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Legal-Technical Secularization and the Reconstruction of Religion–State Relations in Indonesian Criminal Law Reform

An Analysis of the National Criminal Code and the 2025 Criminal Procedure Code

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Abstract
Indonesia's criminal law reform under Law No. 1 of 2023 on the Criminal Code and Law No. 20 of 2025 on the Criminal Procedure Code raises a fundamental question concerning the constitutional transformation of religious and moral values into enforceable criminal norms. Employing doctrinal legal research through statutory, conceptual, and functional-comparative approaches, this article examines legal-technical secularization, changing religion–state relations, and the safeguards governing criminalization. Three findings emerge. First, Article 2 and Articles 411–412 of the Criminal Code subject living law and morality-related offenses to legally defined conditions, offense elements, and complaint requirements. Second, Article 235 of the Criminal Procedure Code addresses categories of admissible evidence and the judicial assessment of unlawfully obtained or inauthentic evidence; such provisions do not, by themselves, resolve wider questions of privacy, equality, or proportionality. Third, Malaysia and Singapore demonstrate distinct approaches to the allocation of religious-law jurisdiction and institutional competence. The article proposes an integrative-constitutional model linking sources of normative value, the statutory construction of offenses, procedural enforcement, and constitutional review. Its four-stage assessment offers a structured test of legitimate interests, necessity, normative precision, and judicial safeguards without equating statutory codification with the disappearance of religion from law.

Keywords: legal-technical secularization; religion–state relations; criminal law reform; constitutional proportionality; legal pluralism.

Introduction

Legal secularization, legal secularism, and legal-technical secularization address related but analytically distinct aspects of the relationship between religion, law, and the state. Legal secularization describes the historical or institutional reorientation of legal authority toward legal rationality, constitutional norms, rights, and public justification, without necessarily implying the disappearance of religious influence (Neo, 2024; Purwanto & Silalahi, 2025; Seth, 2024). Legal secularism, by contrast, refers to a normative commitment to the institutional independence of public law from the binding authority of any single religious doctrine (Schlesinger, 2025). For purposes of this article, legal-technical secularization denotes the juridical translation of religiously associated or socially embedded values into publicly ascertainable offense definitions, procedural classifications, rules of evidence, and institutional decision-making subject to constitutional control (Candra & Huda, 2022; Syamsudin & Fernando, 2025).

The fundamental distinctions among these terms concern the process of legal transformation, the paradigm governing the separation of authority, and the techniques used to operationalize norms. In Indonesia, these concepts require critical analysis in light of Pancasila, the 1945 Constitution, guarantees of religious freedom, and a conception of the rule of law that does not simply equate legal modernization with the elimination of religious values.

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The term "legal-technical secularization" is employed as an analytical rather than a descriptive label for every instance of codification. Three cumulative indicators are examined: (i) whether the source of a moral or religious value can be distinguished from the state-recognized legal basis of liability; (ii) whether the content and enforcement of the resulting norm are determined by publicly specified legal elements, institutional competence, and applicable evidentiary rules; and (iii) whether the exercise of coercive power remains reviewable under constitutional guarantees of legality, equality, religious freedom, and proportionality. Ordinary codification satisfies neither the second nor the third indicator merely because a rule has been placed in a statute. The analysis therefore tests the quality and constitutional consequences of normative translation rather than presuming that positive legal form alone establishes secularization.

Within the National Criminal Code, the relevant framework comprises Article 1 on legality and the prohibition of analogy, Article 2 on the conditional recognition of living law, Articles 300–305 concerning offenses involving religion and belief, and Articles 411–412 regulating adultery and cohabitation outside marriage. These provisions illustrate distinct forms of state recognition: Article 2 concerns living law, which should not be conflated with religious law in every instance, whereas Articles 411–412 set out statutory offense elements and restrict the persons entitled to initiate complaints. Accordingly, the existence of a moral or religious rationale does not replace the need for an identifiable legal basis of liability or the statutory conditions governing prosecution (Republic of Indonesia, 2023). A distinction between normative recognition and effective legal implementation is evident in scholarship beyond criminal law. M. J. Rambe (2025) identifies constitutional recognition of indigenous communities alongside regulatory and administrative barriers to its realization, while P. Rambe (2025) distinguishes recognition of a customary-law community from the separate legal determination of customary-forest status. These findings provide a useful analogy for assessing conditional recognition under Article 2; they do not establish that the respective statutory regimes are identical.

The procedural dimension is examined principally through Article 235 of Law No. 20 of 2025. Article 235(1) identifies legally recognized categories of evidence, including physical and electronic evidence and a residual category conditioned on lawful acquisition, whereas Article 235(5) addresses the judge's authority to deny probative force to evidence that is inauthentic or unlawfully obtained. These provisions regulate evidentiary classification and judicial scrutiny of authenticity and legality; they should not be treated as an exhaustive codification of the standard of proof or the full range of rights attaching to criminal proceedings (Republic of Indonesia, 2025).

