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Deconstructing Colonial Law Through Critical Race Theory in Indonesian Regulations

Suyuti Dahlan Rifa'i[1*], Mahrus Alwi Hasan Siregar[2], Indah Pratiwi Utami[3], Ach Mujahid[4], Adinda Zeranica Putri Fakhis[5]

[1] *Universitas Islam Negeri Maulana Malik Ibrahim, Malang, Indonesia*
[2] *Universitas Diponegoro, Semarang, Indonesia*
[3] *Universitas Islam Negeri Imam Bonjol, Padang, Indonesia*
[4] *Çanakkale Onsekiz Mart University, Çanakkale, Turkey*
[5] *International Islamic University Malaysia, Selangor, Malaysia*

**Author's correspondence email: suyutirifai99@gmail.com*

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ABSTRACT

This study aims to map patterns of discrimination arising from colonial legacies, whether in the form of legal norms, institutions, or law enforcement practices, and to offer an alternative perspective that can elevate the experiences of marginalised groups as a basis for national legal reform. This study employs a critical qualitative method grounded in document and critical discourse analysis, particularly by adopting Critical Race Theory (CRT) as its primary theoretical and methodological framework. The results of the deconstruction of colonial law through Critical Race Theory (CRT) clearly show that the Indonesian national legal system still harbours residues of colonial discrimination and bias, so that administrative revisions alone are not sufficient to eradicate entrenched injustice. Therefore, a paradigm shift and transformative legal reform are needed, one that dares to place the experiences of marginalised groups at the centre of renewal, to build a legal structure that is truly inclusive, fair, and responsive to the needs of all citizens. This is the time for the Indonesian nation to commit to legal decolonisation that is not merely symbolic but real and liberating to achieve substantive justice that upholds humanity.

A. Introduction

Deconstructing colonial law is not merely a matter of replacing old norms with new ones in a cosmetic manner. Still, it involves re-reading the basic assumptions taken for granted. For example, the dualism of colonial inheritance law that distinguished between laws for indigenous people (inlander), East Asians, and Europeans, although formally abolished, continues to shape deep social and legal stratification in practice, as reflected in issues of land ownership, citizenship, and the treatment of minorities by the authorities (Joseph & Golash-Boza, 2021). This issue becomes even more complex when linked to identity politics in the post-colonial era, where the state often reproduces the logic of discrimination and subordination against certain groups in the name of nationalism, public order, or development.

Many of Indonesia's laws and regulations are still rooted in colonial law, from the Criminal Code (KUHP) to agrarian law and administrative rules (Butt, 2023). The Criminal Code, for example, despite repeated attempts at revision, essentially retains its colonial spirit in its regulations: the concept of offences, the construction of crimes against state security, and articles on insulting the authorities, which were originally designed to protect the colonial regime from popular resistance. Agrarian law, with the 1960 Agrarian Law (UUPA), has indeed sought to break away from the foundations of the 1870 Agrarische Wet. Still, in practice, the principles of state control over land often perpetuate the logic of exclusion and restricted access characteristic of the colonial era, exacerbated by investment policies, development initiatives, and the expansion of large-scale plantations that replicate colonial relations in new forms.

Deconstructing colonial law through the lens of Critical Race Theory (CRT) demands more than mere revision of regulations; it requires a paradigm shift in how we view law and justice. CRT poses fundamental questions: Who benefits and who is harmed by the existence of a rule? How do power relations manifest themselves in legal texts and practices? How can the experiences of marginalised groups become the basis for reforming, even dismantling, the existing legal order? Based on these questions, it becomes clear that deconstructing colonial law in Indonesia is not merely a legalistic project, but a political-epistemological agenda that requires the collective involvement of various actors, from academics and practitioners to communities that have suffered injustice.

One of CRT's sharpest criticisms of colonial law is the way colonial law defines and regulates 'legal subjects'. In the Indonesian context, the colonial legacy distinguishes legal subjects based on race, ethnicity, religion, and social status, which are then subtly passed down in various regulations, both national and regional. Administrative discrimination, such as that experienced by the Chinese, Papuan, and other indigenous communities, is clear evidence that the categories constructed by colonial law continue to exist, evolve, and even become institutionalised in state practices (Rosenbaum, 2024). The issue of electronic identity cards (e-KTP) for the Anak Dalam tribe, for example, shows how colonial administrative logic that marginalises certain groups is still maintained in the name of modern administrative order.

CRT also highlights how legal language becomes a tool of domination and exclusion. In the Criminal Code, ambiguous, multi-interpretable, and easily abused terms—such as 'public order,' 'morality,' or 'insult'—are a colonial legacy deliberately created to suppress expression, silence criticism, and quell resistance. In practice, these provisions are more often used to criminalise activists, minority groups, and indigenous communities than to protect the broader public interest. In this context, the CRT approach becomes relevant: legal language is not neutral but political and ideological. It must always be critically analysed, considering the experiences of groups directly affected by its implementation.

Studies on deconstructing colonial law and applying Critical Race Theory (CRT) in Indonesian law are still relatively limited. Still, several studies from within and outside the country have provided relevant theoretical and empirical foundations as references, whether

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in legal studies, historical reviews, or critical studies of national and local legal products. One such study, conducted by Daniel S. Lev (2021) in 'Legal Evolution and Political Authority in Indonesia: Selected Essays,' sharply highlights how Indonesia never completely abandoned the Dutch colonial legal system after independence. Lev reveals that the colonial legal structure and bureaucratic traditions experienced continuity in the Republic era, leading to injustice and exclusion for minority groups as well as inequality in access to justice.

Robert Cribb's (2008) study in 'Gangsters and Revolutionaries: The Jakarta People's Militia and the Indonesian Revolution 1945-1949' demonstrates how colonial law shaped and maintained social categories that influenced power structures and social relations in Indonesian society, which were later reproduced in post-independence legal products. Michael van Langenberg (1990), in his study focusing on the New Order era, asserts that the legal language and regulations used by the state are a continuation of colonial techniques in regulating, controlling, and disciplining society. Langenberg's analysis helps to see how contemporary Indonesian legal products still inherit colonial discursive strategies, particularly in interpreting the concepts of 'security' and 'order.'

