



Vagueness of Article 271 of the Indonesian National Criminal Code on Necrophilia as an Uncivilized Act Against Corpses

Kekaburan Pasal 271 KUHP Nasional terhadap Necrophilia sebagai Perbuatan Tidak Beradab terhadap Jenazah

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Abstract: This article examines the vagueness of Article 271 of Law Number 1 of 2023 concerning the Indonesian National Criminal Code in relation to necrophilia as an uncivilized act against corpses. The main problem lies in the open-ended phrase “treating a corpse in an uncivilized manner,” which does not explicitly clarify whether sexual acts against a corpse fall within its scope. This study uses normative legal research with statutory, conceptual, case, and comparative approaches. The analysis focuses on the National Criminal Code, the principle of legality, the lex certa requirement, the Mojokerto case, and comparative models from England and Wales, the United States, and India. The study finds that Article 271 provides an initial normative basis for protecting corpses, but its vague formulation may create uncertainty in prosecution, evidentiary construction, and judicial interpretation. This article argues that necrophilia should be regulated more explicitly as a sexual act against a corpse, either through an additional provision under Article 271 or through a separate offence. Such regulation is necessary to protect human dignity after death while maintaining legal certainty and limiting excessive interpretation in criminal law enforcement.

Keywords: corpse dignity; criminal law reform; legal certainty; necrophilia; principle of legality

DOI: 10.47006/ijlres.v%vi%i.31133

INTRODUCTION

Indonesia is a state based on law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This principle requires that criminal law be placed not only as an instrument of punishment, but also as a normative framework for protecting

legal certainty, social order, morality, and human dignity. Criminal law determines the boundaries between conduct that remains socially tolerable and conduct that must be formally condemned by the state. In this sense, criminal law does not merely respond to physical harm or material loss, but also protects fundamental values that society considers essential to civilized life.

Human dignity does not entirely disappear when a person dies. A corpse is no longer a living legal subject capable of expressing consent, objection, or suffering in the ordinary sense. However, a corpse cannot be reduced to an ordinary object that may be treated freely by others. The treatment of corpses is closely related to personal identity, family grief, religious values, social morality, and the collective obligation to respect the human body after death. Indonesian society recognizes this value through funeral rites, burial practices, religious ceremonies, and social norms that require proper treatment of the deceased. Therefore, legal protection for corpses can be understood as an extension of respect for human dignity after death.

Necrophilia refers to sexual conduct directed toward a human corpse. This conduct cannot be understood merely as a psychological or sexual deviation, because it also raises a serious legal issue concerning the protection of corpses and the limits of criminalization. The central problem lies in the fact that ordinary sexual offences are generally constructed around a living victim. Rape, sexual violence, and sexual abuse usually presuppose the existence of a person who can be subjected to violence, coercion, incapacity, or the absence of consent. A corpse does not occupy that legal position. For this reason, necrophilia cannot simply be forced into the ordinary construction of rape or sexual violence against a living person.

Indonesian criminal law has not explicitly formulated necrophilia as an independent offence. The old Criminal Code did not specifically regulate sexual acts against corpses, while the construction of rape and indecent acts remained oriented toward living victims. Law Number 12 of 2022 concerning Sexual Violence Crimes has expanded the protection of victims of sexual violence, including prevention, handling, protection, and recovery of victims' rights. However, its regulatory structure still focuses on living victims who experience sexual violence and require legal protection and recovery (Indonesia, 2022). This leaves sexual acts against corpses outside the clear structure of sexual violence regulation.

Law Number 1 of 2023 concerning the National Criminal Code introduces Article 271, which prohibits unlawfully digging up or dismantling graves, taking, moving, transporting corpses, and/or treating corpses in an uncivilized manner (Indonesia, 2023). This provision is the closest legal basis for addressing necrophilia in Indonesian criminal law. The phrase

“treating a corpse in an uncivilized manner” indicates that the National Criminal Code recognizes corpses as objects of criminal law protection. However, the provision does not expressly explain whether sexual acts against a corpse fall within the scope of “uncivilized” treatment.

