

The state strikes again: the new Indonesian criminal code

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As Indonesia passes its new criminal code - the first significant revision of its criminal laws since the country got its independence from colonial rule in 1945 - Frans Ari Prasetyo outlines its dangers, and discusses next steps for the movement against state repression in Indonesia.

A new Indonesian criminal code was brought in at the end of 2022, marking a historic decision to depart from Indonesia's previous colonial criminal code. The former criminal code had languished for decades while the President and legislators in the world's biggest Muslim-majority nation struggled with how to adapt its native culture, majority religion and norms to a criminal code that was a living legacy of the Dutch colonial administration. Indonesia continued in this time to follow civil and criminal codes first implemented under Dutch colonial rule in 1918. Indonesia achieved independence in 1945, but it had not significantly revised its criminal code, despite drafting beginning in 1963, until this year.

Indonesia has now experienced two terms under Joko Widodo's administration (2014-2024) (he's popularly known as Jokowi in Indonesia). In 2014, Jokowi's government claimed that their agenda was to extend access to social services and rights, and this has been a well-publicised characteristic of the government, alongside the presumption that its establishment deflected a possible reassertion of authoritarian politics that dominated in Indonesia until 1998, after 32 years under an authoritarian regime. Despite the professed agenda of the administration, under Jokowi Indonesia has seen the deterioration of its democracy. The attacks on Indonesia's democracy include a whittling away of its capacity to protect human rights, and attacks on many social rights, including for some of the most vulnerable members of society.

A previous criminal code was poised for passage in 2019, but Jokowi urged lawmakers to delay the bill amid mounting public criticism that led to nationwide protests, when tens of thousands of people took to the streets. In 2019, the Jokowi administration was experiencing a decline in people's trust due to its policies and political steps that destroyed [reformasi](#), a period of democratic reforms since 1998. Demonstrators used the slogan *#reformasidikorupsi* ('reformasi is being corrupted'). Opponents said the process by which the new criminal code was devised lacked transparency and that it contained articles that discriminate against minorities.

The government has now finally managed to pass the Bill to Revise the Criminal Code (RKUHP), endorsed by all nine parties in Indonesia's large government coalition, including Islamic parties and groups. The code is made of 627 articles, and there are at least 88 articles in the new code containing broad provisions that could be misused and interpreted by authorities to criminalise those who peacefully express their opinions or exercise their rights to peaceful assembly and association. The new criminal code (KUHP-Kitab Undang-Undang Hukum Pidana) will apply to Indonesian citizens and foreigners alike, and will come into effect within three years of its passing, i.e. before Dec 2025. That should at least allow for ample time for the filing of constitutional

challenges and popular protest.

The new criminal code and its dangers

The new criminal code is controversial and problematic, encroaching on civil liberties and giving authorities the right to make life difficult for anyone they choose. The state can accuse anyone of being a criminal, as the new laws criminalise a huge range of behaviours and speech, such as: insulting the president and the vice president; insulting state symbols and institutions like the government, parliament, police and the military; fake news, blasphemy, voodooism and black magic; abortion except in cases of rape; sex outside marriage; cohabitation without being married; discussing or teaching anyone about contraception; Marxism and socialism; spreading or teaching communism; and protesting without a permit from the government and police. Meanwhile, the code actually reduces punishment for corrupt politicians and oligarchs. The code also preserves the death penalty within the criminal justice system, despite calls from the National Commission on Human Rights and other groups to abolish capital punishment.

The criminal code's revisions come as religious fundamentalism deepens across Indonesia, and the changes are designed to appease conservative forces. Since Indonesia's democratic transition in 1998, strict religious laws on sex and relationships have been introduced in some parts of the country of 267 million people. City-regional governments across the country have enacted laws regulating behaviour in a way that tends to be conservative. In Aceh, for example, the only province in Indonesia with special regional autonomy that uses sharia law, decentralization powers have been devolved to allow regional variations in law. This new criminal code now extends many of the more repressive regional laws to the whole country.

Under the new laws, if you hold a demonstration, such as a protest or a Mayday celebration, you will be subject to an article on protesting without permission (article 256). The new code imposes prison terms of up to three years for insulting the country's president or vice president, and also imposes up to an 18-month prison term for insulting state institutions.