Another study by Lindsey and Simon Butt (2012) in 'The Constitution of Indonesia: A Contextual Analysis' examines how various legislative products in Indonesia, ranging from criminal, civil, to constitutional law, are still heavily influenced by the colonial paradigm, both in structure and fundamental principles. Lindsey and Butt also discuss the problem of inconsistency and ambiguity in the application of law, which often has a discriminatory impact on minority groups. In addition, a very important international study is the work of Richard Delgado and Jean Stefancic (2023), pioneers of Critical Race Theory, in 'Critical Race Theory: An Introduction'. Although focused on the context of the United States, their main argument that law is not a neutral entity and always operates to maintain the status quo is highly relevant for understanding how law in Indonesia inherits, reproduces, and perpetuates practices of racial and ethnic discrimination and subordination.

From the above literature review, it can be concluded that studies on the deconstruction of colonial law in Indonesia and legal analysis through the framework of Critical Race Theory have gained strong theoretical and empirical grounding. However, the application of CRT in Indonesia is still very limited and requires more progressive development. Previous studies have generally shown that the legacy of colonial law has shaped the structure, substance, and even the culture of law in Indonesia, resulting in the emergence of both explicit and implicit discriminatory practices. The objective of this study is to unpack, deconstruct, and critically analyse the residual elements of colonial law that persist in Indonesia's legal regulations through a Critical Race Theory approach, as well as to formulate transformative strategies that can drive legal change towards a more inclusive, fair, and responsive legal system that reflects the multicultural reality of the Indonesian nation.

B. Method

This study uses a critical qualitative method based on document studies and critical discourse analysis, particularly by adopting Critical Race Theory (CRT) as its main theoretical and methodological framework. The critical qualitative approach was chosen because it can highlight and dismantle the hidden colonial residues in regulatory texts, policies, and state practices that have remained inaccessible to normative-positivistic analysis. The data for this study were collected through a comprehensive review of legislation that historically and substantively still contains traces of colonialism, such as the Book of Laws-Undang Hukum Pidana (KUHP), the Civil Code (KUHPer), agrarian law, and regional regulations that have the potential to reproduce discrimination based on race, ethnicity, or group identity. In addition, this study also analyses historical documents, colonial archives, court decisions, and narratives of minority groups such as the Papuan, Chinese, and indigenous communities

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through field literature reviews and case studies to identify counter-narratives and lived experiences often overlooked in the construction of state law.

In the analysis process, this study combines Critical Race Theory with Norman Fairclough's (2013a, 2013b, 2023) critical discourse analysis, enabling it to examine the layers of legal texts, discourses, and socio-political relations that shape and perpetuate structural injustice. Critical Race Theory is used to deconstruct how law, from colonial times to the present, has functioned as a political arena laden with interests and prone to reproducing power relations based on race, ethnicity, and identity. The main principles of CRT, such as the importance of counter-storytelling, the legitimacy of marginalised groups' experiences as valid knowledge, and the recognition of intersectionality in legal injustice, serve as the primary analytical tools in this study. In addition to CRT, legal decolonisation theory highlights the importance of dismantling colonial epistemology within the Indonesian legal system and rehabilitating local values and the experiences of marginalised groups. Through the combination of these theories and methods, this study not only describes the persistence of colonial law in Indonesian regulations but also offers a transformative framework for moving toward a more just, inclusive, and contextual legal system for all elements of society.

C. Results and Discussion

1. Traces and Legacy of Racism in Indonesian Legal Products

After the proclamation of independence, the Indonesian people faced a major dilemma: whether to radically abolish the entire colonial legal system and build a completely new national legal system, or to gradually adapt by adopting most of the colonial legal products already well-established administratively. Political realities and the practical needs of the young government at the time led to the second option being chosen, as reflected in Article II of the Transitional Provisions of the 1945 Constitution, which states that all existing laws and regulations shall remain in force until they are amended or repealed by new rules. This decision was not without consequences.

From a sociological perspective, the adoption of colonial law as the backbone of the national legal system perpetuated the discriminatory and racist 'spirit' that had long been internalised within the colonial social system (Al Hamid et al., 2023). One of the most tangible legacies is the Criminal Code (KUHP), which was only recently amended at the end of 2022 but remains substantively tied to colonial structures and philosophy. In the old KUHP, various articles were specifically designed to protect colonial interests and subjugate indigenous groups. For example, the offence of insulting the authorities (Articles 154-155) was originally intended to silence indigenous resistance movements and protect colonial authority from criticism or rebellion. The broadly defined crime of "treason" in Articles 104-110 of the KUHP was also widely used to prosecute independence fighters and pro-independence activists. This practice historically instilled systemic fear among indigenous people to criticise the authorities, a socio-legal trauma that is still felt today.

Racial bias in colonial law manifested in normative texts and law enforcement practices. Customary courts established for indigenous people (*Landraad*) were always positioned below colonial courts (*Raad van Justitie*), with shorter procedures, harsher penalties, and severely limited access to legal defence. Even after independence, remnants of this inequality persisted in discrimination in access to justice, both in state courts and in customary law practices that were instrumentalised by the state.

One clear example is land policy. Colonial agrarian law, through the Agrarische Wet 1870, explicitly ignored the land rights of indigenous peoples, while granting privileges to European plantation companies. This scheme laid the foundation for structural inequality, which is still evident in Indonesia's land ownership. Although the Basic Agrarian Law (UUPA) of 1960 normatively abolished colonial discrimination, in practice, the logic of state control over land, restrictions on the rights of indigenous communities, and preferences for foreign

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investment often replicate colonial power relations, with indigenous communities and minority groups as the most vulnerable to losing their rights.

