

Legal Certainty and Equality Before the Law under Article 28D of the 1945 Constitution in Indonesia's New Criminal Justice System

Amalia Intan Tresna¹⁾ & Noval Arief Fradana²⁾

¹⁾Universitas Pasundan, Bandung, Indonesia, E-mail: amaliaintan756@gmail.com

²⁾Universitas Langlangbuana, Bandung, Indonesia, E-mail: novalarieffradana@gmail.com

Abstract. *The reform of Indonesia's criminal law through Law No. 1 of 2023 on the Criminal Code (KUHP) has profound implications for the interpretation and application of Article 28D(1) of the 1945 Constitution, particularly regarding the guarantee of fair legal certainty and equality before the law. This study aims to analyze (1) the normative and practical implications of the new Criminal Code's configuration for the principle of legal certainty in Indonesian criminal law, (2) the extent to which the principle of equality before the law is accommodated in criminal justice practice after KUHP 2023, and (3) to formulate legal policy recommendations to harmonize Article 28D's constitutional guarantees with the national criminal justice system. Using a normative legal research method with statutory, conceptual, and comparative approaches, the analysis is grounded in KUHP 2023, Constitutional Court decisions. The findings reveal a sharp dialectic between the principle of legality and recognition of living law, expanded judicial discretion and restorative mechanisms, and unequal institutional capacity that risks generating new forms of uncertainty and inequality. The study recommends detailed implementing regulations, strengthened institutional capacity and oversight, and accredited customary justice institutions to ensure that legal certainty and equality before the law under Article 28D are effectively realized in practice.*

Keywords: *Constitution; Criminal Code; Equality; Restorative Justice.*

1. Introduction

The constitution, as the grundnorm of a state, contains fundamental principles that serve as reference points for all subordinate legal instruments, including criminal law. Article 28D(1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) affirms that every person has the right to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law, a formulation that serves as the constitutional anchor for the principles of legal certainty and equality before the law in Indonesia (Jitmau dkk., 2025). This provision does not stand in isolation; rather, it interacts dynamically with

developments in positive criminal law, particularly following the enactment of Law No. 1 of 2023 concerning the new Criminal Code (KUHP), which came into full effect on 2 January 2026 (Aripkahan dkk., 2026).

The enforcement of the new Criminal Code marks the end of an era of colonial-era criminal law that had persisted for more than a century, while introducing substantial changes such as the abolition of the dichotomy between crimes and violations, recognition of living law within society, and a paradigm shift in sentencing from retributive to restorative approaches (Dwijayanto, 2026). Faisal (2024), in a Scopus-indexed study rethinking penal reform within Indonesia's new criminal code, found that these sweeping changes have the potential to significantly affect individual rights, thereby necessitating critical examination of their consistency with fundamental constitutional principles (Faisal dkk., 2024). Transitions of this magnitude inherently bring about a period of normative and practical uncertainty, particularly in the early years of implementation, as law enforcement officers, judges, and the public remain in the process of adjusting to the new paradigm.

The paradigm shift in Indonesian criminal law from the colonial-inherited Criminal Code (*Wetboek van Strafrecht*) toward a national Criminal Code carries broad consequences for how the state interprets and operationalizes legal certainty. Riyadi (2024) explains that criminal law reform through the new Criminal Code explicitly adopts the principle of restorative justice, reformulating sentencing provisions to emphasize the restoration of relationships among offenders, victims, and society (Riyadi, 2024). This philosophical shift from a legalistic-formal approach toward one that accommodates substantive justice raises fundamental questions about the extent to which the constitutional norm in Article 28D remains relevant and consistently applied within the new criminal law framework, particularly since this reorientation grants greater discretionary space to law enforcement authorities (Kasvarof, 2026).

One critical issue that emerges is the tension between legal certainty and substantive justice in criminal law enforcement practice. Legal certainty demands that norms be applied consistently and predictably, while substantive justice demands judicial flexibility in rendering decisions suited to the context of each case. Sirot (2025) notes that the new direction of criminal law politics following the National Criminal Code positions restorative justice as one of its main pillars, yet its implementation still faces conceptual and operational obstacles that may undermine the predictability of law that has traditionally characterized the constitutional principle of legal certainty (Sirot & Soesatyo, 2025).

