



# Reconsidering Racial and Ethnic Discrimination in Indonesia's Criminal Law Reform from an Islamic Human Rights Perspective

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### ABSTRACT:

**Background:** Indonesia's 2023 Criminal Code introduces explicit criminal provisions on racial and ethnic discrimination in a diverse society where identity based conflict has not disappeared. The reform, however, still invites debate on whether it offers real safeguards for victims or mainly reinforces equality in formal terms.

**Aims:** This article revisits the construction and punishment of racial and ethnic discrimination in KUHP 2023, focusing on Articles 244 and 245, and tests their normative coherence against Islamic human rights principles.

**Methods:** Using normative doctrinal analysis and a statute approach, the study examines KUHP 2023 in relation to the previous KUHP framework and Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. The discussion draws on scholarly literature and evaluates definitions, scope, and sanction design through Islamic principles of human dignity, equality, justice, freedom, peace, and social security.

**Result:** KUHP 2023 strengthens recognition of discriminatory conduct and treats discriminatory motives as relevant to sentencing, including through aggravation where serious offences are involved. At the same time, the offence design remains comparatively narrow and the penalty scale may be insufficient to deter conduct that produces broader social harm. From an Islamic human rights perspective, the provisions reflect dignity and equality, yet they require a clearer orientation toward victim protection and substantive justice.

**Conclusion:** The reform is an important advance, but further doctrinal refinement is needed so anti discrimination rules operate as effective protections consistent with Islamic human rights values, not merely as symbolic prohibitions.

**Keyward:** Criminal law reform: ethnic discrimination: Islamic human rights:

## INTRODUCTION

The adoption of Indonesia's 2023 Criminal Code marks a pivotal moment in the long trajectory of national criminal law reform (Faisal et al., 2024; Pangaribuan, 2025a). Intended to replace a colonial legal legacy, the new Code seeks to respond more directly to contemporary social conditions within a pluralistic society (Alter, 2021; Manse, 2024). One area that receives explicit attention is racial and ethnic discrimination, a phenomenon that continues to surface despite constitutional guarantees of equality and the existence of sectoral anti-discrimination legislation (Atrey, 2021). By



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incorporating discrimination offences into the Criminal Code, the reform signals an effort to strengthen state protection against identity-based harm. At the same time, this development invites closer scrutiny regarding whether criminalization alone can translate normative commitments into substantive justice for those affected by discriminatory practices.

Academic discussions on racial and ethnic discrimination in Indonesia have developed through several parallel strands (Dewantara et al., 2024; Meyer & Waskitho, 2021). Doctrinal legal studies have examined statutory frameworks, particularly Law No. 40 of 2008, focusing on the formulation of offences, enforcement mechanisms, and the proportionality of sanctions (Allegrezza & Lasagni, 2024; Makhambetsaliyev, 2025). In a related but distinct line of inquiry, constitutional and human rights scholarship has emphasized equality before the law as a constitutional guarantee and assessed Indonesia's obligations under international human rights instruments (Palguna & Wardana, 2024). Alongside these approaches, Islamic legal and ethical scholarship has articulated comprehensive principles of human dignity, equality, and justice grounded in the Qur'an, the Sunnah, and early Islamic governance practices (Asghari, 2023a). Although these bodies of literature provide important insights, they have largely evolved in isolation, rarely intersecting within analyses of contemporary criminal law reform.

This tendency is reflected in several prior studies. (Einat & Toys, 2021) analyzed racial and ethnic discrimination under Law No. 40 of 2008 from the perspective of Islamic criminal law, concentrating primarily on sanction design. (Ahmad et al., 2024a) compared sanctions for discriminatory offences under positive law and Islamic law, yet his analysis remained confined to normative comparison rather than systemic reform. (Tornado, 2022) explored the concept of discrimination in international human rights law through decisions of the Indonesian Constitutional Court, without engaging with the framework of the new Criminal Code. Lubis and Yani (2023) examined hate speech provisions in KUHP 2023 from a doctrinal standpoint, while (Pangaribuan, 2025b) approached racial discrimination as a human rights issue through case-based analysis. Taken together, these studies enrich the understanding of discrimination from legal and ethical perspectives but stop short of integrating Islamic human rights principles into an evaluation of the new penal framework (Ahmad et al., 2024).

Despite the breadth of existing scholarship, a clear analytical gap remains (Kraus et al., 2021; Vrontis & Christofi, 2021). Most studies focus on describing doctrinal developments or comparing sanction severity without assessing whether Indonesia's criminal law reform coherently reflects ethical commitments central to Islamic human rights discourse (Ahmad et al., 2024). As a result, the capacity of the new Criminal Code provisions to move beyond symbolic criminalization toward substantive justice and meaningful victim protection remains underexplored. This gap is particularly consequential in Indonesia, where Islamic values continue to shape legal reasoning, public expectations, and moral evaluations of justice.