Racist bias is also subtly present in population administration policies. During the colonial era, administrative categories such as 'Inlander', 'Vreemde Oosterlingen', and 'Europeanen' were not only included in identity documents but also used as a basis for differential treatment in access to education, employment, and the courts (Luttikhuis, 2013). After independence, administrative discrimination continued in other forms, such as issues surrounding the recording of certain ethnic identities (e.g., on identity cards for ethnic Chinese), complicated citizenship status, and the neglect of civil rights for minority groups such as indigenous communities, the Suku Anak Dalam community, and the Papuan population.

The issue of racism in Indonesian law is also evident in various discriminatory regulations targeting the Chinese community. Legal instruments such as Presidential Regulation No. 10 of 1959 on the Prohibition of Foreign Trade in Second-Level Regions, which in practice targeted the Chinese community and restricted their economic mobility outside major cities, serve as evidence of the persistence of racial bias rooted in colonial law. Additionally, Presidential Instruction No. 14 of 1967 on Religion, Beliefs, and Customs of the Chinese Community has, for decades, restricted the religious freedom and cultural expression of the Chinese community in public spaces. These practices stem from a colonial mindset that views the Chinese community as 'foreign' and a potential threat to national stability.

Another example of discrimination that persists to this day is the policy in Papua. From the colonial era to the present, Papua and its indigenous communities have often been positioned as 'the other' in national legal discourse and policy. Various military operations, special policies, and the neglect of the socio-economic rights of the Papuan people have been carried out with legal justifications that inherit the colonial logic of the 'civilising mission': that the central state has the right to determine the form of progress and civilisation for minority groups on the periphery. Legal products such as the Special Autonomy for Papua often fail to place indigenous peoples as the main subjects, but instead continue to view them as objects of management and control.

The relationship between the state and indigenous peoples is equally problematic throughout the archipelago. Although the 1945 Constitution recognises the existence of indigenous peoples, implementing regulations and sectoral policies often limit their rights to land, natural resources and culture (Fahmi, 2024). Formal recognition of the existence of indigenous communities is usually accompanied by a colonial logic that they "need to be developed," "need to be adapted to national development," and in some cases are even forced to abandon their traditions and local knowledge. In many areas, land disputes between indigenous peoples and the state or large corporations are often resolved through repressive approaches that disregard the principles of substantive justice and socio-ecological sustainability. Adopting national laws based on customary law principles does not always mean equal recognition, but it often constitutes domestication or control of customary law to align it with central interests. This pattern is colonial.

Recognising this reality, it cannot be denied that Indonesian law, despite constitutionally affirming the spirit of equality, justice and non-discrimination, still harbours strong remnants of racial bias and marginalising logic (Rajendra & Thuraisingam, 2025). This is evident in the legislative process, where many new laws and regulations "copy-paste" the colonial system without critical reflection on its impact on vulnerable groups. The judicial review process in the Constitutional Court also often fails to uncover the roots of systemic discrimination in regulations due to limited critical perspectives and a lack of representation of marginalised groups' experiences in court forums.

Discrimination based on race and ethnicity is not only present explicitly in legal texts but also in the enforcement and interpretation of laws that are rife with subjectivity, bias, and

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stereotypes. Law enforcement officials, whether in the police, the prosecution or the judiciary, still often reproduce narratives of 'natives who must be disciplined', 'suspicious Chinese' or 'Papuans prone to separatism'. The designation of suspects, court decisions, and even the granting of remission are often influenced by discriminatory perceptions that have never been thoroughly exposed and reformed systematically.

Cases of violence and criminalisation against indigenous communities in Kalimantan, Maluku, and Sulawesi, forced evictions in the name of development in Papua and Sumatra, and administrative discrimination against religious minority groups in Java are clear examples of how the 'spirit' of colonial law is still very much alive in the national legal system. Even in times of crisis, such as during the New Order era and in the context of social conflict during the Reform era, the law has often been used as an instrument to legitimise state violence against groups considered 'other'—a legacy of colonial divide and rule politics that relied on the separation and division of identities.

Colonial biases are also found in the distribution of access to education for certain groups when traced to education policy. During the colonial period, access to secondary and higher education was only granted to Europeans and a small number of East Asians, while the indigenous population was systematically excluded from opportunities for intellectual development. After independence, this discrimination was still reflected in the distribution of elite schools, access to public universities, and opportunities to obtain scholarships and other educational resources. The education zoning system, although normatively aimed at improving equity, often failed in its implementation to reach minority groups in remote areas, including indigenous peoples and migrant groups.

The shift in the form of racism in Indonesian law from explicit to implicit is also evident in economic and development policies. Various national strategic projects, such as large-scale infrastructure development, often disregard the basic rights of local and indigenous communities in the name of 'national interests.' Local communities frequently receive minimal compensation, losing access to land, livelihoods, and cultural identity. As a result, the economic marginalisation experienced by indigenous and minority groups becomes increasingly institutionalised through legal policies that appear 'neutral' but are highly biased towards groups that are already politically and economically powerful (Haerozi et al., 2023; Sugitanata et al., 2023).

In the realm of religious life, racism and discrimination are still evident in the process of granting permits for the establishment of places of worship, the resolution of cases of intolerance, and the recognition of religious identity in state legal documents. Although the 1945 Constitution and the Human Rights Law guarantee freedom of religion and belief, in practice, religious minorities, such as Ahmadiyah, Shia, indigenous faith practitioners, and local religious groups, often face difficulties in obtaining equal treatment (Parhi et al., 2025; Prianto et al., 2024). Complex administrative processes, resistance from the majority community, and bias among officials usually perpetuate colonial-era practices that prioritise social stability over the protection of individual and minority rights.

Considering the above, whether Indonesia is truly independent becomes relevant and urgent. True independence, in a legal context, can only be achieved if the nation dares to acknowledge, expose, and radically deconstruct the traces of racism and marginalisation inherited from the colonial system. This requires political and intellectual courage to conduct a comprehensive audit of all legal products that still contain discriminatory biases, whether explicit or implicit. Legislative and policy reforms based on transformative justice are needed, in which the voices, experiences, and aspirations of groups that have been marginalised are truly taken into consideration in every aspect of law-making and law enforcement.