The existence of criminal legislation or formal evidentiary rules is not, without more, proof of legal-technical secularization. The inquiry applies three analytical dimensions: first, normative translation, which examines whether sources of social or religious value are reformulated as determinate legal interests and offense elements; second, procedural autonomy, which examines whether adjudication proceeds through legally defined evidentiary categories, judicial competence, and safeguards against unlawful acquisition of evidence; and third, constitutional subordination, which examines whether the norm and its enforcement remain subject to legality, equality, religious freedom, and proportionality (Afandi & Bagaskoro, 2024; Butt, 2023; Utama, 2021). Each dimension is necessary to evaluate the distinct role of the state in adopting, expressing, and enforcing morally contested norms.

Article 2 of the Criminal Code thus raises a question about the constitutional limits of incorporating living law; Articles 300–305 raise questions about the extent and neutrality of state protection for religious life; and Articles 411–412 raise questions about the boundaries of criminal punishment for private conduct. Article 235 of the Criminal Procedure Code provides a distinct procedural lens through which the lawfulness and authenticity of evidence may be assessed. These provisions constitute case studies for a doctrinal inquiry into legal techniques, not evidence that Indonesia has adopted a comprehensive separation of law and religion (Republic of Indonesia, 2023, 2025).

Method

This study adopts doctrinal legal research using statutory, conceptual, and functional-comparative approaches. The statutory analysis examines the legal basis of liability, the specification of offense elements, complaint requirements, and evidentiary competence in Law No. 1 of 2023 and Law No. 20 of 2025. The conceptual approach distinguishes legal-technical secularization from legal secularism and helps identify continuity and change in the state's exercise of punitive authority. Malaysia and Singapore are selected as functionally relevant, though institutionally different, comparators because both accommodate Islamic law within state legal systems. The comparison uses four common criteria: (i) allocation of legislative and judicial jurisdiction; (ii) institutional treatment of religious norms; (iii) the relationship between those norms and general criminal law; and (iv) constitutional or statutory safeguards. These criteria illuminate alternative arrangements without assuming that foreign doctrines can be transplanted wholesale into Indonesia (Choudhary, 2024).

The primary legal materials consist of the 1945 Constitution, Law No. 1 of 2023, Law No. 20 of 2025, and the relevant comparative legal instruments, particularly Singapore's Administration of Muslim Law Act 1966. Secondary materials comprise doctrinal scholarship on criminal law, constitutional review, legal pluralism, and secularization. Grammatical and systematic interpretations are used to identify statutory meaning and normative relationships; historical and teleological interpretations inform the assessment of reform objectives. The conclusions are normative and comparative rather than empirical: the article does not purport to measure prosecution practices or to establish the actual discriminatory effects of any provision without case-level evidence (Niko et al., 2026; Republic of Singapore, 1966).

Results and Discussion

Legal-Technical Secularization in the Transformation of Religious Norms into the National Criminal Code and the 2025 Criminal Procedure Code

Legal-technical secularization in the development of Indonesian criminal law does not necessarily entail eliminating religious values from the national legal system. Rather, it involves translating religious norms into rational, systematic, and clearly defined provisions of positive law that state institutions can apply in accordance with the principle of legality and the protection of human rights (Waldron, 2022). From this perspective, secularization occurs at the level of drafting and operationalizing norms, rather than necessarily at the level of their sources of values or moral legitimacy. Religious values may therefore continue to influence the substance of law without making religious authorities the direct arbiters of law enforcement (Domingo, 2023). A related distinction is developed by Purba (2025), whose doctrinal account of the Mandailing Martahi settlement model separates the social legitimacy of customary practices from the legal effect of the instruments through which disputes are resolved. Although that study concerns civil obligations rather than criminal liability, it reinforces the need to distinguish social acceptance from enforceable legal authority.

Article 2 of Law No. 1 of 2023 recognizes the possible legal relevance of living law within specified constraints, whereas Articles 411 and 412 define adultery and cohabitation outside marriage as criminal offenses subject to particular complaint requirements. These provisions illustrate separate stages of normative translation: the selection of a socially contested value, its statutory formulation into defined elements of liability, and the creation of enforcement conditions that are legally distinguishable from moral disapproval alone (Republic of Indonesia, 2023; T. Putri & Taylor, 2025). Nevertheless, the classification of an offense as complaint-based is only a procedural threshold. It does not conclusively establish that criminalization is necessary, proportionate, consistent with privacy, or free from discriminatory application. Such questions require independent constitutional justification. This demand for statutory specificity is also reflected in Nasution et al. (2026), who distinguish the elements and protective purposes of different offenses associated with prostitution and sexual conduct.

