal law loses its corrective function and its role as a mechanism of accountability for potential abuses of power. Within the framework of critical criminology, this situation

[21] The elucidation of Article 219 of the Law No. 1 of 2023, which merely states the phrase "sufficiently clear" (*cukup jelas)* reflects the absence of conceptual elaboration on the elements of the offense formulated in the provision. This lack of normative clarification opens broad and subjective interpretive space, particularly for law enforcement authorities in determining the boundary between protected criticism and acts that may be classified as criminal offenses. In the context of criminal law, such an absence of adequate explanation contradicts the principles of lex certa and lex stricta, which require every criminal provision to be formulated clearly, firmly, and unambiguously.

[22] Adiyansyah Lukman Hakim et al., "TINJAUAN KRIMINOLOGIS TERHADAP AKAR PENYEBAB KEJAHATAN: ANALISIS SEBAB TIMBULNYA," *Jurnal Intelek Insan Cendikia* 1, no. 1 (2024): 30–39.

demonstrates that criminal law operates as a technology of power aimed at maintaining state dominance over citizens.

In modern criminal law literature, not every violation of ethical values or abstract concepts may automatically constitute grounds for punishment unless a concrete danger or actual harm to a legitimate legal interest can be demonstrated.[23] When abstract concepts such as "*dignity*" lack clear epistemological and operational boundaries, criminal law risks functioning as an instrument of state moral enforcement rather than as a mechanism for protecting against harm. This condition contradicts the principle of the rationalization of criminal law adopted in the Model Penal Code, which rejects criminalization based solely on morality without objective and measurable criteria. Therefore, the absence of adequate clarification in Article 219 of Law No. 1 of 2023 opens space for abuse of authority through the punishment of expressions that rightly belong in the ethical and discursive realm rather than the criminal sphere. Conceptually, this provision cannot be separated from the tradition of lèse-majesté, rooted in the political theology of European monarchies, in which rulers are positioned as sacred subjects who must be protected from symbolic criticism.[24]

The relationship between the state and its citizens as reflected in the formulation of crimes against the state exhibits a pattern consistent with the lèse-majesté logic inherited from colonial rule. Within this framework, the state is understood as an entity possessing a sacred dimension, as constructed in Kantorowicz's concept of "the king's two bodies." The state is presumed to possess a political body that is eternal, untouchable, and must be protected from any form of criticism, while citizens occupy the position of the natural body, perpetually susceptible to being perceived as a threat. Under this construction, criminal law does not function to protect citizens from abuses of power, but rather to safeguard the "honor" of the state's political body.[25] As a result, criminalization is determined not by the degree of concrete harm posed to society, but by the potential of certain acts to be perceived as injuring the symbolic authority of the state. This pattern renders political opposition, activists, journalists, and critical groups the most vulnerable to being constructed as threats.[26] Thus, this asymmetrical relationship clearly illustrates that the formulation of crimes against the state borrows theological-political legitimacy concerning the sacrality of power to justify the continuation of control over citizens in a postcolonial state context, inevitably reproducing colonial power logic.

Viewed within Indonesia's historical context, the continuity of colonial legal logic becomes evident. Following independence, Indonesia retained the colonial WvS, which was subsequently declared applicable with certain modifications through post-independence legislation. Within this continuity, the provisions that originally protected the Dutch sovereign, namely the Queen of the Netherlands and the Governor-General as the supreme colonial authority, were merely substituted with "the President or Vice President" in the Indonesian Criminal Code. Historically, the "Queen" represented the embodiment of Dutch sovereignty, while the Governor-General functioned as the singular ruler in the Dutch East Indies, exercising absolute authority on behalf of the Dutch Crown. As acknowledged by the Constitutional Court (2008), these provisions were essentially colonial criminal norms designed to criminalize the colonized population with ease, by framing dissent or criticism as "insulting the authorities." Their function was deeply political which is to intimidate, discipline, and pacify colonial subjects so that they remained obedient and refrained from challenging the power of the colonial regime.