The problem of sentencing disparity represents the most concrete manifestation of this tension in Indonesian criminal justice practice. Sentencing disparity differences in the imposition of criminal sanctions for cases with similar characteristics without clear justification has long been a structural problem that

undermines the principle of legal certainty and erodes public trust in the judicial system. The broad discretionary space afforded to judges in determining sanctions, the absence of comprehensively standardized sentencing guidelines, and the wide gap between minimum and maximum sentencing thresholds in statutory norms all contribute to disparities that can be viewed as a form of inequality before the law, contrary to the guarantee of Article 28D(1) of UUD NRI 1945.

The issue of equality before the law also faces distinct challenges amid this transformation of the criminal justice system. The principle of non-discrimination guaranteed under Article 28D(1) requires the state to ensure equal treatment for all citizens regardless of social status, economic standing, or political affiliation in criminal proceedings. Jitmau (2025) found that although the principle of equality before the law is guaranteed under Article 27(1) and Article 28D(1) of the 1945 Constitution, as well as various derivative regulations, its implementation on the ground still faces discrimination, abuse of power, and inequality in law enforcement, revealing a genuine gap between law in books and law in action (Jitmau dkk., 2025).

Further empirical studies reinforce these findings. Marzuki (2024), in a Scopus-indexed study on the rule of law and the principle of equality before the law, asserts that the application of this principle must be understood dynamically, not merely as a formal guarantee, but also as a substantive standard demanding equal treatment for all citizens regardless of socio-economic background (Marzuki, 2024). Aringga (2024) adds that law enforcement in Indonesia from the perspective of equality before the law still requires strengthening at the empirical level, as implementation gaps frequently arise from weak institutional oversight and limited access to legal aid for vulnerable groups (Suhendar & Aringga, 2024).

This complexity is further compounded by the emergence of new forms of crime not yet fully accommodated explicitly within the positive legal framework, such as digital technology-based crimes and the "No Viral No Justice" phenomenon in law enforcement in the digital era. Normative gaps or ambiguities in responding to such phenomena, as examined in the context of objectivity and human rights protection, risk creating legal uncertainty while opening space for inconsistent interpretation among law enforcement institutions, thereby directly affecting the fulfillment of the constitutional right to fair legal certainty.

At the institutional level, the Constitutional Court plays a central role in maintaining consistency between criminal law norms and the constitutional guarantee of Article 28D through the mechanism of judicial review. Angwarmasse (2025), in an analysis of the implications of the new Criminal Code on Indonesia's sentencing system, demonstrates that various new provisions carry the potential for multiple interpretations requiring constitutional review to ensure their

alignment with citizens' fundamental rights, making the Constitutional Court's role increasingly crucial during this transitional period (Angwarmasse, 2025).

Reform of the national criminal justice system should be directed not only toward maintaining public order and security but also toward strengthening human rights protection as mandated by the constitution. The structural and philosophical transformation embodied in the new Criminal Code must be capable of balancing the need for firm law enforcement with respect for the principles of legal certainty and equality that constitute the spirit of Article 28D, so that criminal law reform does not instead create constitutional disharmony. The ultimate success of the new Criminal Code's implementation depends heavily on the readiness of all elements of the legal system, from the preparedness of law enforcement officers to understand the new paradigm, harmonization of derivative regulations such as government and regional regulations, to sustained public socialization. Without such measures, there is a risk that the constitutional ideals of Article 28D concerning legal certainty and equality will remain merely written norms without effective force in day-to-day criminal justice practice.

Several prior studies have examined issues related to this research theme from various perspectives. Jitmau (2025) studied the implementation of the principle of equality before the law within the dynamics of Indonesian positive law and found a significant gap between written regulations and enforcement practice on the ground, yet this study did not specifically link its findings to the dynamics of substantive criminal law change following the enactment of the 2023 Criminal Code (Jitmau dkk., 2025). Faisal (2024), in a Scopus-indexed publication, examined the rethinking of penal reform within Indonesia's new criminal code and its potential impact on individual rights, but this research focused more broadly on criminal policy in general without specifically examining its implications for the constitutional interpretation of Article 28D (Faisal dkk., 2024). Meanwhile, Angwarmasse (2025) highlighted the general implications of the new Criminal Code on Indonesia's sentencing system but did not comprehensively connect these findings to the dimension of equality before the law (Angwarmasse, 2025). These three studies provide important contributions to understanding legal certainty and justice within the criminal law context, yet none has specifically mapped the implications of changing interpretation and enforcement practice of Article 28D of UUD NRI 1945 on the overall architecture of Indonesia's new criminal justice system following the 2023 Criminal Code.

