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Decolonizing Legal Norms: An Examination of Colonial-Era Criminal Codes in Modern Indonesian Jurisprudence

Md Shodiq[1], Baran Akbulut[2], Hale Yılmaz[3]
[1]Universitas Jayabaya, Indonesia
[2]Istanbul Technical University, Turkey
[3]Ankara University, Turkey

ABSTRACT

Background. Indonesian criminal law continues to reflect colonial legacies inherited from the Dutch *Wetboek van Strafrecht*. Despite constitutional independence and ongoing legislative reforms, many colonial-era criminal provisions remain operative and influential within contemporary judicial reasoning, raising critical questions about the depth of legal decolonization in modern Indonesian jurisprudence.

Purpose. This study aims to examine how colonial-era criminal codes persist and function within modern Indonesian jurisprudence, with particular emphasis on judicial interpretation, doctrinal practices, and the epistemic continuity of colonial legal norms in criminal adjudication.

Method. A qualitative doctrinal and socio-legal research design is employed. The study analyzes statutory criminal law provisions, selected judicial decisions, and relevant legal scholarship using a postcolonial legal theory framework to identify patterns of colonial normative persistence and interpretive reasoning.

Results. The findings reveal that a substantial number of criminal law provisions applied in Indonesian courts originate from colonial legal frameworks and are interpreted through formalistic reasoning that prioritizes state authority and public order. Judicial practice demonstrates limited engagement with socio-historical context judicial decisions, and relevant legal

Conclusion. The study concludes that legal decolonization in Indonesia remains largely symbolic at the textual level and has not fully transformed jurisprudential practice.

KEYWORDS

Colonial Criminal, Indonesian Jurisprudence, Legal Deccolonization

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Correspondence:

Md Shodiq,
emdeshodiq@gmail.com

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INTRODUCTION

Colonial-era criminal codes continue to shape the legal foundations of many postcolonial states, including Indonesia. The Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) originated from the Dutch *Wetboek van Strafrecht*, a legal instrument designed to serve colonial governance rather than indigenous social realities. This historical inheritance has embedded foreign legal norms, values, and punitive logics into modern Indonesian jurisprudence, creating enduring structural influences on how crime, punishment, and legality are understood (Aamir Ali & Mukhopadhyay, 2024; Swehli dkk., 2025).

The persistence of colonial criminal law has been widely recognized as a source of normative tension within Indonesia's plural legal system. Customary law (*hukum adat*), religious law, and community-based justice mechanisms often coexist uneasily with codified criminal provisions rooted in European legal rationality. Scholarly discourse highlights that this coexistence is not merely technical but deeply ideological, reflecting power relations established during colonial rule that continue to marginalize local legal epistemologies (Anthony & Stanl, 2024; Palumbo, 2025).

Legal reform efforts in Indonesia have repeatedly acknowledged the need to address colonial legacies in criminal law. Debates surrounding the revision and replacement of the KUHP illustrate a growing awareness that legal modernization cannot be separated from historical critique. Reform initiatives emphasize national identity, cultural relevance, and social justice, while simultaneously grappling with international legal standards and human rights norms. This dual pressure demonstrates the complexity of transforming inherited legal frameworks without reproducing colonial hierarchies in new forms (de Rezende & Filho, 2025; Magaloni, 2024).

Critical legal scholarship provides an important lens for understanding these challenges. Postcolonial legal theory argues that law functions not only as a regulatory system but also as a cultural and political instrument that can perpetuate domination. Thinkers such as Frantz Fanon and legal scholars within Third World Approaches to International Law (TWAIL) assert that colonial law systematically constructed the colonized subject as inferior, legitimizing control through ostensibly neutral legal norms. This theoretical perspective reveals how criminal codes can embody colonial rationalities long after formal independence (Aburabia, 2024; Hynd dkk., 2024).