Their analysis supports a differentiated assessment of criminal liability and protected legal interests; it does not equate the offenses in Articles 411 and 412 with prostitution.

The procedural analysis must avoid attributing to Article 235 a broader effect than its text supports. Article 235(1) of Law No. 20 of 2025 establishes an evidentiary taxonomy that includes witness and expert testimony, documents, the defendant's statement, physical and electronic evidence, judicial observations, and a residual legally conditioned category. Article 235(5) further concerns the judicial treatment of evidence whose authenticity or lawful acquisition is in question (Republic of Indonesia, 2025). The statutory classification of evidence must therefore be distinguished from the burden or standard of proof, the separate guarantees applicable to investigative powers, and the constitutional rights of suspects and defendants. The existence of formal proof rules demonstrates institutional mediation of criminal accusations, but does not by itself show that all procedural guarantees are effectively protected (Waldron, 2022).

Indonesia's reform is more accurately characterized as the legal mediation of competing sources of normative authority than as the categorical displacement of religion from criminal law. Religious values, customary norms, policy preferences, and constitutional rights may coexist within statutory drafting, but the permissibility of coercive enforcement must be justified separately (Syamsudin & Fernando, 2025; T. Putri & Taylor, 2025; Zubaeri et al., 2025). The analytical distinction between value formation, normative specification, and enforcement makes it possible to identify where a rule may fail: an identifiable public interest may still be expressed in overbroad offense elements, or an appropriately drafted offense may be enforced through disproportionate evidentiary practices. A constitutional inquiry must therefore examine each stage rather than infer legitimacy from the origin or formal enactment of the norm.

Reconstructing Religion–State Relations through Changes in the Orientation and Enforcement of Indonesian Criminal Law

The reconstruction of religion–state relations in Indonesian criminal law reform represents a shift from a colonial criminal law paradigm toward a national legal system that seeks to integrate religious values, Pancasila, social pluralism, and the rule of law within a constitutionally defensible legislative framework (Adhari & Tansir, 2026). This change is better understood as a constitutional negotiation between the moral legitimacy of religion and the state's authority to define punishable conduct than as absolute Islamization or secularization. Such negotiation must continue to respect legality, proportionality, human rights protection, and legal certainty (Zubaeri et al., 2025).

At the normative level, Article 2 of Law No. 1 of 2023 on the Criminal Code recognizes living law within specified limits, while Articles 300–305 regulate offenses relating to religion, belief, and religious life. Articles 411 and 412 regulate adultery and living together as husband and wife outside marriage (cohabitation) as complaint-based offenses (Republic of Indonesia, 2023). These formulations show that moral values potentially derived from religion are not directly enforced as theological obligations. Instead, they are transformed into positive legal norms with elements of offenses, jurisdictional limits, and enforcement mechanisms defined by the state (Syamsudin & Fernando, 2025).

Law No. 20 of 2025 subjects the prosecution of offenses—including those associated with contested moral norms—to the general institutions and procedures of criminal justice. Its evidentiary provisions supply one mechanism for scrutinizing the legal basis and reliability of proof; they do not independently settle every question of fair trial rights or the proper scope of state punishment (Republic of Indonesia, 2025). Consequently, the constitutionality of the relevant criminal prohibitions must be assessed by reference to the clarity of legal duties, the legitimate objective of intervention, the risks of unequal treatment, and the necessity and proportionality of restricting privacy or autonomy (N. S. Putri, 2025). These are normative concerns requiring legal assessment, not findings that discrimination has in fact occurred in particular prosecutions.

Malaysia provides an example of constitutionally structured jurisdictional pluralism: federal legislative authority over criminal law coexists with state competence concerning specified Islamic-law matters, subject to constitutional limits and judicial delineation of competence (Aroney & Neoh, 2026; Faruqi, 2025). Singapore represents a different arrangement. Under the Administration of Muslim Law Act 1966, particularly section 35, the Syariah Court exercises statutory jurisdiction principally over specified Muslim marriage, divorce, and related family matters; that jurisdiction should not be described as a parallel general criminal-law jurisdiction. General criminal law remains governed by legislation of general application (Republic of Singapore, 1966). The relevant comparison therefore concerns functional jurisdiction and institutional differentiation, not whether a state is categorically 'religious' or 'secular'.

The functional comparison yields three distinctions. Indonesia incorporates living law and morally contested conduct into national criminal codification, subject to the restrictions of that codification. Malaysia allocates defined competencies between federal criminal authority and state-level Islamic-law institutions. Singapore assigns specified Muslim personal and family matters to a statutory Syariah Court while retaining general criminal law within ordinary state institutions (Adhari & Tansir, 2026; Republic of Singapore, 1966). These differences caution against borrowing jurisdictional arrangements without regard to constitutional design. The lesson for Indonesia is not to imitate the foreign models but to evaluate the visibility of normative limits, enforceable procedural guarantees, and meaningful constitutional scrutiny.