This research seeks to fill this gap by offering an approach that specifically links the constitutional dynamics of Article 28D with the comprehensive transformation of the national criminal justice system, encompassing both substantive and procedural criminal law dimensions. The primary distinction of this research lies in its analytical focus, which is not merely descriptive-normative but also evaluates the consistency of implementing the principles of legal certainty and equality

before the law within the context of the newly enforced Criminal Code, thereby offering novelty in the form of mapping contemporary issues including sentencing disparity and restorative justice that have not been widely examined in an integrated manner within Indonesian criminal law literature.

The urgency of this research is also grounded in the academic need to provide an analytical framework usable by policymakers, law enforcement officers, and academics in evaluating the harmonization between constitutional norms and positive criminal law. Without in-depth examination of the implications of changes to Article 28D on the criminal justice system, there is a risk of inconsistent legal application that could weaken the legitimacy of the criminal justice system and public trust in the rule of law in Indonesia.

Based on the problems outlined above, this research aims to: (1) analyze the implications of changing interpretation and application of Article 28D of UUD NRI 1945 on the principle of legal certainty within Indonesia's new criminal justice system; (2) examine the extent to which the principle of equality before the law is accommodated in criminal law enforcement practice following the enactment of the 2023 Criminal Code; and (3) formulate legal policy recommendations to strengthen the harmonization between the constitutional guarantee of Article 28D and the implementation of a just national criminal justice system

2. Research Methods

This research employs a doctrinal legal research method, also known as normative-juridical research, which focuses on the systematic examination of legal norms, principles, and doctrines rather than empirical social phenomena. Doctrinal research is concerned with methodically finding, examining, explaining, and justifying the enacted legal framework relevant to a given legal problem, beginning with the identification of a legal issue and followed by the collection of relevant legal materials, including statutory law, constitutional provisions, judicial decisions, and scholarly commentary (Majeed dkk., 2023). This approach is appropriate for the present study because the central research problem concerns the interpretation and application of a constitutional norm, namely Article 28D(1) of UUD NRI 1945, in relation to the substantive and procedural provisions of Indonesia's new Criminal Code, rather than the measurement of social behavior in the field. Consistent with this framework, this research applies a statutory approach and a conceptual approach, examining the hierarchical and substantive relationship between the constitutional guarantee of legal certainty and equality before the law and the sentencing provisions, restorative justice mechanisms, and living-law provisions introduced under Law No. 1 of 2023, as well as relevant Constitutional Court decisions that test criminal law provisions against Article 28D. The reconstruction of the normative legal research paradigm further affirms that doctrinal analysis in Indonesian legal scholarship aims to interpret, assess, and construct applicable legal norms through systematic examination of legislation,

principles, and jurisprudence, making it the most suitable instrument for identifying inconsistencies between constitutional mandates and positive criminal law (Masnun dkk., 2025).

Data for this research consist entirely of secondary legal materials, classified into primary, secondary, and tertiary legal sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, particularly Article 28D, Law No. 1 of 2023 concerning the Criminal Code, Law No. 8 of 1981 concerning the Criminal Procedure Code, and relevant Constitutional Court decisions, while secondary legal materials comprise scholarly books, peer-reviewed journal articles, and legal doctrines pertaining to legal certainty, equality before the law, and criminal law reform. Tertiary materials, such as legal dictionaries and encyclopedias, are used to clarify technical legal terminology where necessary. Data collection is conducted through library research (*studi kepustakaan*), and the collected legal materials are analyzed using qualitative-descriptive analysis with deductive reasoning, moving from general constitutional principles toward specific applications within the criminal justice system (Huda & Wahyudin, 2026). This analytical technique aligns with the doctrinal method's core process, whereby a researcher must analyze the legal material to determine its fitness in addressing the identified problem and synthesize it to highlight inconsistencies between enacted legislation and the fundamental legal norms and principles of the legal system, before concluding with findings and recommendations (Wahyudin & Ab, 2025). The intersection between doctrinal and interpretive legal reasoning employed here is further supported by studies distinguishing the object of legal research, which is law itself, from that of social research, thereby justifying the exclusive reliance on normative legal materials without empirical field data collection in addressing the constitutional-criminal law nexus central to this study (Elvira dkk., 2026).

