

Mono-Dualistic Theory and the Principle of Balance: A Conceptual Framework for Criminal Law Reform in Indonesia

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Abstract

Criminal law reform in Indonesia is confronted with a fundamental challenge in reconciling legal certainty with substantive justice, particularly in light of the inadequacy of the colonial-era Criminal Code to address the complexities of contemporary society. The persistence of rigid formalism, coupled with emerging forms of crime and evolving social values, underscores the need for a more balanced and contextual criminal law framework. This study aims to analyze the relevance of mono-dualistic theory and the principle of balance as a conceptual foundation for Indonesian criminal law reform, as well as to examine their implementation within the New Criminal Code enacted through Law No. 1 of 2023. Employing a juridical-normative research method, this study utilizes conceptual, statutory, and comparative approaches to examine legal norms, doctrines, and criminal law practices. The findings demonstrate that mono-dualistic theory effectively functions as a mediating framework between legal certainty and substantive justice by integrating formal legal norms with socio-philosophical values. This integration is reflected in progressive criminal justice mechanisms, including diversion, conditional sentencing, and restorative justice, which emphasize proportionality, human dignity, and social harmony. The study contributes to the development of criminal law scholarship by affirming that the principle of balance constitutes a central normative guideline for enhancing the legitimacy of punishment and directing Indonesian criminal law reform toward a more humanistic, adaptive, and value-oriented legal system.

Keywords: Criminal Law Reform, Mono-Dualistic Theory, Principle of Balance.



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INTRODUCTION

Indonesian criminal law continues to evolve in response to dynamic social, political, economic, and cultural transformations within society. (Amalia, wan Rasiwan, Dian Rosita, Kurniawan Tri Wibowo, Irda Nur Khumaeroh, & Subaidah Ratna Juita, 2025) These changes have significantly influenced patterns of criminal behavior, giving rise to new and complex forms of crime such as cybercrime, environmental crime, and transnational corruption (Muhammad, Affan, & Rahmah, 2024). The increasing sophistication and transboundary nature of these crimes demand a criminal law system that is adaptive, responsive, and capable of addressing contemporary societal challenges. However, for decades, Indonesia relied on a colonial legacy criminal code derived from the *Wetboek van Strafrecht*, which was primarily designed to serve the interests of colonial governance rather than the values and aspirations of an independent nation. As a result, the old Criminal Code has long been criticized for its inadequacy in reflecting the philosophical foundations of Pancasila and the constitutional mandate of the 1945 Constitution (Lubis, 2024).

The enactment of the New Criminal Code through Law No. 1 of 2023 represents a historic milestone in Indonesia's legal reform agenda. (Setiawan, Afita, Zia, & Agusta, 2022) This legislation signifies a paradigm shift toward a more contextual, national, and value-oriented criminal law system. Fundamentally, the New Criminal Code seeks to balance three core principles of modern criminal justice: legal certainty, justice, and expediency. Rather than prioritizing rigid formalism, the new framework aspires to integrate normative clarity with moral considerations and social utility. (Arni, 2025) Within this context, the mono-dualistic theory emerges as a particularly relevant conceptual approach. (Titis Pandan Wangi Reformasi, 2025) This theory attempts to reconcile two traditionally opposing schools of thought in criminal law: monism, which emphasizes strict adherence to legal certainty and formal legality, and dualism, which prioritizes substantive justice, moral responsibility, and societal values (Judge, 2019).

The principle of balance constitutes the core of mono-dualistic theory, asserting that legal certainty and substantive justice should not be viewed as mutually exclusive or dichotomous. Instead, both principles must function proportionally and harmoniously within the criminal justice system (Nur, 2023). This balanced approach is evident in several progressive policies introduced by the New Criminal Code, including the expansion of conditional sentencing, the strengthening of diversion mechanisms within the juvenile justice system, and the formal recognition of restorative justice as an alternative approach to punishment. These developments reflect a fundamental shift away from a purely repressive and punitive orientation toward a more humane, corrective, and socially responsive model of criminal justice (Nainggolan & Adhari, 2023).

