

# Transformation of Criminal Law in Indonesia: An Analysis of Social Rights Protection through a Qualitative Descriptive Approach

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## KEYWORDS

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## ABSTRACT

This research aims to analyze the protection of human rights in criminal law in Indonesia, considering the importance of integrating human rights protection into a fair and effective criminal law system. This study uses a qualitative descriptive research method, utilizing primary data from case studies related to human rights violations and secondary data in the form of scientific literature, laws, and official documents from related institutions. Data were collected through documentation study techniques and media content analysis, which allowed for in-depth exploration of various cases and legal policies that had been implemented. Content analysis was used to identify key themes in legal documents and literature studies, while theoretical modeling helped formulate a theoretical model that links criminal law to human rights protection. The results of the study indicate that there is a discrepancy in several implementations of criminal law with human rights principles, especially in terms of protecting victims and fulfilling the rights of the accused. The conclusions obtained highlight the need for criminal law reform to ensure the fulfillment of basic rights for all individuals in accordance with international standards. This study provides recommendations for policymakers to integrate human rights protection more systematically into the criminal law system in Indonesia.

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## Introduction

Human rights are the inalienable rights of every person as a fellow human being and cannot be taken away or given away by others. Among the many aspects of life covered by human rights are the rights to life, liberty, security, and protection from cruel, inhuman, or degrading treatment. The basis for the recognition and defense of human rights internationally is the adoption of the Universal Declaration of Human Rights by the United Nations in 1948. According to the Declaration, everyone has equal rights to these freedoms (Audina, 2022).

In Indonesia, human rights are regulated in Law No. 39 of 1999, which emphasizes that every person is entitled to protection and respect for their dignity. The concept of human rights in Indonesia is not only individualized but also considers the interests of society as a whole. This reflects the

understanding that every individual is part of a larger social community. Human rights violations often occur in various forms, such as discrimination, torture, and arbitrary arrest. These cases of violations demonstrate the challenges faced in upholding human rights at the national level. In addition, public awareness about the importance of human rights also needs to be increased so that each individual can play an active role in fighting for their rights (Haryanti & Hayati, 2019).

The criminal law system in Indonesia is complex and integrated with complete laws and regulations. Broadly speaking, this system can be divided into three main subsystems: Material/Substantive Criminal Law, Formal Criminal Law, and Criminal Implementation Law. Material/substantive criminal law discusses offenses that are threatened by criminal law. This includes commands and prohibitions that, if violated, are punishable by criminal penalties. For example, the Penal Code provides a list of prohibited offenses and the penalties associated with each offense.

The process of implementing criminal laws is the subject of formal criminal law. Formal criminal law includes regulations that control the application of criminal law, from court decisions to police investigations and prosecutions. For example, the Criminal Code stipulates aggravated/extenuated criminal offenses, joint criminal offenses, and ways of criminal offenses (Marzuki, 2017). Criminal execution law regulates how punishment is imposed and executed. For example, types of punishment such as confinement, fine, and imprisonment. For example, imprisonment can last from a minimum of one day to a maximum of one year, while fines can be replaced with substitute imprisonment if not paid (Tumbel, 2020).

The criminal law system in Indonesia is also influenced by the politics of punishment reflected in special laws outside the Criminal Code. The term "straf" is defined as criminal, while the term "punishment" is still general as it also includes civil and state administrative penalties. Indonesia's criminal law system has challenges related to interpretation and implementation (Wajdi & Imran, 2022). For example, the Criminal Code does not explicitly mention the objectives and guidelines of punishment, so judges and law enforcement officials must interpret them themselves. This can lead to uncertainty and imbalance in implementation.

The protection of human rights in the criminal justice system is essential in maintaining justice and human dignity. The criminal justice system must reflect universal human rights values, such as legality, presumption of innocence, and equality of opportunity, to ensure that every individual receives equal treatment before the law without any discrimination (Syafi'ie, 2020). Human rights protection must be concrete, not just abstract. This means that protection must be translated into real and effective practice, not just theory. For example, in the criminal justice process, the rights of crime victims must be explicitly guaranteed so that they are not sidelined in the implementation of the law. Furthermore, human rights protection must be transparent and fair. Judges, as creators of the law, have a moral and ethical responsibility to consider the interests of victims in their decisions (Wati, 2020).