3. Result and Discussion

3.1. Implications of the Changing Interpretation and Application of Article 28D of UUD NRI 1945 on the Principle of Legal Certainty within Indonesia's New Criminal Justice System

The enactment of Law No. 1 of 2023 concerning the Criminal Code (KUHP) has produced fundamental consequences for the operational interpretation of Article 28D(1) of UUD NRI 1945, particularly regarding the phrase "fair legal certainty". This provision was previously understood narrowly as textual certainty over criminal norm formulations, yet the shift toward restorative approaches and the recognition of living law has broadened its meaning to encompass contextual and outcome-oriented certainty. Masyhar (2025) demonstrates that the recognition of living law under Article 2 of the new Criminal Code opens positive prospects for legal pluralism, but simultaneously creates conceptual tension with the *lex certa* principle that constitutes a core element of constitutional legal certainty (Masyhar

dkk., 2025). This tension confirms that the changing meaning of Article 28D cannot be separated from the fundamental debate over the boundary between legal flexibility and the predictability of criminal norms.

One concrete dimension of this implication appears in the newly introduced sentencing guidelines, which are intended to reduce disparity in judicial decisions yet in practice still grant judges broad discretionary space. Andini (2025), in examining the living law provisions within the 2023 Criminal Code, finds that the formalization of customary criminal law through regional regulations remains inconsistent across jurisdictions, creating varied standards of legal certainty depending on where a case is adjudicated (Andini, 2025). Without clear technical guidelines, the application of restorative considerations risks producing variations in judicial outcomes across regions that ultimately contradict the sense of legal certainty guaranteed by Article 28D. This condition reveals that normative reform has not automatically resolved the challenge of consistent legal application at the judicial level.

The following table maps the shift in interpretation and its implications for the elements of legal certainty guaranteed under Article 28D(1) of UUD NRI 1945.

Table 1. Shifts in Legal Certainty Elements under the New Indonesian Criminal Code

Legal Element	Certainty	Old Criminal Code (Colonial)	New Criminal Code (Law No. 1/2023)	Implication for Article 28D
Source of criminal law		Pure formal legality (lex scripta)	Recognizes living law as a supplementary source	Broadens the meaning of legal certainty toward a contextual dimension (Masyhar, 2025)
Sentencing orientation		Retributive	Restorative and rehabilitative	Tension between judicial flexibility and normative predictability (Alfies, 2025)
Sentencing guidelines		Not explicitly regulated	Regulated under Chapter III of the new Criminal Code	Potential to reduce disparity if supported by detailed technical guidelines (Latifah & Hairri, 2025)
Constitutional review function		Limited colonial-era norms	Expanded to progressive new provisions	Strengthens the Constitutional Court's checks-and-balances role over Article 28D consistency (Selajar, 2023)

Consistency between Constitutional Court decisions and the principle of legal certainty serves as an important indicator for evaluating the implications of changes to Article 28D. Legal scholarship on the limitations of living law in Indonesian criminal law reform emphasizes that the absence of clear standards for qualifying customary criminal norms creates uncertainty that undermines efforts to realize substantive justice (Bakhtiar dkk., 2023). When customary norms applied by different regions lack uniform qualification standards, public trust in

the constitution as the highest source of legal certainty is correspondingly eroded. Consistency in constitutional jurisprudence therefore becomes an absolute precondition for realizing the legal certainty guaranteed by Article 28D amid criminal law reform.

Substantive criminal law reform further affects legal certainty through the reformulation of specific offenses that were previously not explicitly regulated. Azizi, Roibin, and Mahmudi (2025), in their study on the reformulation of Article 445(1) of the 2023 Criminal Code from Lawrence Friedman's theory of justice perspective, show that reformulating certain offenses is intended to close legal gaps, yet formulations that remain overly general risk generating multiple interpretations in prosecutorial practice (Jumain Azizi dkk., 2025). Such interpretive multiplicity directly affects the predictability of law that lies at the core of constitutional legal certainty. Consequently, the success of substantive offense reform depends heavily on the clarity of normative formulation to avoid interpretive loopholes that undermine Article 28D.