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[23] Martin D. Schwartz and Walter S. DeKeseredy, "Critical Criminology," in *The Encyclopedia of Criminology and Criminal Justice* (Wiley, 2013), https://doi.org/10.1002/9781118517383.wbeccj190.

[24] Ernst H. Kantorowicz and Conrad Leyser, *The King's Two Bodies: A Study in Mediaeval Political Theology*, First Princeton classics edition, Princeton Classics (Princeton University Press, 2016).

[25] Anita Anita, "POLITIK HUKUM DALAM PENEGAKAN HUKUM DI INDONESIA," *"Dharmasisya" Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022), https://scholarhub.ui.ac.id/dharmasisya/vol2/iss1/25.

[26] Zul Khaidir Kadir, "Kriminalisasi Tanpa Batas."

Against this background, transplanting such provisions into the Indonesian national legal system without deconstructing their underlying logic produces a fundamental conceptual dissonance. In a democratic constitutional state, such as Indonesia, the President does not occupy the metaphysical position of "the State," nor does the office carry the sacralized sovereignty characteristic of monarchies where the doctrine of lèse-majesté emerged. In monarchic systems, the ruler is equated with the State itself; thus, protecting the monarch's dignity is framed as protecting the very existence of the polity. Indonesia's constitutional structure, however, constructs the President as a public official, subject to accountability, criticism, and democratic scrutiny. Retaining criminal provisions that prioritize the symbolic sanctity of executive power effectively imports a colonial and monarchical logic into a republican-democratic order. Consequently, these provisions are normatively incompatible with Indonesia's constitutional framework, as they privilege the protection of state authority over citizens' democratic freedoms and perpetuate asymmetric power relations reminiscent of the colonial past rather than reflecting a genuinely decolonized and democratic criminal law paradigm.

Furthermore, the reproduction of colonial logic is also evident in the way criminal law abstracts the "state" as a homogeneous moral entity, as though it possesses honor, dignity, and ethical sensitivity equivalent to those of a human subject. This abstraction is epistemologically problematic because the state is not a moral agent; it is an institutional construct composed of power relations, procedures, and apparatuses that operate through delegated authority.[27] By attributing moral qualities typically associated with human beings to the state, criminal law obscures the fundamental distinction between protecting individuals and protecting power. Consequently, state interests are constructed as indisputable public interests, so that any expression perceived as degrading or disturbing the state can easily be reduced to a threat to society as a whole. From the perspective of critical criminology, this blurring is ideological in nature because it forecloses recognition of internal conflicts of interest within the state and the potential for abuse of power by its apparatus.

Feinberg supports this view by explaining that the state cannot be positioned as a victim of harm in the moral sense, because harm inherently presupposes the existence of a subject capable of experiencing suffering, personal loss, or tangible normative impact.[28] In modern criminal law theory, harm is not understood as interference with abstractions or symbols, but as a violation of the interests of individuals who possess moral and psychological capacity. The state, as an institutional construct operating through structures and apparatuses, has no consciousness, feelings, or capacity to experience suffering in the way human beings do. Therefore, the claim that the state can be "morally harmed" is essentially a political metaphor rather than an ethical category. The use of such a metaphor in criminal law carries serious implications because it shifts the focus of punishment from protecting citizens as moral subjects to protecting the dignity and authority of state institutions, an object that conceptually lies outside the scope of the harm principle as a legitimate basis for criminalization.

These findings demonstrate that the reform of the Criminal Code does not automatically constitute a process of decolonizing criminal law, contrary to what several earlier normative–conceptual studies have suggested. Instead, the analysis of offenses related to crimes against the state reveals the continued operation of colonial logic through the preservation of asymmetric power relations between the state and its citizens. The formulation of these offenses reaffirms a protectionist paradigm that positions the state as

[27] According to Herbert Lionel Adolphus Hart in his book Punishment and Responsibility (1968), a moral agent is an individual who possesses the rational capacity to understand norms, to make conscious choices, and to experience the moral consequences of his or her actions.