Human rights protection is also closely linked to strong legislative mechanisms and legal frameworks. Constitution No. 39/1999 on Human Rights establishes basic principles of human rights protection, such as the right to be presumed innocent until proven guilty in a court of law. While the law sets high standards, implementation is often plagued by real challenges. For example, unequal access to justice and limited resources can hinder the effective implementation of human rights. In the face of these challenges, several solutions can be pursued. One is more inclusive and participatory

legal reform. These reforms should involve various levels of stakeholders to ensure that human rights standards are substantially improved. In addition, improving access to justice is also essential so that every citizen can enjoy their rights fairly and transparently (Tumbel, 2020).

The development of criminal law in Indonesia has undergone significant transformation in line with the social, political, and economic dynamics that occur in society. From the colonial period until now, criminal law in Indonesia has not only functioned as a law enforcement tool but also as an instrument to protect human rights (Wahyuni, 2017).

Initially, Indonesian criminal law was heavily influenced by the Dutch legal system through the Criminal Code (KUHP) adopted in 1918. This Criminal Code regulates various criminal offenses and sanctions imposed but is often considered unresponsive to evolving human values (Arief, 2019). Over time, there is an awareness of the importance of criminal law reform that is more progressive and oriented towards the protection of human rights. This is reflected in the ongoing efforts to reform the KUHP, where new concepts such as restorative justice and the abolition of the death penalty are being introduced.

The influence of international criminal law is also growing stronger. The ratification of various international conventions on human rights encourages Indonesia to adjust its legal system to be in line with global standards (Basuki, 2020). For example, international courts and the recognition of crimes against humanity provide impetus for national legislation to strengthen human rights protection in criminal law. One of the important issues in the development of criminal law is disparity in the imposition of sanctions. Uncertainty in the application of the law can lead to injustice, where criminals do not receive equal treatment before the law. This shows the need for clear standards in the criminalization process and the imposition of sanctions (Audina, 2022). In addition, the existence of laws outside the Criminal Code often creates confusion and uncertainty, thus disrupting the harmony of the national criminal law system. The protection of human rights in the criminal law system is also evident in the restorative justice approach that has begun to be applied. This approach focuses on restoring relationships between offenders, victims, and the community, not just on punishment alone (Haryanti & Hayati, 2019).

Human rights-oriented criminal law reform will create a fairer and more humane justice system. This requires commitment from all parties - government, law enforcement, and the public - to support the necessary changes. The development of criminal law in Indonesia must continue to be directed towards meeting international human rights standards while considering the local context. The development of criminal law in Indonesia shows an effort to integrate human rights values into the justice system. Although many challenges remain, steps towards reform that are more inclusive and responsive to the needs of society are positive steps towards social justice. Going forward, Indonesia must continue to evaluate and revise its legal policies to be in line with human rights principles and the needs of modern society (Mertha, 2016).

## **Research Methods**

The descriptive qualitative research method in the legal context aims to understand the transformation of criminal law in Indonesia, especially in protecting social rights. This research collected data from primary and secondary sources. Primary data is obtained through case studies relevant to the protection of human rights. In contrast, secondary data includes literature, official

documents from government agencies and international organizations, and the results of previous research.

The data collection process was conducted through a documentation study that involved analyzing various written sources, including laws and scholarly journals, to provide a comprehensive overview of the issues studied. In addition, news articles and investigative reports were analyzed to gain additional perspectives on human rights issues in criminal law. Content analysis was applied to evaluate themes and patterns in the documents and literature, which helped to understand the relationship between criminal law and human rights protection policies in Indonesia. This approach allows researchers to delve deeper into the social dynamics that influence the legal system and how these changes contribute to the protection of social rights in society.

## **Results and Discussion**

### **Legal Basis for Human Rights Protection in Criminal Law**

The main foundation of human rights law in Indonesia is the 1945 Constitution of the Republic of Indonesia (UUD 1945). In Articles 28A to 28J of the amended 1945 Constitution, the state reaffirms its commitment to respect and defend human rights. Article 28A guarantees that every person has the right to life and the right to defend his or her life and livelihood, while Article 28B regulates the right to have a family and continue offspring. In addition, Article 28C emphasizes the importance of the right to education and the fulfillment of basic needs for self-development.