Despite these normative advancements, much of the existing scholarship on Indonesian criminal law reform remains focused on textual and doctrinal changes within the New Criminal Code. (Nadianti & Kusumo, 2025) Limited attention has been given to the deeper philosophical and methodological foundations that shape the direction of this reform. This gap is particularly evident in the lack of systematic analysis regarding the role of mono-dualistic theory as a guiding framework for harmonizing legal certainty and substantive justice within the 2023 Criminal Code. Therefore, the novelty of this research lies in its integrative approach, which connects mono-dualistic theory, the principle of balance, and the broader trajectory of Indonesian criminal law reform in a more coherent and analytical manner.

Based on this background, the research is directed toward addressing two central questions: first, to what extent is mono-dualistic theory relevant in constructing a conceptual framework for criminal law reform in Indonesia; and second, what are the implications of applying this theory to the development of a criminal law system that is more humanistic, inclusive, and aligned with Pancasila values as well as the constitutional mandate.

RESEARCH METHOD

This research employs a juridical-normative method that focuses on the analysis of legal norms, principles, and doctrines within the framework of criminal law reform in Indonesia. The study places particular emphasis on mono-dualistic theory and the principle of balance as the conceptual foundations for the development of a modern criminal law system. To achieve this objective, several analytical approaches are utilized. First, a conceptual approach is applied to examine relevant legal theories, philosophical foundations, and fundamental principles that

underpin the orientation of criminal law reform. Second, a statutory approach is employed to analyze and compare the provisions of the former Criminal Code and the New Criminal Code enacted through Law No. 1 of 2023, with the aim of identifying normative shifts and policy orientations. Third, a comparative approach is used by reviewing criminal law concepts and practices in selected jurisdictions, in order to broaden the analytical perspective and identify best practices relevant to the Indonesian context. The sources of legal materials consist of primary legal materials, including statutory regulations and selected court decisions (Sukanto, 1990), as well as secondary legal materials such as scholarly literature, prior research findings, and academic opinions. All collected data are analyzed qualitatively through systematic interpretation and legal reasoning to formulate a balanced, humanistic, and contextually relevant conceptual framework for Indonesian criminal law reform

RESULT AND DISCUSSION

Mono-Dualistic Theory as a Synthesis of Criminal Law Paradigms

The *Mono-Dualistic Theory* is present as a synthesis of two criminal law paradigms that have been considered contradictory: the monistic paradigm which emphasizes punishment on one dimension, for example, only retribution, and the dualistic paradigm which separates the objectives of punishment between *vergelding (revenge)* and *doelmatigheid (benefit)*. (Masri, 2025) This theory arose from the realization that modern criminal law can no longer rely on extreme approaches, but must integrate both perspectives to be contextual and relevant to the dynamics of society. (Law, Rahadian, & Oghenemaro, 2023)

Conceptually, this theory emphasizes the dual function of punishment: (Хилюта Вадим Владимирович, 2019) First, as a form of moral responsibility for violations of the law (retributive justice), and second, as a policy instrument to maintain social order while preventing crime (*utilitarian purpose*). (Rivanie, Muchtar, Muin, Prasetya, & Rizky, 2022) With this approach, punishment is not only a form of state retribution, but also a means of protecting society, rehabilitating perpetrators, and restoring victims. (Akbar, Sakti, & Jafar, 2023).

From a mono-dualistic perspective, there is a synthesis of three main orientations of criminal law: legal certainty (*rechtszekerheid*), justice (*gerechtigheid*), and expediency (*doelmatigheid*) (Kurniawan et al., 2022). This paradigm emphasizes that all three must work together, not be positioned hierarchically.

The following is a comparison to clarify the position of legal certainty, justice, and utility in the *monistic*, *dualistic*, and *mono-dualistic* paradigms.

Aspects / Paradigms	Monistic	Dualistic	<i>Mono-Dualistic (Synthesis)</i>	Analysis of the New Criminal Code
Legal certainty (Nur, 2023)	Emphasized rigidly; criminalization is a logical consequence of violating norms.	Acknowledged but can be compromised with expediency.	Normative foundations that go hand in hand with justice and utility.	The New Criminal Code emphasizes legality, yet is flexible through the recognition of living law, in line with adaptive legal certainty.