The dimension of criminal procedure law has also undergone transformation with implications for legal certainty, particularly concerning the protection of suspects' and defendants' rights. Manik, Saragih, Fauzan, Suwirza, and Saragih (2025) identify that Indonesian criminal law reform under Law No. 1 of 2023 faces the primary challenge of a gap between progressive procedural norms and institutional readiness to implement them consistently (Dibi Vation Manik dkk., 2025). This gap creates the risk that procedural guarantees formally aligned with Article 28D fail to materialize in day-to-day judicial practice. Inconsistent implementation, in turn, weakens the function of criminal procedure law as an instrument guaranteeing substantive legal certainty for justice seekers.

The application of the legal certainty principle is also relevant in the context of anti-corruption enforcement through non-conviction-based asset forfeiture mechanisms. Legal certainty constitutes the core principle in implementing such mechanisms, because without clear procedures and evidentiary criteria, this instrument risks being misused and violating property rights that are equally protected under the constitution (Maulidiya dkk., 2025). This principle confirms that the expansion of new criminal law instruments must still submit to the strict legal certainty standards mandated by Article 28D. Procedural ambiguity in new legal instruments can become a loophole for violations of citizens' constitutional rights.

Overall, the implications of changes to Article 28D on the principle of legal certainty within the new criminal justice system are bidirectional, on one hand, they broaden the scope of legal certainty toward a more substantive and contextual dimension, while on the other hand, they create new risks of uncertainty due to norm formulations that are not yet fully detailed. The balance between restorative flexibility and normative predictability becomes key to the

success of this reform in maintaining consistency with the constitutional guarantee. Without adequate technical guidelines and consistent constitutional jurisprudence, the goal of fair legal certainty envisioned by Article 28D risks not being optimally achieved.

3.2. Accommodation of the Principle of Equality Before the Law in Criminal Law Enforcement Practice Following the 2023 Criminal Code

The principle of equality before the law guaranteed under Article 28D(1) faces a real test in the application of restorative justice mechanisms following the enforcement of the new Criminal Code. Alfies (2025) evaluates the application of restorative justice in reducing recidivism in Indonesia and finds that its effectiveness depends heavily on the capacity and consistency of law enforcement officers in applying it uniformly across regions (Alfies dkk., 2025). When the application of restorative justice depends on individual officer discretion, the risk of unequal treatment across regions and social groups becomes increasingly apparent. This demonstrates that good intentions to achieve substantive justice can turn into a threat to formal equality if not accompanied by clear implementation standards.

The effectiveness of restorative justice in the context of juvenile offenders further serves as an important indicator for achieving substantive equality within the sentencing system. Erdin (2025) evaluates the effectiveness of restorative justice in resolving juvenile criminal offenses in Indonesia and finds that outcomes vary significantly across regions due to differences in institutional capacity and law enforcement officers' understanding of restorative principles (Erdin dkk., 2025). This variation in outcomes indicates that juvenile offenders in regions with weaker institutional capacity have a smaller opportunity to benefit from the restorative approach compared to those in better-resourced regions. Such disparity in opportunity directly contradicts the principle of equal treatment before the law guaranteed by the constitution.

The conceptualization of restorative justice within Indonesia's regulatory framework also requires clarity to avoid hidden discrimination in its application. Pangestu, Pranata, Tanjung, and Ardianza (2025) explain that restorative justice is regulated across various fragmented regulations that have not been systemically integrated, meaning its field application depends heavily on the interpretation of each law enforcement institution (Pangestu dkk., 2025). Diverse interpretations risk producing different treatment for offenders with similar case profiles, depending on which institution handles them. This condition reinforces the finding that fragmented regulation constitutes one of the root causes of inequality in contemporary criminal law enforcement.

Reform of Indonesian criminal law reviewed across various related statutes also shows that normative innovation has not been fully matched by uniform

implementation readiness. Manik, Saragih, Fauzan, Suwirza, and Saragih (2025) find that innovations within the new Criminal Code face varying implementation challenges across regions, depending on local resources and officers' understanding (Dibi Vation Manik dkk., 2025b). This implementation imbalance creates a reality in which citizens in regions with better law enforcement resources receive higher-quality certainty and justice compared to citizens in underdeveloped regions. This phenomenon clearly contradicts the principle of universal equality that constitutes the spirit of Article 28D of UUD NRI 1945.