These articles also include the right to fair trial (Article 28D), freedom of religion and assembly (Article 28E), and the right to information and communication (Article 28F). Article 28G protects the individual's right to security and protection from torture, while the importance of a healthy environment and mental and physical well-being is emphasized in Article 28H. The right not to be retrospectively prosecuted is one of the human rights affirmed by Article 28I that cannot be diminished in any way. Article 28J emphasizes that everyone has a social responsibility to respect the rights of others (Muslikin, 2022).

Law No. 39/1999 on Human Rights is an important component of Indonesia's human rights legislative framework, in addition to the 1945 Constitution. The law lays out the government's duties in upholding, defending, and enforcing human rights and precisely regulates a number of their characteristics. The government shall uphold human rights in accordance with relevant national and international laws and regulations, as stated in Article 71 of this law. Minister of Law and Human Rights Regulation No. 32/2016, which regulates public communication services relating to human rights issues, is one of the additional laws and regulations that help protect human rights. It demonstrates the government's efforts to improve public access to information and complaint mechanisms related to human rights violations. The human rights guarantees in the 1945 Constitution and related laws reflect Indonesia's commitment to respect and protect human rights. However, challenges in implementation remain. Human rights violations still occur in various forms, such as discrimination, violence, and abuse of power (Maylani et al., 2022).

As a country dedicated to upholding human rights, Indonesia has ratified a number of international treaties governing its defense and realization. The ratification of the Universal Declaration of Human Rights (UDHR) in 1948, which became the world standard in the defense of human rights, was a significant first step. Although not specifically included in the 1945 Constitution, the revision of the 1945 Constitution in 1999-2002 has strengthened the protection of human rights

in the constitution (Haryanti & Hayati, 2019). The ratification of the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR) in 2006 are two international treaties that Indonesia has ratified. Civil and political rights, including the right to justice, freedom of expression, and immunity from torture, are regulated in the ICCPR. On the other hand, the ICESCR provides a strong focus on economic, social, and cultural rights, such as the right to decent work, health care, and education.

In addition, Indonesia also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1984. CEDAW focuses on eliminating discrimination against women in various aspects of life, including education, employment, and political participation. Indonesia has developed various policies to support gender equality and protect women's rights. Another convention adopted is the Convention on the Rights of the Child (CRC), which was ratified in 1990. The CRC provides special protection to children and emphasizes the importance of fulfilling their rights in the context of education, health, and protection from violence and exploitation. Indonesia has also adopted additional protocols related to the CRC governing the protection of children from involvement in armed conflict and sexual exploitation (Pangaribuan, 2017).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is also part of Indonesia's commitment to human rights. The ratification of this convention in 1988 shows the seriousness of the state in protecting individuals from torture and other ill-treatment. Indonesia is also involved in the Convention on the Protection of All Persons from Enforced Disappearance (CED), which was ratified in 2010. The convention aims to prevent enforced disappearances and ensure that individuals have access to justice in the event of violations. Although Indonesia has ratified these international conventions, challenges in implementation remain. Many domestic laws and regulations are not yet fully in line with these international commitments. In addition, institutions such as the National Human Rights Commission (KOMNASHAM) play an important role in monitoring human rights implementation at the national level (Prasetyo & Herawati, 2022).

### **Challenges in the Protection of Human Rights in Criminal Proceedings**

Cases of abuse of authority by law enforcement officials in Indonesia are often in the public spotlight, especially in the context of law enforcement related to illegal activities, such as unlicensed gold mining. One striking example is Frinsis Warmansyah's (2023) study of illegal gold mining practices in West Sumatra, where despite numerous accidents and fatalities, law enforcement against the activity remains weak. The most recent accident that claimed the lives of 13 workers shows how serious the problem is, with raids conducted by authorities yielding no significant results and often leaking before they are carried out.

The Solok police chief acknowledged that the leak of information about the raid signaled a fundamental problem in the law enforcement system. This led to allegations that some security forces were involved in protecting the illegal mining practices. Investigations showed a mutually beneficial relationship between the miners, political officials, and law enforcement officials. For example, DPRD members and retired police officers are directly involved in operating heavy equipment for illegal mining, while public officials act as liaisons between miners and police officers.