Addressing this gap is both normatively and socially significant (Constantino et al., 2022; Hatuka et al., 2021). Islamic human rights principles emphasize not only formal equality but also the protection of human dignity and the pursuit of justice that responds to social harm (Asghari, 2023). Reconsidering racial and ethnic discrimination within Indonesia's criminal law reform from this perspective allows for a more holistic evaluation of the ethical orientation of the law. Moreover, such

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an approach contributes to wider scholarly debates on how religious human rights frameworks can inform modern criminal law systems in plural societies without undermining constitutional principles or legal certainty (Tuliakov, 2025).

In light of these considerations, this study aims to reassess the regulation of racial and ethnic discrimination under Indonesia's 2023 Criminal Code by examining its alignment with Islamic human rights principles. The article seeks to determine whether the reform advances substantive justice or remains largely confined to formal legal equality. Rather than testing empirical hypotheses, the study advances a normative argument that integrating Islamic human rights values more explicitly can strengthen both the ethical foundation and the practical effectiveness of anti-discrimination provisions within criminal law reform.

### METHOD

#### Research Design

This article is written as a qualitative normative legal study. Its purpose is not to measure attitudes or behavior, but to examine how Indonesia's criminal law reform frames racial and ethnic discrimination as a matter of criminal liability and protection. The 2023 Criminal Code is treated as the central reform text, and its relevant provisions are interpreted as part of a broader attempt to modernize penal norms. A statute-based approach guides the reading of the legal rules, while Islamic human rights principles provide the normative standpoint for reassessing whether the reform promotes substantive justice. To make the analytical pathway transparent, the study uses a staged framework summarized in Figure 1.

#### Participant

No human participants are involved. The object of inquiry is normative, so the analysis is directed at legal texts and authoritative writings that shape the meaning of racial and ethnic discrimination within criminal law, rather than at respondents, interviews, or field data.

#### Instrument

The study relies on documentary legal materials. The main primary sources are the 2023 Criminal Code, the former Criminal Code for contextual comparison, and Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. These are read alongside secondary sources such as peer reviewed articles, legal commentaries, and prior research on discrimination and criminal law reform. Islamic human rights references, including Qur'anic principles, Prophetic traditions, and established Islamic legal scholarship, are used as interpretive anchors for evaluating the ethical direction of the reform.

#### Data Analysis

The analysis follows a structured normative sequence, presented visually in Figure 1. It begins by defining racial and ethnic discrimination as the legal problem examined within the setting of criminal law reform. The next stage identifies the relevant statutory landscape and positions the 2023 Criminal Code in relation to earlier criminal law provisions and the sectoral anti discrimination framework. The study then conducts a doctrinal reading of the key provisions, with particular

attention to Articles 244 and 245, focusing on how the offences are constructed, what conduct and intent are captured, and how sanctions are calibrated. After that, the provisions are assessed against Islamic human rights principles, especially dignity, equality, and justice, to test normative coherence and ethical orientation. The final stage draws a critical evaluation of the reform's capacity to protect victims and to move the law beyond symbolic criminalization toward substantive justice.



**Figure 1.** Normative Analytical Flow of Racial and Ethnic Discrimination in Indonesia's Criminal Law Reform from an Islamic Human Rights Perspective

## RESULTS AND DISCUSSION

### Result

The doctrinal reading of Indonesia's 2023 Criminal Code indicates that racial and ethnic discrimination is no longer treated as a peripheral concern managed mainly through sectoral regulation. Instead, KUHP 2023 places discrimination within the core architecture of penal law, signaling that identity based harm is viewed as conduct that can trigger criminal responsibility. This repositioning is significant because it shifts the legal conversation from regulatory compliance toward criminal accountability, at least at the level of statutory design.

Within KUHP 2023, Articles 244 and 245 provide the main points of entry for addressing racial and ethnic discrimination. The provisions introduce a more explicit recognition of discriminatory conduct and, importantly, connect racial or ethnic motives to criminal liability. From a formal standpoint, this linkage strengthens the visibility of equality commitments inside criminal law. Yet the analysis also reveals that the offence design remains relatively confined. The provisions tend to

capture overt and expressive manifestations of discrimination, while indirect or institutional patterns that produce cumulative harm are not clearly reflected in the offence structure. In addition, the sanction architecture appears restrained when viewed against the potentially wide social impact of discriminatory acts, suggesting that the reform may strengthen legal recognition more than it strengthens deterrence.

