

Research/ Review

Reformulation of the Indonesian Criminal Code (KUHP) Number 1 of 2023 Article 445 Paragraph (1) Item 1

A Lawrence Friedman's Theory of Justice Perspective Toward a Responsive and Culture-Oriented Criminal Law

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Abstract: This study aims to analyze Article 445 paragraph (1) of the Indonesian Criminal Code (KUHP) Number 1 of 2023, which regulates the criminal act of eloping with a young woman. The provision is considered to be in tension with the social and cultural realities of Indonesian society, particularly the people of Lombok who practice the merariq tradition. Merariq is an ancestral customary practice within marriage rituals involving the consensual elopement of the prospective bride as an integral part of the marriage process. This research uses Lawrence M. Friedman's legal system theory, which examines three main components of law: (1) the substance of law—normative provisions contained in legislation; (2) the structure of law institutions and law enforcement agencies; and (3) the legal culture values, attitudes, and behavior of society toward law. This study is a normative legal research that treats law as norms, principles, doctrines, and rules. The primary legal material is Article 445 paragraph (1) of the Indonesian Criminal Code. The findings indicate that, from the perspective of legal substance, the article remains ambiguous. Its formulation potentially conflicts with Indonesia's legal culture, which in practice prioritizes familial and traditional mechanisms for resolving private conflicts. Based on these findings, this study recommends a reformulation of the legal substance to make it more responsive to the socio-cultural context. The reformulation should be grounded in the principles of *ultimum remedium* and restorative justice, providing space for customary law and local culture as legitimate mechanisms to resolve private disputes. This approach is expected to reduce the disproportionate use of imprisonment and position criminal sanctions as a last resort in law enforcement.

Keywords: Justice; Legal Culture; Merariq; Reformulation; Responsiveness.

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1. Introduction

Article 445 of the Indonesian Criminal Code (KUHP) No. 1 of 2023 regulates the offense of abducting or eloping with a woman, a provision inherited from the Dutch colonial legal system known as *ontvoering* (Islah et al., 2021). This provision has long generated significant controversy in Indonesia's criminal justice system (Nugraha et al., 2025). It carries serious implications for the protection of human rights and frequently clashes with the principle of individual autonomy, thereby creating tensions between formal law and customary law (Nuriyah & Mahyani, 2022). Given contemporary developments, it is necessary to reassess whether this provision remains compatible with modern understandings of individual rights, particularly the freedom to choose one's own destiny.

Furthermore, Article 445 paragraph (1) item 1 frequently produces conflicts between state law and customary norms (Yogaswara et al., 2024). In practice, interpretations of what

constitutes “elopement” often vary according to local customs (Irawan & Pura, 2023). This divergence leads to legal uncertainty and affects the fairness and consistency of law enforcement (Saly et al., 2023).

Article 445 paragraph (1) item 1 explicitly criminalizes taking an underage girl away without the consent of her parents or guardian, even when the girl herself consents. The provision imposes a maximum imprisonment of seven years (Islah et al., n.d.). This formulation, which includes acts based on the underage girl’s consent, creates multi-interpretations among law enforcers. As a result, an act may be seen as a crime by some but not by others, generating harmful legal uncertainty for both the alleged victim and perpetrator.

Within the criminal justice system, inconsistencies arising from such ambiguity may become criminogenic. Legal uncertainty can cause a criminal act to be overlooked or, conversely, cause non-criminal behavior to be prosecuted. This situation opens the possibility for potential offenders to exploit ambiguities in the law.

Given this context, reformulating Article 445 paragraph (1) item 1 becomes crucial to aligning criminal law with principles of child protection, human rights, and individual autonomy within a modern social framework. The reformulation must also ensure clarity, consistency, and proportionality in law enforcement.

2. Preliminaries or Related Work or Literature Review

The effectiveness and fairness of a legal system—including the reformulation of Article 445—can be comprehensively examined through Lawrence M. Friedman’s legal system theory. According to Friedman (1975), a legal system consists of three interdependent components:

1. Legal Structure — institutions and law enforcement agencies (Siddiq & Salam, 2025).
2. Legal Substance — rules, norms, and legislation (Flora et al., 2023).
3. Legal Culture — societal values, attitudes, and expectations concerning the law (Syarhan, 2021).

Legal culture plays a determinative role in shaping whether a legal system functions effectively (Akbar, 2024). It encompasses collective beliefs and social forces influencing compliance or resistance toward the law.

Thus, reformulating Article 445 requires not only changes in legal substance but also responsiveness within legal structure and alignment with legal culture. Harmonizing these three components is essential for achieving substantive justice.

3. Materials and Method

This research employs a normative (juridical-normative) legal method. Normative legal research focuses on law as norms, principles, and doctrines that regulate human conduct, rather than empirically examining social behavior. The statutory approach is applied to examine the text, structure, and substance of Article 445 paragraph (1) item 1 of the Criminal Code, assessing its formulation and underlying legal principles in relation to Friedman’s theory of justice. The primary legal material is Article 445 paragraph (1) item 1 itself.