The involvement of the authorities in this illegal mining business creates a situation where law enforcement becomes a mere formality. Although there are laws that regulate sanctions for violations,



such as the Minerba Law, the application of the law is often hampered by power relations involving various parties. The powerlessness of the authorities in cracking down on these violations is further exacerbated by the lack of integrity and professionalism among law enforcers.

Another striking case is the illegal coal mining activities in East and South Kalimantan, where the alleged involvement of unscrupulous officials was also revealed. Commission III of the House of Representatives has reminded the National Police Chief to take firm action against unscrupulous officials involved in this illegal practice. However, despite supervision from the legislative body, concrete action against the perpetrators is still minimal. Abuse of authority by law enforcement officials not only harms the state from an economic perspective but also threatens the safety of the community and the environment. When officials are supposed to act as protectors of the law, they become part of the problem by protecting criminals. This creates a deep injustice for the people who are victims of these illegal activities (Basuki, 2020).

To prevent the recurrence of similar cases in the future, the law enforcement system and the integrity of the authorities need to be thoroughly evaluated. Strict supervision of mining activities and community involvement in the supervision process can be the first step to improving this situation. Without significant changes in the way law enforcement is carried out, tragedies involving the lives of mine workers and environmental losses will continue to recur.

Awareness of human rights among the public and law enforcers in Indonesia is still relatively low, although various efforts have been made to increase understanding and respect for these rights. One of the main factors contributing to this lack of awareness is the lack of education and socialization on human rights. Formal education in schools often does not cover human rights in-depth, leaving young people without an adequate understanding of their basic rights. This has the potential to result in indifference to human rights violations that occur around them (Wati, 2020).

On the other hand, law enforcement officials often lack an understanding of the importance of human rights in carrying out their duties. Many of them are involved in actions that violate individual human rights, either directly or indirectly. For example, in some cases, acts of violence by security forces against suspects or demonstrators show that an understanding of human rights has not been fully internalized in law enforcement practices. This lack of understanding may be due to a lack of adequate training and education on human rights principles within law enforcement institutions.

Cases of abuse of power by law enforcement officials often reflect a lack of awareness of human rights. For example, street judgments that occur in communities show that many people feel entitled to take matters into their own hands against criminals without considering the basic rights of the individual. This creates a cycle of human rights violations that is increasingly complex and difficult to address. People tend to think that such actions are justified because they are frustrated with the slow pace of the legal process (Yusri, 2020).

In addition, there are also cultural factors that influence human rights awareness. In some contexts, local social and cultural norms may contradict universal human rights principles. For example, discriminatory practices against certain groups may be taken for granted in certain societies, hindering efforts to uphold their rights. Awareness of the importance of respecting differences and diversity also needs to be instilled so that people can understand that every individual has equal rights.

To address this problem, systematic efforts are needed to raise awareness about human rights at all levels of society. Human rights education should be incorporated into the school curriculum

from primary to tertiary levels. In addition, socialization programs involving local communities and non-governmental organizations can help improve people's understanding of the importance of respecting and protecting human rights. The government also has a responsibility to ensure that law enforcement officials are thoroughly trained in human rights principles. This training should include ways to handle conflict situations without violating individual rights, as well as the importance of respecting the dignity of every person (Wajdi & Imran, 2022).

The criminal justice system in Indonesia faces various systemic obstacles that hamper the effectiveness and fairness of law enforcement. One of the main problems is the arbitrariness of law enforcement officials, who often commit procedural irregularities in carrying out their duties. Reports from the Ombudsman of the Republic of Indonesia show that many public complaints are related to poor service from law enforcement agencies, especially the police. These complaints include long delays, maladministration, and even requests for bribes, all of which reflect a lack of transparency and accountability in the justice system.

In addition, the problem of abuse of power also arises in the form of wrongful arrests and mistreatment of suspects during the investigation process. These cases not only harm the individuals involved but also create public distrust of law enforcement institutions. This legal uncertainty is exacerbated by the lack of understanding of human rights among law enforcement officers, who are supposed to be the protectors of individual rights. Another significant obstacle is the lack of strong evidence in the judicial process. Many criminal cases rely solely on testimonies without the support of adequate scientific or forensic evidence. This often leads to dubious and even wrongful convictions. In some cases, defendants are found guilty even though the evidence is not strong enough to support the charges. This weak evidentiary process creates a situation where justice becomes difficult to achieve (Tumbel, 2020).