Justice	Identical to retributive justice.	Sharply separated from utility.	Substantive: victim recovery and social balance.	Diversion and restorative justice make justice more substantive, not just retribution.
Benefits	Not a focus; subordinate to legal certainty.	Separated as instrumental goals.	Instrumental function that complements legal certainty and justice. (Artadi, 2024)	Conditional sentences, supervision, and corporate accountability reflect social benefits.
Main Focus	One dimension: legal recompense or certainty.	Two dimensions are often opposites.	Synergistic three-dimensional integration.	The New Criminal Code integrates legal certainty, justice, and utility within a balanced framework.
Weakness	Tends to be rigid, repressive, ignoring human values.	Prone to internal conflict between justice and expediency.	Implementation challenges: require consistency, apparatus readiness, and a paradigm shift.	The implementation of the New Criminal Code requires institutional harmonization, socialization, and changes in the legal culture of the apparatus so that the mono-dualistic principle is effective.
Relevance to the New Criminal Code	Irrelevant; too formalistic.	Partly relevant, potentially dichotomous.	Highly relevant: flexible legality, restorative justice, living law, conditional sentences.	The New Criminal Code directly implements a mono-dualistic synthesis, ensuring humanistic, inclusive, and adaptive criminal law.

This table clearly demonstrates that the *Mono-Dualistic* Theory serves as a bridge between the rigid and repressive monistic paradigm and the dualistic paradigm, which often creates internal conflicts between justice and expediency. By integrating legal certainty, justice,

and expediency, this paradigm forms a balanced conceptual framework relevant to the dynamics of modern society. In the New Criminal Code (Law No. 1 of 2023), the mono-dualistic principle is reflected through the flexibility of the legality principle and the recognition of living law to maintain adaptive legal certainty; diversion and restorative justice mechanisms that emphasize substantive justice; and conditional sentences, supervision, and corporate accountability that emphasize social benefit. This approach ensures that criminal law is not only normative, but also operational, humanistic, and inclusive. The paradigm comparison table confirms that each provision of the New Criminal Code can be linked to one or a combination of the three main orientations of criminal law. Thus, the *Mono-Dualistic* Theory is not only conceptually relevant but also serves as a practical foundation guiding the reform of Indonesian criminal law toward a system that balances legal certainty, justice, and expediency.

Dynamics of Criminal Law Reform in Indonesia

The dynamics of criminal law reform in Indonesia cannot be separated from its historical roots, which are deeply influenced by the colonial legal legacy. (Nugraha, Rohaedi, Kusnadi, & Abid, 2025) The *Wetboek van Strafrecht voor Nederlandsch-Indië* of 1918 served as the foundation of the Indonesian Criminal Code after independence and continued to shape the orientation of criminal law for decades. Although several partial amendments were introduced, the old Criminal Code fundamentally remained a colonial product, formulated within a social, political, and cultural context that was markedly different from the realities of contemporary Indonesian society (Fadhilah, Zulkarnain, Yulianto, & Satory, 2024). As a result, the old Criminal Code increasingly failed to respond adequately to social change, national values, and constitutional mandates, thereby strengthening the urgency for comprehensive and contextual criminal law reform. (Kurdi, 2024)

The rapid development of society, driven by technological advancement, globalization, and economic transformation, has significantly altered patterns of criminality. New and complex forms of crime such as cybercrime, corporate crime, money laundering, terrorism, and transnational organized crime have emerged as serious threats to social order and state sovereignty (Setiawan & Afita, 2025). These developments challenge the traditional repressive model of criminal law, which focuses primarily on punishment, deterrence, and imprisonment. In the contemporary context, criminal law is increasingly expected to be not only effective in crime control, but also humane, responsive, and consistent with human rights principles and the rule of law. (Pande Komang Surya Mahesa, 2025) This paradigm shift reflects a broader understanding that criminal law should function as an instrument of social regulation and protection, rather than merely a mechanism of state coercion. (Bego, Wijaya, Irianto, & Amili, 2025)