Efforts to reform Indonesia's legal system from its colonial racist legacy cannot be achieved through mere revisions of regulations or the creation of new administrative institutions. A comprehensive paradigm shift is needed in viewing law not merely as an

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instrument of social control, but as an arena for collective struggle for substantive justice (Ibrahim et al., 2025). Legal education must be directed towards forming a critical and sensitive perspective towards diversity. At the same time, the legislative process must involve the active participation of groups that have long been victims of discrimination. Courts, both at the local and national levels, must be open to counter-narratives and the lived experiences of minority communities, and must reinterpret the law to redress past injustices.

Indonesia's long journey to truly free itself from racism in law is a complex process, full of challenges, and requires collective commitment from all elements of society. Eliminating the 'spirit' of colonial law is not merely the task of legislators or academics, but a historical calling for all people who believe in the values of humanity, equality, and social justice. Only in this way can the law in Indonesia become an instrument of liberation, reconciliation, and respect for the dignity of every human being, without exception, without discrimination—truly becoming a free, liberating, and humanising law.

2. Criticism of the Neutrality and Universality of National Law

When examining historical traces, the Dutch colonial legal system in the East Indies was deliberately designed to facilitate the colonisers' economic, political, and social interests. One of the main pillars of this legal system was juridical differentiation based on race, ethnicity, and social status, which was institutionalised through various regulations that divided the population into three broad categories: Europeans, Foreign Orientals (Chinese, Arabs, Indians), and Natives (Inlanders). This differentiation served administrative purposes and as a socio-political mechanism to maintain stratification, control social mobility, and preserve colonial power.

The court system was differentiated according to racial status, access to education and economic opportunities were strictly separated, and civil and criminal laws were applied with double standards (Hibbatulloh et al., 2025). This legacy subtly but systematically entered the DNA of Indonesia's national law, which, after independence, chose continuity over radical deconstruction of the colonial system. A crucial question arises: Can a legal system born out of colonialism, and whose birth was based on specific racial interests, truly transform into a universal and neutral legal system?

In the historical reality of Indonesia, the decision to continue using colonial legal products became one of the most important political decisions after the proclamation of independence (Al Hamid et al., 2025; Kurniawan et al., 2025). Through Article II of the Transitional Provisions of the 1945 Constitution, all colonial-era regulations were declared to remain in effect until replaced by new rules (Satrio, 2023). This decision is often justified pragmatically: a new country needs legal certainty and institutional stability, and it is impossible to change the entire legal system overnight. However, the long-term consequence of this decision is that discriminatory logic and structures are embedded in national law, easily camouflaged behind rhetoric of neutrality and universality.

The claim of the universality of national law contains a fundamental paradox. On the one hand, law is idealised as a reflection of the shared values of a plural, diverse and inclusive nation. On the other hand, in the practice of legislation and law enforcement, bias, stereotypes and even overt and covert discrimination are often found, reflecting the persistence of colonial social structures. Many national legal products, whether codified or sectoral regulations, merely adopt or modify colonial law without critically reflecting on its sociological impact on groups previously discriminated against by the colonial system (Tamanaha, 2021). One of the most obvious examples is the Criminal Code (KUHP), which, despite having been revised, still retains many of the original principles and articles of colonial law that were originally designed to protect the interests of the colonial regime from resistance by the indigenous people. Moreover, ambiguous provisions such as defamation, treason, and national security offences are still enforced with logic and interpretations that can ensnare anyone deemed a

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threat to power or political stability, often disproportionately targeting socially and politically vulnerable groups.

Many national regulations, both explicitly and implicitly, still carry the spirit of racial and ethnic discrimination. For example, in land tenure, the principle of state control over land as stipulated in the 1960 Basic Agrarian Law (UUPA) formally abolished colonial racial privileges. Still, in practice, the logic of exclusion and marginalisation persists, particularly against indigenous communities and minority groups. Administrative laws on population are also not free from historical bias (Latif et al., 2025). Historically, administrative categories such as 'Inlander,' 'Vreemde Oosterlingen,' and 'Europeanen' determined citizens' access to education, employment, and justice. Although these categories have been officially abolished, bureaucratic practices and social stereotypes persist, manifesting in differential treatment toward groups such as the Chinese community, Papuan communities, and indigenous communities across the archipelago.

The issue of national legal neutrality must also be understood within the context of contemporary socio-political dynamics (Karimullah, 2023). Various cases of racial discrimination against Papuans, the neglect of indigenous peoples' rights to land and culture, and regulations that restrict freedom of expression or religion for minority groups demonstrate that national law is never truly free from bias, majority interests, or even the state's political agenda. In many cases, the legislative process is carried out top-down without adequate representation from the groups most affected by the regulations. The law thus becomes a tool for producing and legitimising power relations, rather than a guarantor of substantive justice.

The narrative of the neutrality and universality of national law is often used as a shield to reject criticism or demands for change from marginalised groups. The positivist paradigm, which emphasises the supremacy of written law, ignores that legal texts are always read, interpreted, and applied by actors with specific social, ideological, and historical backgrounds. When law enforcers still have colonial, stereotypical, and biased views towards certain groups, then changes to the law alone will not result in true justice. The law is 'colour-blind' only in theory, but is highly sensitive to colour, status, origin, and social identity (Karimullah & Sugitanata, 2025).

The experiences of minority groups in Indonesia prove that national law often fails to provide fair protection (Muhajir et al., 2023). The Chinese community, for example, has endured decades of legal and social discrimination, both through economic restrictions and bans on cultural symbols and practices, as was the case during the New Order era through Presidential Instruction No. 14/1967 and Presidential Regulation No. 10/1959. Papuan groups also experience double marginalisation: politically through security policies, and legally through restrictions on access to justice and the criminalisation of activists and traditional leaders. Even indigenous communities outside Papua are often faced with the neglect of their rights to land and resources, under the argument of 'national interests' which ironically replicates the logic of the Dutch colonial 'civilising mission.'