The issue of equality is also relevant in the context of protecting vulnerable groups in criminal proceedings, as reflected in the Constitutional Court decision concerning mental disability terminology. Scholarship examining Constitutional Court Decision Number 93/PUU-XX/2022 finds that although the Court acknowledged that certain terms in the Civil Code are scientifically outdated, these terms were nevertheless retained within legal norms, potentially perpetuating discriminatory stigma against persons with disabilities (Jennifer dkk., 2023). Such a decision raises serious concerns from the perspective of equality before the law, as it potentially conflicts with Article 28D(1) of the 1945 Constitution as well as the Convention on the Rights of Persons with Disabilities. This case exemplifies how even the highest judicial institution can produce decisions that indirectly weaken the principle of substantive equality.

Pretrial and preliminary hearing examinations further constitute an important arena for assessing the consistency of equality before the law, particularly regarding access to mechanisms correcting law enforcement errors. Nugroho (2025), in examining digital media pornography offenses and related procedural mechanisms, indicates that access to corrective legal mechanisms in practice remains influenced by the economic capacity and legal literacy of petitioners (Nugroho dkk., 2025). Parties with greater economic resources and legal information access tend to be more capable of effectively utilizing pretrial mechanisms compared to less advantaged parties. Such access disparity constitutes a form of substantive inequality that is not explicitly visible in statutory text but is evident in judicial practice.

From these overall findings, it can be concluded that the accommodation of equality before the law within Indonesia's new criminal justice system still faces significant structural gaps between normative guarantees and field enforcement practice. Variations in institutional capacity across regions, fragmentation of restorative justice regulation, and disparities in access to corrective legal mechanisms constitute the primary factors hindering the realization of substantive equality. Without structured policy intervention, these gaps risk widening the divide between social groups with differing access to legal resources. This condition underscores the urgency for the state to strengthen oversight

mechanisms and implementation standardization to ensure consistent fulfillment of the equality principle guaranteed by Article 28D throughout Indonesia.

3.3. Legal Policy Recommendations for Harmonizing the Constitutional Guarantee of Article 28D with the National Criminal Justice System

Based on the findings in the two preceding sub-discussions, harmonizing the constitutional guarantee of Article 28D with the implementation of the national criminal justice system requires structured policy measures at the regulatory, institutional, and oversight levels. The first urgent need is the development of more detailed technical sentencing guidelines to operationalize Chapter III of the new Criminal Code concerning sentencing objectives and guidelines, in order to reduce the scope of judicial discretion that risks generating disparity. Such technical guidelines should be developed with the involvement of the Supreme Court, criminal law academics, and civil society representatives to reflect a balance between restorative flexibility and normative predictability. Without concrete guidelines, the ideal of fair legal certainty envisioned by Article 28D will continue to face the risk of inconsistent implementation.

The second recommendation concerns strengthening the consistency of Constitutional Court jurisprudence through improved documentation and systematization mechanisms for its decisions. Studies on constitutional review's role in criminal procedure law development suggest the need for an integrated precedent database so that constitutional judges can consistently refer to prior rulings when testing new criminal provisions against Article 28D (Orujlu, 2026). Such systematization would reduce the likelihood of conflicting decisions and strengthen legal predictability for parties filing judicial review petitions. This measure would also reinforce the Constitutional Court's legitimacy as the guardian of constitutional consistency amid dynamic criminal law reform.

The following table summarizes policy recommendations based on the three main dimensions identified throughout the discussion: regulation, institutional capacity, and oversight.

Table 2. Policy Dimensions and Legal Policy Recommendations to Harmonise Article 28D with the New Criminal Code

Dimension	Core Problem	Policy Recommendation	Relevant Stakeholders
Regulation	Ambiguity of living law criteria and sentencing guidelines	Develop detailed and measurable government regulations and Supreme Court technical guidelines on living law and sentencing	Government, Parliament, Supreme Court
Institutional Capacity	Disparity in law enforcement capacity across regions	Nationally standardised training on restorative justice and living law;	Police, Prosecutor's Office, Supreme Court

		equitable distribution of investigative and prosecutorial resources	
Oversight	Inconsistency in court and Constitutional Court decisions	Systematise jurisprudence databases; periodic consistency reviews of constitutional and cassation-level decisions	Judicial Commission, Constitutional Court, Supreme Court
Access to Justice	Disparity in access to pretrial mechanisms and legal aid	Expand publicly funded legal aid and facilitate access to pretrial review, especially for vulnerable and low-income groups	Ministry of Law and Human Rights, Legal Aid Organisations

The third recommendation focuses on strengthening the institutional capacity of law enforcement officers in resource-limited regions, in response to the implementation disparities in restorative justice identified by Alfies (2025) and Erdin (2025). A nationally standardized training program should be designed so that all law enforcement officers, whether in urban or remote areas, possess equal understanding of applying restorative approaches and recognizing living law. This standardization is essential to ensure that the quality of justice citizens receive does not depend on the geographic location where they face legal proceedings. Investment in this institutional capacity constitutes a structural precondition for realizing the substantive equality guaranteed by Article 28D.