4. Results and Discussion

Diagnostic Analysis of Article 445 Paragraph (1) Item 1 through Friedman’s Tripartite Framework

Analysis of Existing Legal Substance (Legal Substance)

Normatively, the principal criticism of Article 445 paragraph (1) item 1 of the Criminal Code is its focal concern: the offence is framed primarily as a violation of parental authority or guardianship rights rather than addressing the core issues of sexual crimes or violence against women. Consequently, the article is seen as failing to strike an adequate balance between protecting parental rights and recognizing the autonomous will of the female

subject—especially in cases where the female who is taken away has in fact given consent, despite being legally categorized as a minor.

Furthermore, the maximum penalty of seven years' imprisonment for acts carried out with the consent of both parties is regarded as disproportionate and predominantly retributive, far removed from restorative values. By comparison, Law No. 35 of 2014 on Child Protection prescribes considerably heavier sanctions up to fifteen years' imprisonment yet those penalties are explicitly aimed at offences involving elements of violence, exploitation, or clear deception. In the context of Article 445 paragraph (1) item 1, which does not contain an element of coercion (coercion is regulated in subsequent paragraphs), there is a view that this offence is more appropriately classified as a family conflict or even a victimless crime rather than a serious offence warranting severe criminal sanctions (Muhadar, 2024).

At present Article 445 of the Criminal Code is categorized as a general offence (*delik biasa*), meaning prosecution may proceed even without a complaint from the guardian or the alleged victim (Syam et al., 2024). This character as a general offence conflicts with the highly private and familial nature of these matters and disregards the principle of *ultimum remedium*—that criminal law should serve as a last resort in resolving legal problems (Sulistiani & Fakhriah, 2023). In cases rooted in social conflict or customary traditions rather than coercion, the imposition of a seven-year imprisonment threat indicates that the legal substance remains dominated by a colonial-era retributive paradigm, which has proven unresponsive to social developments and the more modern values of restorative justice.

Analysis of Legal Structure in Implementation (Legal Structure)

The effectiveness of legal substance is heavily influenced by legal structure, which includes institutions and law enforcement actors such as the police, the public prosecutor's office, and the courts (Fauzia et al., 2021). In the implementation of Article 445, enforcement often exhibits inconsistency. This inconsistency is influenced by a variety of factors, including subjective perceptions of law enforcers, suboptimal levels of professionalism, infrastructural limitations, cultural influences, and political interests that may affect enforcement processes (Wulandari & Amin, 2024).

Various reports and empirical data indicate that the principal obstacles to enforcement—particularly for sensitive offences like those covered by Article 445—lie in deficiencies of integrity and professionalism among law enforcement personnel. This results in variation in legal application, thereby producing legal uncertainty and substantive injustice (Suwito et al., 2023). Supreme Court data recording verdict categories such as “Other” (140 cases), “Acquittal” (2 cases), and “Dismissal” (2 cases) suggest structural challenges in realizing substantive justice (Putri, 2025). Such variation also indicates that judges, as part of the legal structure, face difficulties in interpreting an ambiguous statutory substance, thereby creating wide discretion for law enforcers (Aljanni & Muhammad, 2025).

When legal substance is unclear, broad discretion afforded to law enforcement can lead to inconsistency and potential injustice. If the legal structure is not supported by sufficient professionalism and integrity, legal processes risk becoming mere formal mechanisms for case disposition without genuinely achieving the substantive justice idealized by Lawrence Friedman.

To realize Friedman's conception of justice, the legal structure must be strengthened. Law enforcement actors—particularly judges and prosecutors—need integrity, professionalism, and a deep understanding of the living social and cultural contexts. Recognition of the law that lives in society (*living law*), as accommodated in the new Criminal Code, underscores that the legal structure should be capable of integrating local values and customary wisdom into law enforcement processes so as to satisfy societal notions of justice more comprehensively and responsively.

Analysis of Legal Culture and Conflicts with Customary Norms (Legal Culture)

Legal culture comprising attitudes, perceptions, and social forces within communities frequently constitutes the main impediment to effective enforcement of Article 445. In many customary communities across Indonesia, the substance of this article is at odds with local marital traditions, such as *kawin lari* (running away to marry) among Lampung customary society or the *meruriq kodeq* tradition in Lombok (Aniq, 2011).

In the context of the *larian* tradition, taking away a minor with her own consent is not regarded as a crime but rather as an initial legitimate step toward marriage under local cultural norms (Hamdani & Fauzia, 2022). These matters are predominantly resolved through customary mechanisms, because formal criminal sanctions are considered misaligned with communal objectives that prioritize family reconciliation and the restoration of social relations over punishment.