However, the repressiveness of the new laws stretches far beyond protest. If students or workers rent a house together to live more cheaply they will also be subject to new articles on decency, including articles 411-413 on sex outside marriage and cohabitation (under the new criminal code, [it is illegal](#) for two unmarried people to live together in the same home, though the only people who can make a formal complaint are the parents or children of the accused). Article 408 limits access to sex education, as it restricts anyone other than medical providers from disseminating information about contraception to children, or from providing information to anyone about obtaining an abortion. The restrictions on extramarital sex apply to citizens and visitors (such as tourists) alike, and will be particularly punitive on minorities such as LGBTQ people, as there is no same-sex marriage in Indonesia – meaning effectively the new laws criminalise all gay cohabitation.

Millions of couples in Indonesia are already living without marriage certificates, especially indigenous people or Muslims in rural areas, because they practice traditional marriage rather than getting their marriages recognised by the state. They will also be affected by this law.

There will also be far-reaching cultural impacts of the new laws due to the articles around public congregations. Indonesia has an active football culture, and if supporters gather on the streets after or before a match, they may be subject to article 256, which regulates public gatherings and demonstrations. Youth from punk hardcore/metal scenes may find themselves in violation of article 256 or 240, especially if they have any lyrics that are considered insulting the president, government or People's Representative Council (DPR). Artists, art performances or other artworks that are considered erotic will also be subject to new articles on decency and pornography.

Moreover, there are sanctions for broadcasting news that is considered fake by the government - articles 263-264 - but if the government shares fake news, there will be no sanction for it. Furthermore, the code also expands the current blasphemy laws - article 302 - threatening imprisonment for up to three years, or five years for publicly displaying or disseminating the relevant 'blasphemous' content. This article also prohibits inciting a person to become irreligious or to change religions. Indonesia is not a secular state. Atheism is unacceptable - citizens technically need to follow one of six prescribed religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism or Confucianism. It is a multi-religious state with an official ideology, Pancasila. If you express any view that runs counter to Pancasila, like Marxism, socialism or communism, you face imprisonment under article 188. Anarchism is already considered terrorism in Indonesian law.

The new criminal code has been simplified in the international media, with a focus solely on the criminalisation of sex and LGBTQ relationships. However, the new laws are far more wide-reaching than this.

Protests and resistance

Many businesses are opposed to the legislation, saying it will discourage visitors and investment and put off international tourists who want to take holidays in Indonesia. The most effective opposition so far to challenge this criminal code has been carried out through litigation, with a judicial review in the constitutional court, and at the grassroots with demonstrations in various protest actions.

Over recent years, there has been mounting public criticism as the code was discussed, leading to nationwide protests dominated by students and young people, which have been violently suppressed by the police. In Bandung in December 2022, a protest took place in front of the Regional Legislative Council office. The police provided security with guns, shields, batons, tear gas and water canon similar to Mayday 2018, the *#reformasidikorupsi* 2019 protest, and the [Omnibus law](#) protests in 2020. Police made random arrests of demonstrators, especially those wearing black clothing associated with anarchist groups that have been targeted since Mayday 2018. Around 35 people were arrested and interrogated, but eventually released from jail with the help of the Bandung Legal Aid Foundation.

In the Jokowi government, there are no opposition parties in parliament that support the people's movement. So we can only rely on the grassroots - the working class in the labour movement, the peasants and the urban poor, the women's movement and other civil rights movements - to continue struggles against unjust state policies and capitalism.

Jokowi's neoliberal state capitalism has deepened the state's control over all spaces, from the streets to workplaces to the home, and stripped back human rights, generating climate change, ecological catastrophe, resource depletion, and a cost-of-living crisis. The rich have the backing of the politicians, policy, the oligarchy and the military-police, and they use them all in a highly organised manner to enrich themselves and bail themselves out when they need to.

These political struggles remind activists that fighting the law through civil disobedience might be necessary. We will not save ourselves by adapting our way of life while the world around us is collapsing, and we will not defeat neoliberalism and capitalism and oligarchy without a fight.

Civil disobedience can prove to be a powerful tool to fight for equal rights. The working class has the right to self-govern and the right to self-determination: we're not asking for our poverty to be redistributed, and we do not want a return to previous laws created under colonialism. Instead, we use civil disobedience as a tool to strengthen civil and political power through education, advocacy, direct action and solidarity. Acts of disobedience prove that it is possible to create resistance and

build up alternatives, even as we do our best to live and survive under repressive laws.

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