The fourth recommendation involves expanding access to legal aid and pretrial mechanisms for economically vulnerable groups, in line with the access disparity findings identified in the preceding sub-discussion. Expanding free legal aid programs integrated with the criminal justice system would ensure that the right to legal certainty and equality is not merely formal but genuinely accessible to all citizens regardless of economic status. Collaboration between government and civil society legal aid organizations is key to the success of such programs in reaching the groups most in need. Without this expanded access, the constitutional guarantee of Article 28D risks being optimally enjoyed only by social groups with greater economic privilege and legal literacy.

The fifth recommendation concerns revising legal terminology that still contains discriminatory elements, as identified in the Constitutional Court decision regarding mental disability terminology. Reforming legal terminology toward more inclusive and humane language should become an integral part of the legislative harmonization agenda following the enforcement of the new Criminal Code, so that legal norms genuinely reflect the substantive justice guaranteed by the constitution. This revision process should involve legal language experts, disability rights organizations, and human rights institutions to ensure that terminological changes are substantive rather than merely cosmetic (Rahmasari & Firmansyah, 2026). This measure would strengthen the state's commitment to the

non-discrimination principle that lies at the core of Article 28D(1) of UUD NRI 1945.

The final recommendation concerns the need for periodic evaluation of the new Criminal Code's implementation through an independent monitoring mechanism involving academics, civil society organizations, and relevant state institutions. Such periodic evaluation is essential for early detection of potential misalignment between the implementation of new criminal law and the constitutional guarantee of Article 28D, enabling responsive corrective measures. A transparent and participatory evaluation mechanism would also enhance state accountability in fulfilling its constitutional obligations to citizens. Through a comprehensive policy approach encompassing regulation, institutional capacity, oversight, and access to justice, harmonization between Article 28D of UUD NRI 1945 and Indonesia's new criminal justice system can be more optimally and sustainably achieved.

4. Conclusion

The implications of the changing interpretation and application of Article 28D of the 1945 Constitution for the principle of legal certainty in Indonesia's new criminal justice system show that the 2023 Criminal Code shifts legal certainty from a purely textual notion toward a more contextual, restorative, and outcome-oriented concept through recognition of living law and corrective, rehabilitative, and restorative sentencing paradigms. Empirical and doctrinal studies demonstrate that expanded judicial discretion and recognition of customary law without clear technical limits create new tensions with the principles of legality and *lex certa*, opening room for multiple interpretations and sentencing disparities. These findings map a risk that vague formulations of certain offences and restorative mechanisms may generate fresh uncertainty that undermines the constitutional guarantee of fair legal certainty under Article 28D. Consequently, legal certainty can only be effectively realized if the regulation of living law, the aims and guidelines of sentencing, and restorative justice procedures are formulated in detailed, measurable, and consistent ways through implementing regulations and strengthened constitutional review. The accommodation of the principle of equality before the law in criminal law enforcement practice after the 2023 Criminal Code reveals a clear gap between the normative guarantee of equality and its empirical implementation in Indonesia. Research on restorative justice and the role of customary institutions indicates that restorative approaches can enhance substantive justice, reduce recidivism, and strengthen community participation, yet their application remains fragmented and heavily dependent on institutional capacity, legal culture among law-enforcement officials, and community access to restorative mechanisms. These mapped findings show that the opportunity to obtain restorative settlements and effective victim protection is uneven, especially for vulnerable

groups and regions with limited law-enforcement resources, thereby creating new forms of inequality that contradict the “equality before the law” guarantee of Article 28D. Thus, full realization of the equality principle requires standardized restorative procedures, strengthened legal aid and access to review mechanisms, and corrective measures for terminology and practices that still embed discriminatory bias in the criminal justice system.

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