The neutrality of national law is also questionable in the context of law enforcement, which is often selective and influenced by socio-economic and political factors (Karimullah, 2022). Law enforcement officials, who are supposed to act impartially, usually practise subtle discrimination, from the investigation stage, through prosecution, to court decisions (Karimullah, 2024). Perceptions and stigmas attached to certain groups, such as 'Papua has separatist tendencies,' 'Chinese are synonymous with foreign capital,' or 'indigenous peoples are backwards,' directly influence the determination of legal status, the severity of punishment, and even treatment in detention facilities.

Such judicial practices cannot be overcome simply by improving written rules, but require a change in the mindset and paradigm of law enforcement officials (Musmuliadin et al., 2024). Challenging the universality of national law also means challenging the way

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legislation and codification are carried out. Political actors often dominate the legislative process, and state bureaucrats are sensitive to the historical experiences of groups previously disadvantaged by the colonial system (Bhat & Shahid, 2024). The lack of public participation from minority groups in the law-making process has resulted in regulations that are not adaptive to the diverse needs and social conditions in Indonesia. The law ultimately does not become an instrument for conflict resolution, but rather a tool for justifying the interests of dominant groups. Some may argue that the continuous changes to the law since the reform have improved many forms of discrimination in national law.

However, an equally important critical question is: are substantive changes to laws effective if changes in the perspectives, paradigms, and legal culture of law enforcement officials are not pursued simultaneously? Empirical experience shows that regulatory revisions without mental and institutional transformation often result in only cosmetic changes. For example, after the prohibition of discriminatory practices against the Chinese community was lifted, there were still many cases of intolerance and labelling against this community at the bureaucratic and community levels. Similarly, despite recognition in the 1945 Constitution, the rights of indigenous peoples continue to be reduced in the implementation of sectoral regulations.

Critical reflection also needs to be directed at the influence of legal education, which is still dominated by positivistic, legalistic, and Eurocentric narratives (Al Attar, 2021). Legal education in Indonesia, which from the outset has largely adopted Western (particularly Dutch) curricula and methodologies, shapes the worldview of future law enforcers to emphasise technical-normative aspects over social, political, and historical sensitivity. As a result, critical awareness of power relations, historical injustices, and the importance of the victim's perspective is often neglected.

Progressive, necessary, and marginalised group-based legal paradigms remain marginalised discourse. Undeniably, the state usually uses the narrative of the universality of national law to legitimise development projects that sacrifice vulnerable groups. Many large-scale infrastructure policies are implemented in the name of the public interest, when in reality they marginalise local communities, indigenous groups, and minorities who lose their rights to land, living space, and cultural identity (Eggleton, 2024). Regulations that appear to be 'neutral' actually become instruments of reproducing injustice, as they fail to take into account the historical inequalities inherited from colonialism.

In a global context, criticism of national legal neutrality cannot be separated from the development of legal decolonisation discourse and critical theories such as Critical Race Theory. These discourses encourage the legal system to be no longer viewed as a technical instrument free from interests but as a political arena full of discourse, experiences, and power struggles. The neutrality and universality of law can only be achieved if the legal system can acknowledge, restore, and remedy historical inequalities, as well as open space for the participation of groups that have been marginalised in the history of national law. Therefore, the legal reform agenda in Indonesia must go beyond mere revision of rules.

A paradigm shift, a change in mentality, and institutional structures oriented towards substantive justice are needed. The new national law can only be considered universal if it can embrace all citizens' experiences, especially those disadvantaged by a history of discrimination and marginalisation. The legislative process must be truly inclusive, participatory, and transparent. Law enforcement officials must be educated to be sensitive to the diversity of experience, history, and social needs. The law must no longer be a tool for dominant groups, but rather a guarantee of protection and restoration for all, without exception.

3. The urgency of legal decolonisation through the lens of critical race theory

Indonesia has proclaimed political independence, but legal autonomy has not yet been fully realised. Many national legal products—such as the Criminal Code, the Civil Code, and

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several sectoral laws—still use colonial structures, logic, and spirit in regulating social relations. Ironically, many of the changes during the independence and reform eras have been superficial, adding or removing clauses while maintaining the discriminatory and exclusive colonial foundations. Such an approach only reinforces the status quo of structural injustice. It fails to address the need for transformative justice that can elevate the voices of groups that have been marginalised, both by history and by the existing legal system.

Legal decolonisation through Critical Race Theory (CRT) is not merely about identifying colonial residues in legal texts but also deconstructing legal epistemology. CRT mounts a fierce critique of the claims of objectivity, neutrality, and universality of law. According to CRT, law is inherently laden with interests; it operates in the interest of dominant groups and often silences the voices of minority groups. Therefore, legal decolonisation requires a paradigm shift: from law as a tool of social control to law as an arena for advocacy, liberation, and redress for historical injustices (Monaghan, 2025). Justice, in the CRT perspective, is partisan justice—partisan towards victims, the oppressed, and groups that have been constructed as "the other" within social and legal systems.

The first step towards legal decolonisation is a collective willingness to re-read the history of national law honestly and critically. It must be acknowledged that the national legal system, since its inception, has been indebted to colonial infrastructure and knowledge. However, this debt must not be paid by perpetuating discriminatory and exclusive practices that have proven ineffective in upholding justice for all. The state must have the courage to conduct a comprehensive legal audit—not merely revising, but revolutionising the entire legal system, from legislation and institutions to legal culture. This audit must include tracing colonial residues in every legal product, from the definition of terms and the logic of articles to implementing policies in the field. The involvement of marginalised groups—indigenous peoples, religious minorities, women, persons with disabilities, and poor communities in urban and rural areas—must be placed at the core of this process, not merely as objects of legal protection.