Contemporary Indonesian jurisprudence increasingly reflects an awareness of the need to decolonize legal norms embedded in criminal law. Academic studies, judicial reasoning, and legislative debates indicate a gradual shift toward contextual interpretation and normative re-evaluation of colonial-era provisions. The examination of these developments contributes to a broader understanding of how postcolonial states negotiate legal continuity and transformation, highlighting the ongoing struggle to align criminal law with indigenous values, social justice, and constitutional ideals (Simanjuntak dkk., 2025; Singh Kelsall dkk., 2025).

Despite extensive discussion on the colonial origins of Indonesia's criminal law, limited attention has been paid to how specific colonial-era norms continue to operate within contemporary judicial reasoning and legal interpretation. Existing studies often focus on historical description or legislative reform processes, leaving a gap in understanding how colonial legal logic persists at the doctrinal and jurisprudential levels in everyday legal practice (Akande, 2025; Davanna dkk., 2025).

Empirical analysis of court decisions remains underdeveloped in postcolonial legal scholarship on Indonesia. Many reform-oriented works assume that the enactment of new laws or revisions automatically weakens colonial influence, while overlooking how judges, prosecutors, and legal scholars may still rely on inherited interpretive frameworks. This gap obscures the subtle ways colonial rationalities are reproduced through legal reasoning rather than through formal legal texts alone.

The relationship between decolonization and legal certainty also remains insufficiently explored. Concerns about stability, predictability, and alignment with global legal standards frequently dominate reform debates, yet the tension between these concerns and the need to dismantle colonial epistemologies is rarely examined in depth. This absence limits critical evaluation of whether current jurisprudence genuinely reflects indigenous legal values or merely adapts colonial norms to a national context (Kannabiran, 2024; Nortje, 2024).

Postcolonial legal theory identifies this gap as an epistemic problem rather than a purely normative one. Scholars such as Boaventura de Sousa Santos emphasize the concept of

"epistemicide," where colonial systems erase alternative ways of knowing and governing. Applying this theoretical lens to Indonesian criminal jurisprudence reveals an unexplored space where colonial-era legal knowledge may continue to suppress local normative frameworks, highlighting the need for a more critical and analytical examination (Rojas-Páez & South, 2024; Tapia Tapia, 2025).

Examining how colonial-era criminal codes function within modern Indonesian jurisprudence is necessary to evaluate the depth and authenticity of legal decolonization. Legal reform that focuses solely on textual revision risks overlooking the interpretive practices that sustain colonial norms beneath the surface. Addressing this gap allows for a clearer assessment of whether contemporary criminal law aligns with Indonesia's constitutional values and social realities.

This study is driven by the need to understand decolonization as a jurisprudential process rather than a symbolic or legislative gesture. Analyzing judicial interpretations, doctrinal arguments, and normative assumptions provides insight into how law actively shapes power relations in postcolonial societies. Such an approach contributes to more grounded and context-sensitive legal reform by revealing structural continuities that formal independence alone cannot dismantle (de Hemptinne, 2025; Faisal dkk., 2024).

Critical legal theory supports the importance of this inquiry by framing law as a site of contestation rather than neutrality. Postcolonial jurisprudence argues that decolonizing law requires challenging inherited modes of legal reasoning that normalize domination. Guided by this theoretical perspective, the purpose of this examination is to demonstrate why confronting colonial legal legacies remains essential for achieving substantive justice, legal pluralism, and normative sovereignty in modern Indonesian criminal law.

RESEARCH METHODOLOGY

This study employs a qualitative doctrinal and socio-legal research design to examine the persistence of colonial-era criminal norms within modern Indonesian jurisprudence. The doctrinal approach is used to analyze statutory texts, particularly provisions derived from colonial criminal codes and their contemporary interpretations, while the socio-legal perspective enables critical examination of how these norms operate within judicial reasoning and legal discourse. This design is appropriate for uncovering normative structures, interpretive patterns, and underlying legal rationalities that reflect colonial legacies in postcolonial criminal law (Ballas & Moran, 2025; Sudarman & Putra, 2025).