The phrase “uncivilized treatment” creates a problem of legal vagueness. On the one hand, necrophilia is clearly contrary to morality, human dignity, and social decency. On the other hand, criminal law cannot rely solely on moral condemnation. The principle of legality requires that a punishable act be clearly formulated in law before it can be criminalized. This principle includes the requirement of *lex certa*, which demands that criminal norms be sufficiently clear, precise, and predictable. Putri’s analysis of the living law element in the Draft Criminal Code shows that the recognition of social values in criminal law must still be controlled by the principle of legality so that criminal prosecution does not depend on vague moral standards (Putri, 2021).

The vagueness of Article 271 becomes more serious because the phrase “uncivilized” is evaluative and open-ended. Such a formulation may be useful for covering various forms of improper treatment of corpses, but it also risks creating uncertainty in criminal law enforcement. Investigators, prosecutors, and judges may differ in determining whether sexual penetration, sexual contact, mutilation, symbolic insult, or other forms of degrading conduct against a corpse are covered by the provision. Latif’s study on judicial interpretation of the element of unlawfulness confirms that criminal law interpretation must remain within the limits of legal certainty and due process, because excessive interpretation may shift the judge’s role from interpreting the law to creating a new criminal prohibition (Latif, 2010).

The Mojokerto case illustrates the practical relevance of this issue. In that case, sexual conduct toward the victim’s corpse appeared as part of the factual sequence surrounding a serious criminal offence. However, the criminal responsibility imposed in the case did not construct necrophilia as an independent offence. The sexual act against the corpse was not treated as a distinct attack on the dignity of the deceased, but appeared only within the broader narrative of the criminal event. This shows a gap between the moral seriousness of the act and the availability of a clear criminal norm. Mahadnyani and Darma (2025) similarly argue that necrophilia in Indonesia remains legally ambiguous because existing provisions have not clearly defined it as a specific criminal offence.

Comparative criminal law provides an important reference for examining this problem. England and Wales regulate sexual penetration of a corpse explicitly through Section 70 of the

Sexual Offences Act 2003. This model identifies the prohibited act, the object of the act, the mental element, and the sexual nature of the conduct. Several jurisdictions in the United States also regulate sexual abuse or sexual contact with a dead human body within the broader framework of offences against corpses. India protects corpses through provisions concerning indignity to human corpses, burial places, and religious or social feelings. These comparative models show that sexual acts against corpses may be formulated more clearly either as a specific sexual offence against a corpse or as a specific form of offence against the dignity of the dead.

Based on these problems, this article examines the vagueness of Article 271 of the National Criminal Code in qualifying necrophilia as an uncivilized act against corpses and formulates a clearer regulatory construction based on comparative criminal law. The main argument of this article is that Article 271 provides an initial normative basis for protecting corpses, but its open-ended formulation is not sufficient to ensure legal certainty when applied to necrophilia. Sexual acts against corpses need to be regulated more explicitly so that the protection of human dignity after death does not depend entirely on broad moral interpretation.

This article uses normative legal research with statutory, conceptual, case, and comparative approaches. The statutory approach examines the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the National Criminal Code, and Law Number 12 of 2022 concerning Sexual Violence Crimes. The conceptual approach is used to analyze the principle of legality, *lex certa*, legal certainty, and the legal status of corpses. The case approach is used to understand the relevance of the Mojokerto case as a factual basis for the legal ambiguity surrounding necrophilia. The comparative approach examines selected regulations from England and Wales, the United States, and India to formulate a more precise model for regulating sexual acts against corpses in Indonesian criminal law reform.