The enactment of Law No. 1 of 2023 concerning the New Criminal Code represents a decisive moment in Indonesia's criminal law reform. (Butarbutar, 2025) This legislation marks a transition from a colonial-oriented legal framework to a national criminal law system grounded in Pancasila and the 1945 Constitution. (Widiastuti, Putranto, Ahmad, Pramudya, & Bahari, 2024) The New Criminal Code introduces several significant innovations that demonstrate a new orientation of punishment and legal policy. These include the flexibilization of the principle of legality through the recognition of living law, the formalization of diversion and restorative justice mechanisms, the expansion of conditional sentencing and supervision

models, the strengthening of corporate criminal liability, and the regulation of new criminal offenses related to environmental protection, information technology, and state security. Collectively, these changes illustrate a shift toward a more contextual, proportional, and value-based criminal law system. (Khumairoh, Arum, & Maulidah, 2025)

From the perspective of mono-dualistic theory, the reform of the Criminal Code reflects an integrative effort to harmonize two interrelated dimensions of law: the formal-positive dimension and the socio-philosophical dimension. The formal-positive dimension emphasizes written norms, codified principles, and legally enacted rules as the foundation of legal certainty. This dimension remains essential to ensure predictability, consistency, and accountability in law enforcement. In the New Criminal Code, this aspect is evident in the systematic regulation of new criminal offenses, clearer standards for corporate criminal responsibility, and structured sentencing models that provide guidance to judges and law enforcement officials. Through this framework, criminal law retains its authority as a binding normative system. (Dewi Nawang Bulan, 2025)

At the same time, the socio-philosophical dimension recognizes law as a living institution that must reflect social values, moral considerations, and the evolving needs of society. This dimension is particularly visible in the New Criminal Code's accommodation of living law, the diversification of sentencing options, and the institutionalization of restorative justice. (Junaedi, 2025) By allowing greater flexibility in sentencing and emphasizing dialogue, accountability, and restoration, the New Criminal Code seeks to reduce over-reliance on imprisonment and promote social reintegration. This approach also enhances the role of victims and communities in the criminal justice process, thereby strengthening the legitimacy and social acceptance of criminal law. (M. Chaerul Risal, 2022)

The integration of these two dimensions illustrates the core principle of mono-dualistic theory, namely balance. Legal certainty and substantive justice are not positioned as opposing values, but as complementary elements that must operate proportionally. (Ehrlich, E. (1936)) This balanced approach is particularly important in addressing implementation challenges, such as resistance from law enforcement officials accustomed to formalistic practices, the diversity of customary norms across regions, and the complexity of proving crimes that involve cross-border elements. Without a balanced framework, the recognition of living law risks legal fragmentation, while excessive formalism risks social injustice. (Moore, C. W. (2014)

Comparative experiences from countries such as the Netherlands, Germany, Japan, the United States, France, Singapore, and Malaysia demonstrate that criminal law reform universally faces the challenge of reconciling legal certainty with social values. (Ashworth & Zedner, 2014; Roxin & Greco, 2014). These jurisdictions show that flexibility in sentencing, restorative mechanisms, and adaptive interpretation of legality can coexist with strong legal certainty when guided by clear principles and institutional safeguards. (Fletcher, 2007; Tak, 2008; Haley, 1998). For Indonesia, this comparative insight underscores that the implementation of the New Criminal Code must be gradual, adaptive, and consistently grounded in the principle of balance. Only through such an approach can criminal law reform achieve its intended objectives: a national criminal law system that is authoritative, humane, and aligned with Pancasila values and constitutional ideals. (Arief, 2018; Hamzah, 2017).

Implications of Mono-Dualistic Theory on the Direction of Criminal Law Reform

The *Mono-Dualistic* Theory has significantly influenced the direction of criminal law reform in Indonesia, particularly through the implementation of the New Criminal Code (Law No. 1 of 2023). This theory serves as a philosophical and normative foundation that reconciles the tension between the classical paradigm, which emphasizes legal certainty and retribution, and the modern paradigm that emphasizes substantive justice and social benefit.