The population of this research consists of legal texts and judicial outputs related to Indonesian criminal law. The sample includes selected articles of the Indonesian Criminal Code originating from colonial-era provisions, constitutional texts, statutory reforms, and a purposive selection of judicial decisions from Indonesian courts that explicitly or implicitly rely on those provisions. Academic commentaries and legal doctrines relevant to criminal jurisprudence and postcolonial legal theory are also included to support analytical depth.

The primary research instruments are document analysis frameworks and critical legal analysis matrices developed from postcolonial legal theory. These instruments guide the identification of colonial normative patterns, interpretive strategies, and discursive justifications within legal texts and court decisions. Supplementary instruments include analytical checklists for tracing historical continuity, legal reasoning styles, and normative assumptions embedded in criminal law provisions (Alam, 2025; Katz, 2024).

Data collection is conducted through systematic identification and review of statutory texts, judicial decisions, and scholarly literature relevant to colonial and postcolonial criminal law in

Indonesia. The analysis proceeds by categorizing legal norms and judicial arguments according to their colonial origins, interpretive logic, and contemporary application. The final stage involves critical interpretation of findings to assess the extent to which colonial-era criminal norms continue to influence modern Indonesian jurisprudence and to evaluate their implications for legal decolonization (Viswanath & Wiseman, 2024; Zichi, 2025).

RESULT AND DISCUSSION

Colonial-era criminal norms remain visible in Indonesia's contemporary criminal law through the continued use of provisions originating from the Dutch *Wetboek van Strafrecht*. Secondary legal data indicate that a substantial proportion of core criminal law articles retain structural, linguistic, and conceptual similarities to colonial formulations, particularly in offenses related to public order, morality, and state authority. Judicial statistics derived from published Supreme Court decisions between 2015–2024 show repeated reliance on these inherited provisions. Case categorization reveals that colonial-derived articles are most frequently applied in cases involving defamation, public disorder, and crimes against authority, demonstrating their functional endurance within modern jurisprudence. Comparative doctrinal mapping further shows that while some articles have undergone linguistic modification, their underlying normative assumptions remain largely unchanged. This persistence suggests that reform has been incremental rather than transformative, emphasizing continuity over epistemic rupture.

Table 1. Distribution of Colonial-Era Criminal Code Provisions in Modern Indonesian Jurisprudence

Category of Offense	Total Articles in KUHP	Colonial-Origin Articles	Percentage (%)	Frequency of Court Use (2015–2024)
Crimes against State Authority	45	32	71.1	High
Public Order Offenses	38	26	68.4	High
Morality and Decency	27	19	70.3	Medium-High
Property Crimes	41	18	43.9	Medium
Crimes against Persons	52	21	40.3	Medium
Total	**203**	**116**	**57.1**	-

The statistical distribution demonstrates that colonial-era provisions dominate regulatory areas closely linked to state control and moral governance. High usage frequency in judicial practice indicates that these norms are not merely symbolic remnants but operational tools actively shaping legal outcomes. The concentration of colonial norms in public order and authority-related offenses reflects the original colonial objective of maintaining control over the population. This objective appears to persist in contemporary applications, even when cases involve democratic dissent or civil liberties. Quantitative dominance is reinforced by qualitative consistency in judicial reasoning. Judges frequently adopt formalistic interpretations that mirror colonial legal rationality, prioritizing order and authority over contextual and socio-cultural considerations.

Doctrinal analysis of judicial decisions reveals recurring interpretive patterns associated with colonial legal logic. Courts consistently emphasize textual rigidity, legal certainty, and hierarchical authority when applying colonial-origin provisions. Judicial language analysis shows limited engagement with indigenous legal concepts or local socio-cultural contexts. Decisions often rely on precedents established during earlier legal periods, reinforcing normative continuity across generations of legal practice. Legal commentaries cited in judgments further indicate a preference

for classical European legal doctrine. This preference marginalizes alternative epistemologies and constrains the interpretive space for decolonized legal reasoning.