RESULTS AND DISCUSSION

Legal Position of Corpses and Necrophilia in Indonesian Criminal Law

The legal position of a corpse in Indonesian criminal law cannot be understood merely through the biological fact that human life has ended. A corpse is no longer a living legal subject that can hold rights and obligations in the same way as a living person. However, it also cannot be treated as an ordinary object that is entirely detached from human dignity. This intermediate position makes the corpse a distinctive object of legal protection. Aryanto (2018) explains that the status of corpses in Indonesian law raises a specific problem because a corpse

may be approached as an object of legal protection in criminal law, while its position in private law remains more difficult to determine. This view is important for the present article because necrophilia does not attack a living victim, but it still violates the dignity attached to the human body after death.

The criminal law protection of corpses must therefore be placed within the broader idea of respect for human dignity. In Indonesian legal consciousness, the body of a deceased person is still connected to family identity, religious belief, social memory, and public morality. The obligation to treat a corpse properly is not merely a private obligation of the family, but also a public concern that may justify criminal law intervention. Hanafi (2019) argues that crimes against corpses are related to social defence because such acts generate public disapproval, disturb social order, and contradict religious and moral norms that are strongly embedded in Indonesian society. In this sense, criminal law protects not only the physical condition of the corpse, but also the social and moral meaning attached to the deceased.

This position is also consistent with the idea that the human body has a special value that cannot be reduced to property. Christianto (2011), in discussing the right over the human body in organ transplantation, emphasizes that the body must be understood through the value of humanity. Although the context of that study concerns transplantation, its reasoning is relevant to the legal position of corpses. A human body, even when discussed in relation to medical use, cannot be separated from the principle of dignity. This supports the argument that a corpse is not a neutral material object. It is a body that once belonged to a person and remains surrounded by legal, moral, and social respect.

The regulation of corpses in Indonesian criminal law has historically been fragmented. The old Criminal Code recognized several offences relating to burial places, the disturbance of funeral ceremonies, and the unlawful removal or transportation of corpses. These provisions showed that Indonesian criminal law had long recognized the need to protect corpses and burial processes. However, the protection was primarily directed at public order, burial sanctity, and disturbance of religious or social practices. The old framework did not expressly regulate sexual acts against corpses. This is the initial reason why necrophilia is difficult to place within the classical structure of Indonesian criminal law.

The National Criminal Code introduces a more relevant provision through Article 271. The article prohibits unlawfully digging up or dismantling graves, taking, moving, transporting corpses, and/or treating corpses in an uncivilized manner. Compared to the old

Criminal Code, Article 271 provides a broader formulation because it does not only regulate physical interference with graves or the removal of corpses, but also includes the open phrase “treating a corpse in an uncivilized manner.” This formulation shows that the National Criminal Code recognizes that the dignity of corpses may be violated by conduct that goes beyond physical relocation or burial disturbance. Nevertheless, the provision still leaves a difficult question: whether sexual acts against a corpse are clearly included within the meaning of uncivilized treatment.

Necrophilia differs from ordinary sexual offences because the object of the conduct is not a living person. Rape and sexual violence offences generally require a living victim whose body, consent, freedom, or vulnerability is violated. A corpse cannot give or refuse consent, cannot experience psychological trauma, and cannot be positioned as a victim in the same doctrinal structure as a living person. Therefore, forcing necrophilia into the construction of rape or sexual violence may create doctrinal confusion. The legal issue is not the absence of consent in the ordinary sense, but the violation of the dignity of the deceased, the grief of the family, and the public expectation that human remains must be treated with respect.

Law Number 12 of 2022 concerning Sexual Violence Crimes also does not fully resolve this issue. The law provides important protection for victims of sexual violence, but its framework is directed toward living victims who require prevention, handling, protection, and recovery. Necrophilia does not fit neatly into this framework because the protected interest is different. The primary protected interest is not bodily autonomy of a living victim, but the dignity of a corpse and the moral order surrounding death. This distinction is essential so that necrophilia is not inaccurately constructed as an ordinary sexual offence against a person who is still alive.