The contradiction between formal legal substance (such as Article 445) and living legal culture demonstrates that national criminal law is often unresponsive to social realities (Patrissia & Jamalullail, 2024). If formal law continues to criminalize behavior that is culturally accepted or functions as a social dispute-resolution mechanism, communities will tend to avoid, disregard, or even misuse the formal legal system. The implication of such misalignment is a reduced effectiveness of national criminal law and an increasing tendency for communities to prefer customary-based dispute resolution.

For criminal law to be more responsive and just, it is important to consider the recognition of customary legal sanctions as part of the applicable legal system so that the resolution of similar cases can better satisfy the community's living sense of justice. This aligns with Lawrence Friedman's framework, which emphasizes that the effectiveness of the legal system depends on harmony among legal structure, legal substance, and legal culture (Halim & Amni, 2023). In this context, customary law must be understood within its cultural setting so that formal law can be implemented effectively, accepted socially, and avoid prolonged value conflicts.

Principles and the Conceptual Basis for Reformulating Article 445 According to Friedman's Justice

Reformulation Philosophy: Restorative Justice and Ultimum Remedium

The reformulation of Article 445 paragraph (1) item 1 must be grounded in a fundamental shift in criminal justice philosophy, as reflected in the new Criminal Code (Law No. 1 of 2023) (Riyadi, 2024). The punitive paradigm should move away from retribution toward conflict resolution, restoration of social balance, and the creation of public safety and harmony (Faisal et al., 2024). This shift signifies the adoption of restorative justice principles that emphasize repairing social relations and protecting the interests of all parties involved.

Criminal enforcement should prioritize the principle of *ultimum remedium*, meaning criminal law should be used only as a last resort after reconciliation mechanisms have failed. For offences involving the consent of a minor that stem from social or familial conflict, priority should be given to non-custodial sanctions or out-of-court settlement through restorative mechanisms such as mediation or customary deliberation (*musyawarah adat*).

1. Implications of Integrating Customary Law and Local Legal Culture

Friedman's notion of justice requires that legal substance does not stand alone but must reflect the values of the living legal culture. This implies the necessity of formalizing and integrating customary law into the national legal system (Pratama & Karim, 2024). Consequently, cases rooted in tradition or local norms can better satisfy substantive justice while avoiding excessive criminalization of socially accepted behavior.

2. Relevance to Friedman's Framework

According to Friedman, substantive justice is attainable only when there is harmony among legal structure, legal substance, and legal culture. Reformulating Article 445 to adopt restorative justice and the *ultimum remedium* principle will render the provision more responsive to social dynamics, reduce the risk of injustice from rigid application of the law, and strengthen legal legitimacy in the eyes of the public.

The reformulation of Article 445 paragraph (1) item 1 should place restorative justice and *ultimum remedium* at its core, integrating customary law and local cultural values into the national legal framework (Delmas-Marty, 2009). This approach aligns with Friedman's legal system framework and aims to realize adaptive, inclusive, and contextual substantive justice.

Principles of Reformulation — Explanation**Table 1.** Principles of Reformulation — Explanation.

Principle	Explanation
Restorative Justice	Emphasizes repairing social relations, resolving conflict, and protecting the interests of victims and offenders.
Ultimum Remedium	Positions criminal law as the last resort, prioritizing non-penal solutions and non-custodial sanctions.
Integration of Customary Law	Accommodates local values and customary dispute-resolution mechanisms within the national legal system.

Relevance to Friedman’s Framework (Summary)

Friedman’s theory holds that substantive justice requires harmony among legal structure, legal substance, and legal culture. Reformulating Article 445 to incorporate restorative justice and the *ultimum remedium* principle will enhance responsiveness to social dynamics, mitigate injustices resulting from inflexible law application, and strengthen the law’s legitimacy in society.

6. Conclusion

Based on Friedman’s framework, Article 445 paragraph (1) item 1 reflects inconsistencies between legal substance, structure, and culture. The ambiguity of the provision, disproportionate sanctions, and its incompatibility with societal norms—particularly regarding *merarik*—create substantive injustice. Inefficiencies within law enforcement further exacerbate these issues.

Therefore, reformulating the legal substance is essential. The reform must incorporate *ultimum remedium*, restorative justice, and the recognition of customary law as a legitimate mechanism for resolving private conflicts. This approach can reduce unnecessary imprisonment and align criminal law with societal realities.

Legislative Recommendations (Substance)

1. Convert the offense into an absolute complaint-based offense (*delik aduan absolut*).
2. Reduce penalties and prioritize non-custodial sanctions such as supervision or fines.

Structural Recommendations (Law Enforcement)

1. Issue technical guidelines requiring police, prosecutors, and judges to prioritize restorative solutions and consider *living law* in adjudication.

Cultural Recommendations (Society)

1. Conduct national legal culture campaigns promoting women’s autonomy while defining the limits of acceptable cultural practices based on child protection principles.

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