In terms of legal certainty, this theory emphasizes that the principle of legality must remain the primary foundation, but it must not be rigid. Legal certainty must align with the principles of justice and utility so that criminal law remains relevant to societal dynamics and does not become a repressive instrument. The New Criminal Code accommodates this principle through the flexibility of the principle of legality and recognition of living law, allowing legal certainty to coexist with substantive justice and social utility.

In the justice dimension, Mono-Dualistic theory encourages sentencing that is oriented toward substantive justice, not just formal punishment. This is reflected in the mechanisms of diversion and restorative justice. (Панченко, 2023) which emphasizes victim recovery, social reconciliation, and maintaining social balance. Thus, punishment is not merely retribution, but also an instrument for building social harmony.

In the context of utility, this theory emphasizes the role of criminal law as a preventative, protective, and rehabilitative social instrument. The New Criminal Code emphasizes conditional sentences, supervision, and corporate criminal liability as efforts to maintain social security, prevent crime, and increase the effectiveness of legal policies in practice.

Overall, the implications of the *Mono-Dualistic* theory are evident in the formation of a humanistic, inclusive, and responsive criminal law paradigm. The integration of legal certainty, justice, and expediency makes criminal law reform in Indonesia not only normative but also operational. This theory serves as a conceptual framework that guides criminal law policy to balance legal certainty, justice, and expediency, while also serving as a basis for developing a legal system that is adaptive to the challenges of modern crime and social complexity.

The following is a comparison table (Legal Certainty → Justice → Benefit accompanied by policy implementation in Indonesia, as follows:

Aspect	Mono-Dualistic Theory	Policy Implications
Legal certainty	Ensuring legal certainty while respecting the principle of justice	Flexibility of the principle of legality; recognition of living law
Justice	Substantive criminalization and social rehabilitation	Diversion and restorative justice to build social balance
Benefits	Criminalization as a preventive and protective instrument	Conditional sentences, supervision, and corporate accountability for social effectiveness

The table shows that the *Mono-Dualistic* Theory provides an integrative framework that simultaneously connects legal certainty, justice, and utility. From the aspect of legal certainty, this theory emphasizes the need for flexible legal principles and recognition of living law, so that legal rules can be applied consistently without ignoring the social context and human rights. From the justice dimension, this theory emphasizes the importance of substantive punishment through diversion and restorative justice mechanisms, which prioritize victim recovery and

social harmony, rather than simply punishing the perpetrator. Meanwhile, the utility aspect emphasizes the preventive and protective functions of punishment, including through conditional sentences, supervision, and corporate accountability, to ensure socially effective criminal law policies.

Overall, this table confirms that the Mono-Dualistic theory is not merely an academic concept but also serves as an operational guideline for the development and implementation of the New Criminal Code. The integration of these three aspects ensures that Indonesian criminal law is humanistic, inclusive, and adaptive, able to balance legal certainty, justice, and expediency in addressing modern social and criminal challenges.

CONCLUSION

The main conceptual findings of this study indicate that the *Mono-Dualistic* Theory is able to synthesize the three orientations of criminal law: legal certainty, justice, and expediency, thus forming a balanced and adaptive conceptual framework to the dynamics of modern society. Theoretically, this theory strengthens the philosophical and methodological foundations of Indonesian criminal law, affirming that legal certainty, substantive justice, and social expediency can synergize without conflicting with each other.

Practically, the application of the Mono-Dualistic principle is seen in the New Criminal Code through the flexibility of the principle of legality and the recognition of living law (legal certainty), diversion and restorative justice mechanisms (*justice*), as well as conditional sentences, supervision, and corporate accountability (*expediency*). This confirms that Indonesian criminal law is not only normative, but also humanistic, inclusive, and effective in facing the challenges of modern crime. As a suggestion for future research, it is necessary to conduct empirical studies related to the implementation of diversion, restorative justice, and living law, as well as international comparative studies to strengthen the development of criminal law theory and policy. Thus, the Mono-Dualistic Theory acts as a conceptual foundation as well as an operational guide, bridging the classical and modern paradigms, and building an Indonesian criminal law system that is balanced, humanistic, and in line with the values of Pancasila.

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