[28] Gerald Dworkin and Joel Feinberg, "Harm to Others: The Moral Limits of the Criminal Law, Vol. I," *The Philosophical Review* 98 (April 1989): 239, https://doi.org/10.2307/2185284.

a superior entity requiring special safeguarding from its citizens, while simultaneously reinforcing the role of criminal law as an instrument of social control and political stabilization. Consequently, the reform of the Criminal Code has not yet realized an epistemological transformation toward a democratic model of criminal law oriented primarily toward the protection of citizens' rights.

IV. Conclusion and Recommendations

Departing from the foregoing discussion, this study identifies two principal findings concerning crimes against the state from the perspective of critical criminology. First, within critical criminology, crimes against the state are not understood as neutral or natural legal categories, but rather as social and political constructions shaped by power relations between the state and its citizens. In this framework, criminalization is not determined by the inherent social harm of a particular act, but by the interests of the state in maintaining order, stability, and the authority of power. Criminal law thus operates as an instrument of social control that delineates the boundaries of political expression and action deemed disruptive to state interests.

Second, the formulation of crimes against the state contained in Law No. 1 of 2023 especially at Chapter II demonstrates a tendency to reproduce colonial logic by positioning the state as a superior subject that must be protected from its citizens. This reproduction is evident in the use of abstract norms oriented toward safeguarding the honor, dignity, and authority of the state without clear and stringent normative parameters. Such formulations create an asymmetrical relationship between the state and citizens within criminal law. Consequently, the reform introduced through Law No. 1 of 2023 has not fully severed the colonial rationality that treats criminal law primarily as a tool for protecting state power.

Third, these findings demonstrate that the formulation of crimes against the state in Law No. 1 of 2023 does not signify a process of democratic rationalization, but rather reproduces asymmetric power relations rooted in colonial and monarchical legal traditions. By sacralizing the state and positioning it as a privileged object of criminal law protection, while simultaneously using criminalization as a tool of social control, the law departs from the harm principle and undermines the normative foundations of a democratic constitutional order. In this sense, the reform of Indonesia's Criminal Code does not represent a decolonized transformation of criminal law, but instead reaffirms a colonial epistemology in which the protection of state authority prevails over the protection of citizens' rights and democratic participation.

These findings carry significant implications for the development of national criminal law within a democratic state governed by the rule of law. Theoretically, this study reaffirms the relevance of critical criminology in reading criminal law as an exercise of power rather than merely a neutral normative system. This perspective encourages a reassessment of the foundations of criminalization, particularly in relation to offenses categorized as crimes against the state. Normatively, the findings indicate the need for stringent parameters of criminalization to ensure that criminal law is not employed to restrict freedom of expression and political participation. Epistemologically, the decolonization of criminal law requires a shift in protective orientation from the state as an abstract entity toward citizens as the primary subjects of legal protection. Finally, in practical terms, abstract and coercive norms risk expanding the scope for selective criminalization in law enforcement. Therefore, criminal law reform must be accompanied by a critical reading of the power relations legitimized by criminal law. It is hoped that this study will serve as an initial foundation for future empirical research examining how offenses against the state are applied in legal practice and their implications for civil liberties and democratic space in Indonesia.

The significance of this study lies in the conceptual foundation it provides for the advancement of future research. Through an epistemic deconstruction of the new Indonesian Criminal Code, this research demonstrates that legal reform cannot be reduced to textual modification or institutional redesign, since colonial power logics continue to shape

contemporary criminalization practices. This intervention enriches ongoing debates by highlighting the persistent entanglement between law, knowledge, and power within postcolonial legal systems, thereby offering a more nuanced framework for understanding state–citizen relations in criminal law. At the same time, this study consciously situates itself as a preliminary yet essential stage within a broader decolonial project. By dismantling and critically interrogating the colonial epistemologies embedded in criminal law doctrine, it opens conceptual space for subsequent scholarship to proceed toward substantive epistemological reconstruction. Future research may further advance this trajectory through Quijano's coloniality of power framework, particularly by developing alternative legal rationalities that challenge state-centered dominance and reorient criminal law toward genuinely decolonial, citizen-centered, and democratically grounded paradigms.

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