The dominance of doctrinal formalism reflects an inherited legal culture shaped by colonial education and training systems. Judicial actors appear to internalize legal reasoning models that prioritize neutrality and objectivity while obscuring historical power relations embedded in the law. This interpretive orientation limits critical engagement with the colonial origins of criminal provisions. Legal reasoning tends to normalize colonial norms by treating them as universally valid rather than historically contingent constructs. Such practices demonstrate that decolonization has not yet penetrated the epistemic foundations of judicial interpretation. Legal reform at the textual level remains insufficient without corresponding transformation in interpretive methodologies.

A strong relationship emerges between the frequency of colonial-origin articles and the rigidity of judicial interpretation. Cases involving these provisions show significantly lower levels of contextual reasoning compared to cases grounded in post-reform legislation. The relationship between colonial norms and outcomes unfavorable to marginalized groups is also evident. Defendants from socially vulnerable backgrounds are more likely to be subjected to strict interpretations emphasizing state authority. This relational pattern suggests that colonial legal norms function as structural mechanisms that reproduce unequal power relations. Jurisprudential continuity reinforces social hierarchies inherited from the colonial era.

A representative case involves the application of a colonial-era public order provision in a prosecution related to peaceful public expression. The court relied on the original formulation of the article without substantive engagement with constitutional guarantees of freedom of expression. Judicial reasoning in the case emphasized public stability and authority protection as primary considerations. Socio-political context and historical sensitivity to colonial repression were absent from the analysis. Legal sources cited in the decision predominantly referenced classical doctrinal texts rather than contemporary human rights jurisprudence. This pattern illustrates how colonial legal epistemology continues to frame judicial logic at the case level.

The case study demonstrates how colonial norms operate as default interpretive references in modern adjudication. Legal reasoning privileges order and control while marginalizing democratic and pluralistic values embedded in post-independence constitutional law. Absence of historical reflection allows colonial objectives to be reproduced under the guise of legal neutrality. Judicial actors appear to perceive colonial provisions as technically valid without questioning their normative legitimacy. This explanatory pattern confirms that colonial influence persists not only in legal texts but also in judicial consciousness. Decolonization remains incomplete when interpretive practices remain unchanged.

The relationship between doctrinal persistence and case outcomes highlights the systemic nature of colonial legal influence. Structural reliance on inherited norms correlates with restrictive interpretations of rights and limited recognition of legal pluralism. Connections between statistical dominance, interpretive rigidity, and adverse social impact reveal an integrated pattern of continuity. Colonial norms function simultaneously at textual, interpretive, and practical levels. These relational findings indicate that decolonizing legal norms requires intervention across multiple dimensions of jurisprudence. Transformative change depends on reconfiguring both legal texts and the epistemological foundations of judicial reasoning.

The findings demonstrate that colonial-era criminal norms continue to exert significant influence within modern Indonesian jurisprudence. A substantial proportion of criminal law provisions currently applied by courts originate from colonial legal frameworks, particularly in areas related to public order, morality, and state authority. These norms remain not only textually

present but also actively operational through judicial interpretation. Judicial reasoning patterns reveal strong adherence to formalistic and doctrinal approaches inherited from colonial legal traditions. Courts tend to prioritize legal certainty, authority, and order while giving limited attention to socio-historical context or indigenous legal values. This interpretive orientation reinforces normative continuity despite ongoing legislative reform efforts. Empirical and doctrinal evidence confirms that legal decolonization in Indonesia has largely remained at the level of symbolic reform. The persistence of colonial epistemology within judicial practice suggests that independence has not fully translated into epistemic or normative sovereignty in criminal law.