Formulating a Constitutional Model of Legal-Technical Secularization in Indonesia's Criminal Law System

A constitutional model of legal-technical secularization in Indonesia's criminal law system must distinguish the sources of moral values from the techniques of legal coercion. Religion may serve as a source of ethics and inspiration for lawmaking, while the designation of conduct as a criminal offense must rest on constitutional justification, the principle of legality, the need to protect legal interests, and proportionality in punishment (Republic of Indonesia, 1945; Zubaeri et al., 2025). This model does not seek to eliminate religion's contribution to national lawmaking. It seeks to ensure that religious values transformed into criminal norms can be justified to all citizens in a plural society, without making theological belief alone a basis for punishment (Syamsudin & Fernando, 2025). The quality of such justification also depends on the openness of lawmaking to affected interests. In their study of social representation, Rambe and Tanjung (2025) propose consultative participation accompanied by documented legislative responses. Although that proposal concerns representative institutions rather than the constitutionality of criminal prohibitions, it supplies a complementary procedural perspective on public justification when legislatures translate contested social values into law.

Article 2 and Articles 411–412 of the National Criminal Code illustrate how values associated with living law or sexual morality may be incorporated into binding legal provisions (Republic of Indonesia, 2023). A practical application of the proposed model to Article 412 would proceed as follows. First, the legislature or reviewing court should identify the legally protectable interest said to justify the prohibition, without treating theological disapproval as sufficient in itself. Second, it should assess whether criminal punishment is necessary, whether a less restrictive response could protect that interest, and whether the anticipated public benefit outweighs restrictions on privacy and individual autonomy. Third, it should scrutinize the precision of the statutory elements and the scope of persons permitted to complain. Fourth, it should examine whether evidence gathering, adjudication, and opportunities for judicial challenge provide adequate safeguards against arbitrariness. This exercise does not predetermine Article 412's constitutionality; it makes the required grounds of justification explicit (N. S. Putri, 2025).

Malaysia's constitutionally constrained division of powers in religious-law matters and Singapore's statutory allocation of Muslim family-law matters under the Administration of Muslim Law Act 1966 underscore the importance of defining jurisdiction before evaluating

coercive enforcement (Faruqi, 2025; Mitsunari, 2025; Republic of Singapore, 1966). For Indonesia, a defensible integrative-constitutional model must distinguish legislative accommodation of religious values from any independent religious authority to impose national criminal punishment. It must also ensure that statutory recognition of living law remains subordinate to the applicable constitutional and legislative constraints (Septiani et al., 2024).

The integrative-constitutional model operates through four sequential inquiries. At stage one, the decision-maker identifies the relevant social or religious value and translates it into a legitimate legal interest; this corresponds to the dimension of normative translation. At stage two, the necessity of criminalization is tested against the principles of ultima ratio (ultimum remedium), suitability, and proportionality; at stage three, the statutory elements and enforcement thresholds are evaluated for precision, foreseeability, and nondiscrimination. Stages two and three operationalize the dimension of constitutional subordination. At stage four, the adequacy of institutional competence, evidentiary scrutiny, judicial independence, and procedural review is assessed, thereby operationalizing procedural autonomy and linking it back to constitutional subordination. This framework is proposed as a normative test for legislative drafting and constitutional scrutiny, not as an existing judicially established test (Lugina et al., 2026).

Conclusion

Legal-technical secularization under the National Criminal Code and the 2025 Criminal Procedure Code is best understood as the constitutional mediation of moral and religious values through positive legal norms and state-controlled procedures, rather than an absolute separation of religion and law. The doctrinal inquiry identifies three connected requirements: the legal translation of values into determinate offense elements, procedurally regulated enforcement, and the continuing subordination of criminal coercion to legality, equality, and proportionality. Neither the enactment of morality-related prohibitions nor the existence of statutory evidence categories, taken in isolation, establishes that these requirements have been satisfied.

The article's principal contribution is an integrative-constitutional framework that connects three analytical dimensions with four operational stages: identifying a legitimate protected interest, assessing the necessity and proportionality of criminalization, testing the precision of the offense, and scrutinizing procedural and judicial safeguards. For legislative reform, the model supplies a structured checklist against overbroad or unjustified offenses; for constitutional adjudication, it identifies distinct questions concerning statutory purpose, the intensity of rights restrictions, and the adequacy of enforcement safeguards. Its application to Article 412 illustrates an evaluative method rather than a definitive conclusion on constitutionality. In this sense, a Pancasila-based criminal law can remain receptive to religious and social values while requiring every exercise of punitive authority to be independently defensible under constitutional standards.

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