The criminal justice system is also often fragmented, with sub-systems such as investigation, prosecution, and courts operating separately without proper coordination. This fragmentation results in a lack of oversight and accountability between these institutions. The Supreme Court, as the highest authority in judicial power, should have a broader oversight function to ensure that all processes run in accordance with the principles of applicable law (Audina, 2022). In addition, cultural factors also influence the way the public and law enforcement officials view the criminal justice system. Social norms can contradict the principles of justice and human rights. For example, traditional practices or local norms often take precedence over formal legal procedures, which can impede the application of justice. These systemic constraints are also evident in the implementation of new regulations, such as the Law on Juvenile Justice System (UU SPPA). While the law aims to create a more child-friendly justice system, implementation challenges remain, including a lack of supporting institutions and implementing regulations that have not been fully finalized (Hartawan et al., 2020).

### **Human Rights Protection Mechanism in Criminal Proceedings**

The relevant Criminal Procedure Code (KUHAP) contains detailed regulations on legal proceedings that protect the rights of suspects and accused persons in Indonesia. Individual rights are fully protected by KUHAP at every level of the legal procedure, from the investigation stage to trial. The presumption of innocence, which states that everyone is presumed innocent until proven guilty in court, is one of the fundamental ideas. Article 50 of KUHAP regulates the suspect's right to

be immediately examined by the investigator (Marzuki, 2019). This indicates that suspects should not be left in uncertainty without clear legal action. In addition, suspects have the right to have their case immediately brought to court, which means that the legal process must take place without unnecessary delay. This is important to ensure that justice can be served quickly and efficiently.

In addition, according to Article 51 of KUHAP, the suspect has the right to be fully informed of the charges against him in a language understandable to him while a defense is being prepared. An important component of a fair trial is the right of the suspect or accused to give testimony freely and without coercion (Article 52). In KUHAP, the right to legal aid is also expressly regulated. According to Article 55, suspects or accused are allowed to choose their legal counsel; if they cannot afford it, the state must provide it free of charge (Article 56). This ensures that everyone has access to the legal assistance necessary to defend their rights throughout the legal system (Pangaribuan, 2017).

In terms of detention, KUHAP gives suspects or accused persons the right to contact their legal counsel (Article 57) and obtain a visit from a private doctor if necessary (Article 58). They also have the right to be notified of their detention and may contact their family or others to obtain legal support or bail for suspension of detention (Article 59). Other guaranteed rights include the right to produce witnesses or experts who can provide information useful to them (Article 65), as well as the right to appeal court decisions (Article 67). The suspect or accused also does not require corroboration (Article 66), with the burden of proof resting with the prosecution.

In Indonesia, independent institutions are critical to human rights monitoring and enforcement. They serve as watchdogs to ensure that state and government institutions fulfill their obligations properly and openly. The Corruption Eradication Commission (KPK) is one of the most important independent institutions in this area. KPK is tasked with investigating, prosecuting, and preventing corruption. It also serves as a watchdog over how well state institutions and the government are performing in preventing and combating corruption. The presence of the KPK increases oversight of the government and guards against corruption and abuse of power.

Another independent organization responsible for auditing government financial management is the Supreme Audit Agency (BPK). The responsibility and authority to audit the financial statements of the government and state agencies and provide suggestions for improving the state's financial management rests with the BPK. BPK can provide useful criticism to the government on implemented policies and programs by conducting monitoring and evaluation operations (Nuraeni & Sihombing, 2019). In addition to overseeing and resolving public complaints about substandard government services, the Ombudsman of the Republic of Indonesia (ORI) is an independent organization. In addition to investigating and mediating public complaints, ORI also has the authority to provide advice and counsel to government organizations on how to improve public service standards. ORI contributes to improving government responsiveness to public needs and transparency.