To consolidate these findings at a general level, Table 1 summarizes how the regulation of racial and ethnic discrimination shifts across the pre-reform framework, KUHP 2023, and the assessment derived from Islamic human rights principles.

**Table 1.** Normative Characteristics of Racial and Ethnic Discrimination Regulation in Indonesia's Criminal Law Reform

Analytical Aspect	Pre-Reform Framework	KUHP 2023 (Articles 244-245)	Islamic Human Rights Assessment
Legal Position	Discrimination addressed mainly through sectoral legislation	Discrimination incorporated into the core Criminal Code	Criminalization supports the protection of human dignity
Conceptual Focus	General equality and administrative safeguards	Discriminatory conduct and motive as bases of liability	Dignity (karamah), equality (musawah), and justice (249dalah)
Scope of Conduct	Fragmented and limited	Predominantly overt and expressive acts	Calls for coverage of indirect and systemic harm
Sanction Orientation	Uneven and largely symbolic	Criminal sanctions with aggravation	Sanctions aimed at harm prevention and justice restoration
Victim Protection	Indirect and implicit	Formally acknowledged but procedurally narrow	Substantive justice and social harmony
Normative Orientation	Formal equality before the law	Strengthened formal recognition	Justice beyond formal legality

As reflected in Table 1, the reform clearly strengthens formal incorporation of anti-discrimination norms into penal legislation, while leaving unresolved questions about the breadth of protection and the ethical completeness of sanction design when evaluated through Islamic human rights commitments.

The analysis then moves from this general mapping to the internal doctrinal structure of Articles 244 and 245. Although both provisions address discrimination, they operate differently within KUHP 2023. Article 244 functions as a stand-alone offence, whereas Article 245 works primarily by attaching legal consequences to discriminatory motives in connection with other crimes. This distinction matters because it shapes how discrimination is proven, how liability is constructed, and how punishment is calibrated. These doctrinal features are summarized in Table 2.

**Table 2.** Doctrinal Characteristics of Articles 244-245 of the 2023 Criminal Code

Analytical Element	Article 244	Article 245	Normative Observation
Type of Conduct	Discriminatory acts based on race or ethnicity	Discrimination as a motive aggravating other crimes	Focus on explicit and motive-based discrimination

Legal Nature	Stand-alone criminal offence	Aggravating circumstance	Emphasis on intent rather than structural discrimination
Scope of Protection	Individual and group dignity	Public order and broader social harm	Limited reach to indirect discrimination
Sanction Design	Criminal punishment	Increased penalty for related offences	Symbolic deterrence with limited proportionality
Position in KUHP	Substantive offence	Supplementary provision	Formal integration within criminal law

Table 2 highlights that KUHP 2023 operationalizes discrimination chiefly through explicit acts and motive-based aggravation. In doctrinal terms, this approach strengthens formal recognition and creates clearer entry points for prosecution. At the same time, its focus remains concentrated on visible conduct and intent, leaving broader, systemic forms of discrimination less clearly addressed within the penal framework.

## Discussion

The findings indicate that Indonesia's 2023 Criminal Code represents a deliberate effort to reposition racial and ethnic discrimination within the heart of criminal law. By moving discrimination from sectoral human rights legislation into the penal framework, the reform signals a stronger moral and legal condemnation of identity-based harm Dubal (2023). This shift is particularly meaningful in a plural society where legal recognition often shapes public perceptions of justice. Criminal law, as an authoritative normative instrument, carries symbolic weight that exceeds administrative regulation Greenstein (2022). However, symbolic repositioning alone does not resolve deeper questions of justice. The effectiveness of criminal law must be assessed in terms of how it defines harm, assigns responsibility, and protects those affected. The results suggest that while formal inclusion has been achieved, substantive justice remains contested. This tension provides the foundation for examining the doctrinal choices embedded in the new provisions.

Building on this repositioning, the doctrinal structure of Articles 244 and 245 reveals how the reform operationalizes discrimination within criminal liability. These provisions prioritize explicit discriminatory acts and clearly identifiable motives as the basis for punishment Galleguillos (2022). Such an approach reflects conventional criminal law reasoning, which favors clarity and proof of intent. Yet this doctrinal preference has important consequences. Discrimination frequently operates through indirect practices that are normalized rather than openly expressed Skadegård & Horst, (2021). By centering liability on overt conduct, the law risks overlooking patterns of exclusion that cause cumulative harm. This limitation narrows the protective reach of criminal law. Consequently, the reform's doctrinal clarity may come at the cost of social responsiveness.