The strategy of legal decolonisation through CRT requires a major overhaul of national legal education. Until now, legal education in Indonesia has been highly positivistic and Eurocentric, teaching law as a set of norms that must be memorised and obeyed, without opening space for critical discourse on law's history, context, and socio-political impact. Decolonial legal education must introduce alternative readings of legal history, incorporate the lived experiences of marginalised groups as primary sources of legal knowledge, and emphasise the importance of ethics in favour of victims and oppressed groups. In this way, future law enforcers will grow into critical, empathetic actors with a high sensitivity to social inequality and historical injustice.

The main challenge in the legal decolonisation project is resistance from those who benefit from the status quo. At the political, bureaucratic, and legal professional levels, there are always interests in maintaining the old system with various justifications: stability, legal certainty, bureaucratic efficiency, or other 'practical' reasons (Bertelli et al., 2025). However, these justifications often only cover up dominant groups' interests and silence the voices of change. Another challenge is the lack of critical understanding among the public due to legal education, which is too legalistic and rarely teaches the socio-political context of law (Wassouf, 2025). On the other hand, marginalised groups often lack representation in the legislative process, the courts, and public discourse. Limited access, lack of advocacy power, and the burden of a history of oppression make them even more vulnerable in a legal system that is still colonial.

The application of CRT in Indonesia's legal decolonisation project cannot be done partially. CRT offers strategic principles that can be used as a roadmap. First, CRT demands recognition of the importance of counter-storytelling. National legal history must be read through the lens of victims and marginalised groups, not solely from the perspective of the

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rulers and the majority. These counter-narratives can be drawn from real cases of legal discrimination, the experiences of indigenous peoples in fighting for land rights, or the stories of minority communities that have been continuously criminalised and ignored by the state. Second, CRT encourages intersectionality in legal analysis, meaning that experiences of discrimination are never singular, but intersect with other identities such as gender, class, religion, or disability. Decolonial law must be sensitive to the diversity of forms of injustice and able to respond flexibly and fairly.

Third, CRT puts forward the principle that "racism is ordinary, not aberrational"—racism is not an aberration, but part of everyday social and legal systems. This principle reminds us that bias, stereotypes, and discrimination are often hidden in everyday law enforcement practices, from the way officials view, arrest, and adjudicate certain groups. Therefore, legal decolonisation requires strong oversight, reporting, and redress mechanisms, not only at the level of legislation but also in institutional practice. Fourth, CRT reinforces the need for community-based advocacy. Legal change cannot be driven solely by political elites or academics, but must come from social movements led by and for marginalised groups. This community advocacy must be complemented by strengthening citizens' legal capacity, critical education, and collective organising to fight injustice. The experience of other countries in implementing CRT shows that the most significant changes occur when social movements can build broad coalitions across identities and territories.

Legal decolonisation must also question the dominant conceptions of justice (Eckert, 2023). Justice can no longer be defined solely in procedural or formalistic terms, but must be understood as an effort to restore, reconcile, and transform unequal power relations (Aminah et al., 2024; Procter-Legg et al., 2024). In the Indonesian context, this means acknowledging the historical damage caused by colonialism, rehabilitating rights that have been neglected, and designing a legal system capable of anticipating and addressing various forms of discrimination that may emerge in the future.

The question that must be asked of this nation is: Is it enough to 'revise' national laws to free them from the remnants of colonialism and racism, or is it time to 'revolutionise' the legal system as a whole? The experience of the last few decades has proven that partial revisions and patchwork solutions only result in superficial improvements that are easily eroded by old practices. Colonial residues persist in cases of agrarian disputes, customary law conflicts, racial discrimination, religious intolerance, the criminalisation of activists, and so on. Progressive law, responsive law, and community-based law often remain mere slogans, without genuine implementation that transforms the discriminatory structure and culture of the legal system.

The legal revolution referred to here does not mean unthinkingly erasing the entire legal legacy of the past, but rather conducting a critical, contextual, and substantive justice-oriented re-reading. All legal products must be audited with the main question: do certain norms, articles, or practices still contain bias, discrimination, or colonial logic inconsistent with the spirit of independence, social justice, and pluralism of the nation? If so, there must be the courage to repeal, replace, or reformulate these rules through participatory, transparent, and experience-based mechanisms involving affected groups.

Legal decolonisation requires political commitment from all stakeholders: the government, the legislature, the judiciary, academics, and civil society (Banerjee, 2022). Without this commitment, change will only be cosmetic and easily reclaimed by conservative forces. In practice, decolonisation strategies must include: the establishment of an independent legal decolonisation commission, the strengthening of non-discriminatory oversight institutions, the reform of legal education curricula, the opening of access to representation for marginalised groups in parliament and the courts, and the strengthening of community-based legal advocacy networks. The state also needs to develop transitional justice mechanisms to

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restore the victims of colonial law violations and past discrimination, for example, by granting reparations, restoring good names, and guaranteeing non-repetition of discrimination.

Above all, legal decolonisation requires a change in legal culture. The law must reflect the diversity of citizens' experiences, aspirations, and values, not merely serve as a tool of control by a small elite. This process is indeed long and challenging, but only in this way can Indonesia fulfil its promise of independence: to become a nation that is truly free, united, sovereign, just, and prosperous. Legal decolonisation is not merely an academic project, but a moral and political call to reorder our collective life based on the principle of substantive justice.

To provoke debate, if Indonesia is truly serious about building an inclusive, fair and equitable legal system, does this nation have the courage to dismantle and replace all of its irrelevant and discriminatory 'legal heritage', rather than just patching things up here and there? Are we willing to place the voices and experiences of victims of injustice at the centre of legal reform? Are political elites, the legal bureaucracy, and the broader public capable of resisting the temptation of pragmatism in favour of radical change prioritising substantive justice? And most fundamentally, are we as a nation willing to learn from history, acknowledge our wounds, and collectively create a legal system that truly liberates?