Promoting and defending human rights in Indonesia is the responsibility of the National Commission on Human Rights (Komnas HAM), an autonomous organization. Komnas HAM is empowered to investigate human rights violations and provide advice and counsel to state and government institutions on how best to defend human rights. Accountability and transparency of government performance are enhanced through the independent and transparent operation of Komnas HAM in fulfilling its mandate. These independent organizations are critical in observing and assessing government policies and initiatives. In addition to collecting data and information, they also study and evaluate existing policies and plans. The results of this monitoring and assessment are then



used to provide advice to the government to improve or refine existing policies and activities (Haryanti & Hayati, 2019).

In addition, independent institutions actively support change and improve public sector performance. Through their monitoring and evaluation operations, they provide the government with useful criticism of its performance and, where appropriate, make suggestions for policy improvements or modifications. Independent institutions such as the KPK, BPK, ORI, and Komnas HAM interact closely with other institutions in Indonesia's constitutional system. They are accountable to the president and the DPR and are under the supervision of the Supreme Court as they have some judicial functions. These independent institutions ensure that the government and state institutions carry out their duties and responsibilities in an accountable and transparent manner (Adkiras, 2021).

### **Recommendations for Improvement**

Public policies that prioritize law enforcement training and human rights education can help strengthen human rights protection in Indonesia. As the first line of defense, law enforcement officials play a critical role in ensuring the protection and fulfillment of individual rights. Human rights topics, including the presumption of innocence, prohibition of torture, and the right to fair legal representation, should all be covered in training sessions. Law enforcement personnel can understand and apply these ideas in their daily work through formal training and scenario simulations. In addition, attending human rights seminars and workshops can enhance their understanding of contemporary issues and difficulties in upholding human rights (Arief, 2019).

The integration of human rights materials into the education curriculum for prospective law enforcers is also very relevant. With a strong theoretical foundation, future generations will be more sensitive to human rights issues and better prepared to face challenges in the field. A good education will reduce the possibility of abuse of power by law enforcement officers, as they will be more aware of the importance of respecting individual rights. In addition, increased professionalism of law enforcers can be achieved through this training program. In-depth knowledge of human rights will improve their ability to handle cases more fairly and transparently.

To effectively implement this policy, law enforcement institutions need to provide sufficient resources and establish partnerships with non-governmental organizations experienced in the field of human rights. Regular monitoring and evaluation are also needed to ensure that education and training programs achieve their intended goals. Community involvement in monitoring the legal process is essential to create a transparent and accountable justice system (Maylani et al., 2022). The community does not only function as spectators but also as active participants who have a strategic role in maintaining justice. With this involvement, the community can ensure that the legal process is carried out in a manner that is in accordance with the principles of justice and human rights.

One way the public can get involved is through participation as jurors in a trial. As jury members, they have the responsibility to listen to evidence and arguments from both sides before making a decision. This gives the public the opportunity to contribute directly to the judicial process while increasing their sense of ownership of the legal system. In addition, the public is also expected to report any violations of the law that they witness. By reporting actions that are not in accordance with the law, the community acts as a watchdog that assists law enforcement officials in carrying out

their duties. This involvement creates synergy between the community and law enforcement so that the legal process can be more effective (Prasetyo & Herawati, 2022).

The role of witnesses is also important in this context. Communities willing to testify in court can help uncover relevant facts and support justice. Community involvement as witnesses strengthens the legal position and provides a broader perspective on a case. The openness of court proceedings to the public is also a form of community participation. With public access to court proceedings, the public can directly oversee the legal process. This not only increases transparency but also promotes accountability of law enforcement officials.

## Conclusion

This study found that the implementation of human rights protection in Indonesian criminal law is not fully in line with international human rights principles. This conclusion is reached through an analysis of criminal cases that show deficiencies in the protection of victims' rights and the basic rights of the accused. The implications of these findings suggest that reforms in Indonesian criminal law policy are urgently needed to improve human rights protection guarantees. Current policies need to be systematically integrated with global human rights standards to create a fairer and more effective legal system. For policymakers, the findings provide an impetus to review legal regulations and procedures that may lead to human rights violations.

Suggestions for future research include a more in-depth study of approaches that Indonesia could adopt to harmonize its criminal law with international human rights conventions. Future research is also expected to provide practical solutions for policymakers to promote comprehensive human rights protections in the criminal law system, including strategies to strengthen the rights of victims and defendants and ensure that the entire legal process is conducted with transparency and fairness (2023).

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