This doctrinal narrowing becomes more apparent when evaluated through Islamic human rights principles. Islamic legal and ethical thought grounds human dignity in inherent worth, independent of race or ethnicity Baydar (2024). In this respect, the criminalization of discriminatory conduct aligns with the principle of *karāmah*. However, Islamic human rights do not view dignity as a static label conferred by legal recognition alone. Dignity demands active protection and meaningful redress when violated Niemi (2021). Legal norms that recognize harm without addressing its lived consequences remain ethically incomplete. The findings indicate that KUHP 2023 captures the language of dignity but only partially reflects its substantive implications. This gap reveals the limits

of a purely formal approach to criminalization. It also points to the need for a broader conception of justice.

Justice, as understood in Islamic human rights discourse, extends beyond punishment to include the restoration of moral and social balance Ibrahim et al. (2025). From this perspective, criminal sanctions must be assessed not only by their existence but by their proportionality to harm. KUHP 2023 introduces penalties and aggravation based on discriminatory motives, signaling moral blameworthiness. Nevertheless, the restrained scale of sanctions raises concerns about their deterrent capacity Meissner (2023). Discriminatory acts often fracture social trust and reinforce marginalization, effects that are not easily repaired. Sanctions that inadequately reflect these broader harms risk diminishing the seriousness of the offence. Islamic legal thought emphasizes proportionality in relation to social impact, not merely individual wrongdoing. The findings suggest that current sanction design does not yet meet this ethical standard.

Concerns about proportionality naturally lead to questions regarding the position of victims within the criminal justice process. Formal criminalization acknowledges that harm has occurred, but it does not automatically empower those who experience discrimination. Victims often face structural barriers, social stigma, and unequal access to legal resources Roman (2024). Without mechanisms that address these realities, criminal law may fail to deliver meaningful protection. Islamic human rights place strong emphasis on safeguarding the vulnerable and ensuring access to justice. From this standpoint, victim protection is not secondary but central to legal legitimacy. The limited victim-oriented orientation of the reform therefore weakens its normative coherence. This gap underscores the importance of aligning legal form with social experience.

These limitations also raise broader questions about how criminal law governs diversity in plural societies. Indonesia's social landscape is shaped by overlapping identities, historical inequalities, and cultural sensitivities Mukhlis et al. (2025). Legal responses to discrimination must therefore be both firm and contextually aware. KUHP 2023 prioritizes doctrinal uniformity, offering clear but generalized offence definitions. While such uniformity enhances legal certainty, it may obscure the varied ways discrimination manifests across contexts Carlsson (2025). Islamic human rights provide a framework that emphasizes ethical sensitivity and communal responsibility. Integrating these values can enrich criminal law without undermining certainty. The findings suggest that ethical contextualization is not a weakness but a necessary complement to formal legality.

The discussion thus moves toward the relationship between criminal law and morality. Criminal law inevitably reflects judgments about what conduct is socially intolerable Newburn, (2022). By criminalizing racial and ethnic discrimination, KUHP 2023 adopts a clear moral stance against identity-based harm. Yet the cautious scope of the provisions suggests hesitation in translating moral condemnation into comprehensive legal protection. Islamic human rights reject such hesitation where fundamental dignity is at stake Cornwall (2021). They frame discrimination as a violation of both individual rights and collective moral order. This perspective challenges criminal law to move beyond procedural restraint. It invites deeper moral engagement in legal reform.

Viewed comparatively, Indonesia's experience mirrors global struggles in addressing discrimination through criminal law. Many jurisdictions criminalize hate-based conduct while struggling to address systemic discrimination Peršak (2022). This similarity indicates that the challenges identified are not unique to Indonesia. However, Indonesia possesses a distinctive

normative resource in the form of Islamic human rights principles. These principles offer locally grounded ethical legitimacy that complements international human rights norms Fletcher (2022). Their integration can strengthen public acceptance and moral coherence. The findings therefore contribute to broader comparative debates on contextualizing human rights within domestic legal systems. This contextual contribution enhances the study's theoretical relevance.

At the same time, the analysis makes clear that criminal law alone cannot resolve the complexity of racial and ethnic discrimination. Criminalization plays an important symbolic and deterrent role, but it addresses only one dimension of injustice Altman & Coe (2022). Islamic human rights emphasize prevention, moral education, and social responsibility alongside punishment. Without these complementary measures, criminal law risks treating symptoms rather than causes Compton et al. (2023). The findings support a more integrated approach to anti-discrimination governance. Criminal law should operate within a broader framework of social justice. Such integration enhances both ethical integrity and legal effectiveness.