Revolutionising national law is no easy task. It requires time, resources, and massive changes across all sectors. However, if we merely stop at revisions and patchwork solutions, the legacy of colonialism and racism will continue to haunt progress and justice in this country. With a Critical Race Theory approach, Indonesia can rebuild its legal system from the ground up: dismantling bias and discrimination, strengthening victim advocacy mechanisms, and formulating new laws based on the real experiences and collective needs of its pluralistic citizens. Legal revolution is not just a dream, but a historical necessity that cannot be compromised in the 21st century.

Legal decolonisation through the CRT perspective teaches us that justice will never come on its own; it must be fought for through collective efforts, political courage, and consistent hard work. Indonesia will only truly be free when its legal system is free from the remnants of colonialism and racism, and when justice is no longer a privilege but a right for all citizens. This is the greatest challenge and hope for the future of Indonesian law.

D. Conclusion

Indonesia's national legal system is still rife with remnants of colonialism that manifest themselves in the form of discrimination, marginalisation, and institutionalised racial bias, both in legal products and institutional practices. Legal reforms that are merely administrative or partial revisions have proven insufficient to dismantle the roots of injustice passed down for centuries. Introducing CRT as an analytical tool enables a re-reading of legal narratives from the perspective of minority groups and victims, while also opening up space for criticism of the myths of neutrality and universality of national law that have obscured the social reality of inequality and exclusion. Therefore, legal decolonisation in Indonesia must be understood as a transformative agenda that demands a paradigm shift, institutional reform, and a genuine renewal of legal culture committed to substantive justice for all citizens.

Justice will only be realised if all elements of the nation dare to acknowledge historical wounds, dismantle discriminatory biases embedded in the legal system, and jointly build a legal structure that is inclusive, fair, and responsive to the experiences and needs of groups that have long been marginalised. The project of legal decolonisation is not merely an academic task or formal legislation, but a moral call and collective commitment towards a legal order that truly liberates and humanises.

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References

Al Attar, M. (2021). Must International Legal Pedagogy Remain Eurocentric? *Asian Journal of International Law*, *11*(1), 176–206. https://doi.org/10.1017/S2044251321000138

Al Hamid, R., Jamil, M. S., Nimah, R., & Siregar, M. A. H. (2025). Political Conflict between Islamic Law and National Law in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, *1*(1), 48–62. https://journal.mahkotascience.org/index.php/insani/article/view/4

Al Hamid, R., Sugitanata, A., & Karimullah, S. S. (2023). Sinkronisasi Pendekatan Sosiologis Dengan Penemuan Hukum Islam Sui Generis Kum Empiris. *Bertuah Jurnal Syariah Dan Ekonomi Islam*, *4*(1), 48–60. https://doi.org/https://doi.org/10.56633/jsie.v4i1.553

Aminah, S., Sugitanata, A., & Karimullah, S. S. (2024). Restorative Justice for the Survivor of Sexual Violence. *Restorative: Journal of Indonesian Probation and Parole System*, *2*(1), 15–23. https://doi.org/10.61682/restorative.v2i1.10

Banerjee, S. B. (2022). Decolonizing deliberative democracy: Perspectives from below. *Journal of Business Ethics*, *181*(2), 283–299. https://doi.org/10.1007/s10551-021-04971-5

Bertelli, A. M., Falletti, V., & Cannas, S. (2025). Authorized Discretion: The Democratic Essentials of Governance in the European Union. *Governance*, *38*(3), e70029. https://doi.org/10.1111/gove.70029

Bhat, M. A., & Shahid, R. (2024). Introduction: mutual attrition of citizenship, democracy and the rule of law in South and Southeast Asia. In *Journal of Ethnic and Migration Studies* (Vol. 50, Issue 19, pp. 4787–4808). Taylor & Francis. https://doi.org/10.1080/1369183X.2024.2376403

Butt, S. (2023). Indonesia's new Criminal Code: indigenising and democratising Indonesian criminal law? *Griffith Law Review*, *32*(2), 190–214. https://doi.org/10.1080/10383441.2023.2243772

Butt, S., & Lindsey, T. (2012). *The Constitution of Indonesia: A Contextual Analysis*. Bloomsbury Publishing.

Cribb, R. (2008). *Gangsters and revolutionaries: the Jakarta People's Militia and the Indonesian revolution, 1945-1949*. Equinox Publishing.

Delgado, R., & Stefancic, J. (2023). *Critical race theory: An introduction* (Vol. 87). NyU press.

Eckert, J. (2023). Decolonising the political: Presence, law and obligation. *Anthropological Theory*, *23*(4), 436–458. https://doi.org/10.1177/14634996231185324

Eggleton, D. C. (2024). Large-scale research infrastructure projects: A conceptual review for science policy and management. *Science Progress*, *107*(4), 00368504241266555. https://doi.org/10.1177/00368504241266555

Fahmi, C. (2024). The application of international cultural rights in protecting Indigenous peoples' land property in Indonesia. *AlterNative: An International Journal of Indigenous Peoples*, *20*(1), 157–166. https://doi.org/10.1177/11771801241235261

Fairclough, N. (2013a). *Critical discourse analysis: The critical study of language*. Routledge. https://doi.org/10.1002/jdd.13059

Fairclough, N. (2013b). Critical discourse analysis and critical policy studies. *Critical Policy Studies*, *7*(2), 177–197. https://doi.org/10.1080/19460171.2013.798239

Fairclough, N. (2023). Critical discourse analysis. In *The Routledge handbook of discourse analysis* (pp. 11–22). Routledge. https://doi.org/10.4324/9781003035244-3

Haerozi, Winengan, Fakhri, M., Sugitanata, A., & Karimullah, S. S. (2023). Preserving Cultural Heritage in Marriage: Exploring Meanings of Kebon Odeq Tradition in the Sasak Community of Lombok Tengah, Indonesia. *AL-HUKAMA: The Indonesian Journal of*

 DOI: 10.65586/jpr.v1i1.12

Islamic Family Law, *13*(2), 202–228. https://doi.org/10.15642/alhukama.2023.13.2.202-228

Hibbatulloh, I., Najhan, A. S., Dzulfikar, M. L., & Mabrur, R. (2025). The Secularisation of Islamic Criminal Law and Its Implications for the Protection of Human Rights in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, *1*(1), 17–31. https://journal.mahkotascience.org/index.php/insani/article/view/7

Ibrahim, Z. S., Karimullah, S. S., Assaad, A. I., Septiani, R., & Okur, H. (2025). Integration of Maqaṣid al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity. *Jurnal Hukum Islam*, *23*(1), 105–144.