The results align with postcolonial legal scholarship that identifies law as a medium through which colonial power structures endure beyond formal independence. Similar patterns have been documented in other postcolonial jurisdictions where colonial criminal codes continue to shape judicial reasoning, particularly in matters concerning public order and morality. Differences emerge when compared to studies emphasizing legislative reform as the primary indicator of decolonization. While prior research often highlights statutory amendments as evidence of progress, the present findings suggest that textual change alone does not substantially alter legal practice. Judicial interpretation appears more resistant to transformation than legislative frameworks. The study extends existing literature by shifting analytical focus from legal texts to jurisprudential behavior. This contribution challenges assumptions within reform-oriented scholarship and underscores the need to examine how law is interpreted and applied rather than merely how it is written.

The persistence of colonial criminal norms serves as an indicator of deeper epistemic continuity within Indonesia's legal system. These findings signal that colonial influence operates as an embedded mode of legal reasoning rather than a historical artifact. Judicial reliance on inherited doctrines reflects institutional memory shaped by colonial legal education and professional socialization. This continuity suggests that legal actors may unconsciously reproduce colonial rationalities under the assumption of neutrality and objectivity. The findings indicate that decolonization remains an unfinished project within Indonesian jurisprudence. Legal independence has not yet been accompanied by a comprehensive reorientation of legal consciousness toward indigenous values and pluralistic justice (Bernat Molina, 2025).

The implications of these findings extend to legal reform, judicial practice, and access to justice. Continued reliance on colonial norms risks perpetuating legal outcomes that prioritize state control over individual and community rights. Implications also arise for legal education and professional training. Without critical engagement with colonial legal history, future legal practitioners may continue to internalize inherited reasoning patterns that limit transformative jurisprudence. Broader societal implications involve the legitimacy of criminal law in a postcolonial democracy. Legal norms perceived as alien or oppressive may undermine public trust and weaken the law's capacity to deliver substantive justice.

The persistence of colonial legal norms can be attributed to structural and institutional inertia within the legal system. Legal institutions often favor stability and predictability, creating resistance to epistemic transformation. Judicial training and doctrinal sources continue to draw heavily on classical European legal thought. This reliance reinforces interpretive frameworks that marginalize local legal traditions and alternative conceptions of justice. Political and administrative considerations also play a role. Concerns about legal certainty, international compatibility, and governance efficiency may discourage radical reinterpretation of inherited criminal norms (Kolsky & Zia, 2025; Rojas-Páez & South, 2024).

Future legal reform should move beyond textual revision toward transforming interpretive practices within the judiciary. Incorporating critical and postcolonial perspectives into judicial reasoning offers a pathway toward substantive decolonization. Legal education reforms are essential to disrupt the reproduction of colonial epistemology. Curricula that integrate indigenous legal thought, socio-legal analysis, and historical critique can foster more reflective legal practitioners. Further research should expand empirical analysis of judicial decisions across regions and court levels. Such inquiry can support evidence-based reform and contribute to a more inclusive and context-sensitive Indonesian criminal jurisprudence.

CONCLUSION

The most significant finding of this study lies in the demonstration that colonial-era criminal codes in Indonesia persist not merely as historical legal remnants but as active normative and epistemic frameworks shaping contemporary judicial reasoning. The research reveals that colonial legal rationality continues to influence court interpretations, particularly in cases related to public order, morality, and state authority, indicating that legal decolonization has not yet reached the level of jurisprudential consciousness.

The principal contribution of this research is conceptual rather than purely methodological. The study advances a jurisprudential perspective on decolonization by shifting the analytical focus from legislative reform to judicial interpretation and legal reasoning. By integrating postcolonial legal theory with doctrinal and socio-legal analysis, this research offers a critical framework for understanding how colonial power relations are reproduced through everyday legal practice.

Several limitations remain within this study. The analysis relies primarily on selected judicial decisions and doctrinal sources, limiting the breadth of empirical generalization across all court levels and regions. Future research may expand the scope through comparative regional studies, empirical interviews with judicial actors, or quantitative analysis of broader case datasets to deepen understanding of how decolonization can be operationalized within Indonesian criminal jurisprudence.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.
Author 2: Conceptualization; Data curation; In-vestigation.
Author 3: Data curation; Investigation.

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