Taken together, the discussion shows that Indonesia's criminal law reform embodies both progress and limitation. The explicit inclusion of racial and ethnic discrimination in KUHP 2023 marks a meaningful advance toward formal equality. Yet constraints in offence design, sanction proportionality, and victim orientation reveal gaps between legal recognition and lived justice Tuliakov (2024). Islamic human rights principles illuminate these gaps by emphasizing dignity, justice, and social harmony as substantive goals. Through this lens, the reform appears as an initial framework rather than a completed project Lin & Wang (2022). This perspective invites continued normative refinement and legal development. Ultimately, meaningful criminal law reform requires coherence between legal precision and ethical responsibility.

### **Implications**

This study highlights several important implications for the development of criminal law in societies marked by cultural and religious diversity. The incorporation of racial and ethnic discrimination into Indonesia's Criminal Code confirms that criminal law can function not only as a regulatory instrument but also as a moral statement affirming equality and human dignity. At the same time, the findings indicate that the effectiveness of such reform depends on how far criminal norms move beyond formal recognition toward substantive protection. From an Islamic human rights perspective, justice is not exhausted by criminalization itself but requires legal mechanisms that prevent harm, restore dignity, and protect vulnerable groups. This suggests that ethical frameworks grounded in religious traditions can offer meaningful contributions to contemporary criminal law discourse without compromising legal certainty. The study therefore enriches discussions on criminal law reform by demonstrating how Islamic human rights principles can deepen normative evaluation and strengthen the moral coherence of anti-discrimination legislation.

### **Limitations**

Several limitations should be acknowledged in interpreting the findings of this study. As a normative legal analysis, the research focuses on statutory texts and doctrinal interpretation rather than empirical observation. Consequently, it does not address how Articles 244 and 245 are implemented by law enforcement agencies or interpreted by the judiciary in concrete cases. The absence of empirical data also means that the experiences of victims and the practical impact of criminalization remain outside the scope of this analysis. In addition, while the Islamic human rights perspective provides a focused ethical lens, the study does not engage in systematic comparison with

other moral or philosophical frameworks. The analysis is further limited to the Indonesian legal context, which may restrict the direct applicability of its conclusions to jurisdictions with different legal traditions. These limitations point to areas where further research is necessary rather than undermining the normative value of the present study.

### Suggestions

Future research would benefit from extending this normative inquiry through empirical investigation of the enforcement and judicial application of racial and ethnic discrimination provisions in the 2023 Criminal Code. Studies examining court decisions, prosecutorial practices, and victim experiences could clarify whether formal criminalization produces meaningful protection in practice. Further normative work might also explore the convergence between Islamic human rights principles and international human rights norms in shaping more comprehensive approaches to anti-discrimination law. From a policy perspective, legislators could consider refining offence definitions and sanction frameworks to better capture indirect and systemic forms of discrimination. Strengthening procedural safeguards and victim-oriented mechanisms within criminal justice processes would further align criminal law with ethical commitments to dignity and justice. Together, these measures could help ensure that criminal law reform functions not merely as symbolic recognition but as an effective instrument of substantive equality.

### CONCLUSION

This article argues that the 2023 Indonesian Criminal Code signals a notable change in how racial and ethnic discrimination is treated within the country's penal order, chiefly by bringing anti-discrimination norms into the main body of criminal law rather than leaving them primarily to sectoral regulation. The reform, as reflected in Articles 244 and 245, strengthens the formal visibility of equality commitments and frames discriminatory conduct and motives as matters of criminal accountability. Yet the analysis also shows that the reach of these provisions remains confined, particularly in their emphasis on overt acts and intent, their restrained sanction design, and their limited orientation toward victim-centered protection. Viewed through an Islamic human rights lens, the reform resonates with the ethical imperatives of dignity and equality, but it still falls short of fully translating those imperatives into a framework that robustly prevents harm and advances justice as a lived social reality. For that reason, the reform is best understood as an important starting point rather than a definitive resolution of discrimination within criminal law. Strengthening the normative coherence of the provisions, including broader protection against indirect and systemic discrimination and more meaningful safeguards for victims, would better align criminal law with the substantive justice aspirations emphasized in Islamic human rights discourse.

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### AUTHOR CONTRIBUTION STATEMENT

Marfu'ah Latifatuzzahro conceived the research idea, designed the study framework, conducted the doctrinal and normative legal analysis, and drafted the manuscript. Eva Mir'atun Niswah provided academic supervision, conceptual guidance, and critical review throughout the research process, including feedback on argument development and methodological consistency. The author takes full responsibility for the final content of the manuscript.

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