Joseph, T., & Golash-Boza, T. (2021). Double consciousness in the 21st century: Du Boisian theory and the problem of racialized legal status. *Social Sciences*, *10*(9), 345. https://doi.org/10.3390/socsci10090345

Karimullah, S. S. (2022). Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law. *Mazahib*, *21*(2), 213–244. https://doi.org/10.21093/mj.v21i2.4800

Karimullah, S. S. (2023). The Relevance of the Concept of Justice in Islamic Law to Contemporary Humanitarian Issues. *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, *8*(1), 83–98. https://doi.org/10.22515/alahkam.v8i1.7654

Karimullah, S. S. (2024). The Role of Law Enforcement Officials: The Dilemma Between Professionalism and Political Interests. *Jurnal Hukum Dan Peradilan*, *13*(2), 365–392. https://doi.org/10.25216/jhp.13.2.2024.365-392

Karimullah, S. S., & Sugitanata, A. (2025). Masnun Tahir's Nationalist Fiqh: The Integration of Islam and Nationalism in Addressing Social Challenges in Indonesia. *Addin*, *18*, 193–218. https://doi.org/10.21043/addin.v18i2.20218

Kurniawan, M. R., Fathony, M. R., Yasin, D. T., Jibu, S. A., & Shamat, A. (2025). Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, *1*(1), 32–47. https://journal.mahkotascience.org/index.php/insani/article/view/2

Latif, F. A., Dahhur, M., & Ramadhany, S. S. M. (2025). Protection of Freedom of Religion in Islamic Law in Secular Turkey and Its Relevance for Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, *1*(1). https://journal.mahkotascience.org/index.php/insani/article/view/1

Lev, D. (2021). *Legal evolution and political authority in Indonesia: selected essays* (Vol. 4). Kluwer Law International.

Luttikhuis, B. (2013). Beyond race: constructions of 'Europeanness' in late-colonial legal practice in the Dutch East Indies. *European Review of History: Revue Europeenne d'histoire*, *20*(4), 539–558. https://doi.org/10.1080/13507486.2013.764845

Monaghan, O. (2025). Indigenous lawyering: Colonial legal formations and decolonial manoeuvres. In *Legal Education Through an Indigenous Lens* (pp. 23–38). Routledge. https://doi.org/10.4324/9781003473404-3

Muhajir, M., Nisa, I. S., Munawar, A., & Karimullah, S. S. (2023). Agus Moh Najib's Thoughts on the Interconnection of Islamic Law and National Law. *Jurnal Ilmiah Al-Syir'ah*, *21*(1), 86–103. https://doi.org/10.30984/jis.v21i1.2321

Musmuliadin, M., Indarti, E., & Rochaeti, N. (2024). Revolutionizing Justice: Law Enforcement Through The Lens of Progressive Law. *Indonesia Law Review*, *14*(3), 3. https://doi.org/10.15742/ilrev.v14n3.3

Parhi, N. Z., Hudafi, H., Pangestu, R., & Elmurtadho, F. (2025). Tension between Islamic Law and Human Rights in Child Marriage Cases in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, *1*(1), 96–110. https://journal.mahkotascience.org/index.php/insani/article/view/3

Prianto, A. L., Karimullah, S. S., Idri, I., Ibrahim, Z. S., Nugraha, A. R., & Gönan, Y. (2024).

 DOI: 10.65586/jpr.v1i1.12

Hijacking of State Power on Religious Freedom by Community Organizations in Indonesia. *Jurnal Ilmiah Islam Futura*, *24*(2), 348–367. https://doi.org/10.22373/jiif.v24i2.17916

Procter-Legg, T., Hobson, J., & Quimby, E. (2024). Restorative justice and social justice: an international perspective. *Contemporary Justice Review*, *27*(2–3), 218–238. https://doi.org/10.1080/10282580.2024.2414953

Rajendra, J. B., & Thuraisingam, A. S. (2025). The role of explainability and human intervention in AI decisions: jurisdictional and regulatory aspects. *Information & Communications Technology Law*, 1–32. https://doi.org/10.1080/13600834.2025.2537514

Rosenbaum, C. L. (2024). Arbitrary-and-Capricious Review: The Colonial Roots of Administrative Discrimination. *Available at SSRN 4908499*. https://doi.org/10.2139/ssrn.4908499

Satrio, A. (2023). The Making of (Anti-) Colonial Constitution: The Indonesian 1945 Constitution. *Asian Comparative Constitutional Law*, *1*. https://doi.org/10.2139/ssrn.4929928

Sugitanata, A., Karimullah, S. S., & Sunardi, H. (2023). Hukum Perkawinan di Masyarakat Sasak Lombok Nusa Tenggara Barat (Analisis Produk Hukum Perkawinan Masyarakat Sasak Lombok Nusa Tenggara Barat). *The Indonesian Journal of Islamic Law and Civil Law*, *4*(1), 19–39. https://doi.org/10.51675/jaksya.v4i1.344

Tamanaha, B. Z. (2021). Legal pluralism across the global South: colonial origins and contemporary consequences. *The Journal of Legal Pluralism and Unofficial Law*, *53*(2), 168–205. https://doi.org/10.1080/07329113.2021.1942606

Van Langenberg, M. (1990). The new order state: Language, ideology, hegemony. *State and Civil Society in Indonesia*, *22*, 121–149.

Wassouf, D. (2025). Moving Beyond the Symptom: Postcritical Turn in Critical Legal Studies. *Law, Culture and the Humanities*, 17438721251345476. https://doi.org/10.1177/17438721251345476

 DOI: 10.65586/jpr.v1i1.12