The legal position of corpses is also visible in discussions on the lawful treatment of dead bodies in medical and forensic contexts. Batubara et al. (2021) show that the use of organs from corpses requires legal regulation because the dead body remains connected to questions of legality, consent, medical responsibility, and respect for human dignity. This confirms that Indonesian law does not treat corpses as objects that may be freely used. Certain actions toward corpses may be lawful, such as medical examination, autopsy, identification, or transplantation, but only when they are carried out under legal authority and ethical safeguards. By contrast, necrophilia has no legitimate medical, forensic, educational, or religious purpose. It is a sexual act that degrades the corpse and therefore requires a different criminal law response.

The problem becomes sharper when necrophilia is considered within the current Indonesian criminal law structure. Article 271 may provide the closest normative basis, but its formulation remains general. The phrase “uncivilized” is morally meaningful, yet it does not specify whether the prohibited conduct includes sexual penetration, sexual contact, touching intimate parts of the corpse, or other forms of sexual exploitation. Marasabessy et al. (2024) also highlight the difficulty of enforcing criminal law against indecent acts involving corpses because Indonesian criminal law has not formulated such conduct as a specific and independent offence. This supports the argument that the legal position of necrophilia cannot be settled merely by moral agreement that the act is reprehensible.

The distinction between a corpse as a protected object and a living person as a protected subject has direct consequences for the formulation of criminal offences. If necrophilia is placed under rape, the elements of the offence become strained because rape presupposes a living victim. If it is placed only under Article 271, the legal basis becomes closer but still vague because the sexual element is not expressly formulated. The more coherent construction is to understand necrophilia as a sexual act against a corpse, located within the regime of offences against corpses rather than within the ordinary regime of sexual offences against living persons. This construction preserves the special nature of the protected object while avoiding doctrinal confusion.

The following table clarifies the position of necrophilia within Indonesian criminal law instruments.

Table 1. The Position of Necrophilia in Indonesian Criminal Law

Legal Instrument	Protected Object	Scope of Regulation	Relevance to Necrophilia	Normative Limitation
Old Criminal Code	Burial order, graves, and corpses in limited forms	Disturbance of burial, grave desecration, unlawful removal or transportation of corpses	Shows that corpses have long been protected in criminal law	Does not expressly regulate sexual acts against corpses
Law Number 12 of 2022 concerning Sexual Violence Crimes	Living victims of sexual violence	Prevention, handling, protection, and recovery of victims	Relevant to sexual violence discourse, but not directly applicable to corpses	The framework presupposes a living victim
Article 271 of the National Criminal Code	Corpse and dignity of the deceased	Unlawful digging, removal, transportation, and	Closest provision for addressing necrophilia	The phrase “uncivilized treatment”

		uncivilized treatment of corpses		remains open-ended
Medical and forensic regulations	Human body after death in lawful procedures	Autopsy, identification, transplantation, and medical use under legal authority	Confirms that corpses may only be treated under lawful and ethical grounds	Does not address sexual acts against corpses
Proposed construction	Corpse as a dignified human body after death	Sexual acts against corpses as a specific offence	Provides a clearer basis for criminalizing necrophilia	Requires explicit formulation to satisfy legal certainty

Source: Processed by the author based on Indonesian criminal law instruments and doctrinal literature.

The table shows that Indonesian law already recognizes corpses as objects of legal protection, but that recognition has not yet produced a precise construction for necrophilia. The old Criminal Code protected corpses mainly in relation to burial order and public peace. The Sexual Violence Crimes Law protects living victims and therefore cannot be used as the main framework for sexual acts against corpses. Article 271 of the National Criminal Code provides the closest normative basis, but its open-ended phrase still requires clarification. This structure indicates that necrophilia occupies a legal gap between sexual offence doctrine and offences against corpses.

Based on this analysis, the first finding of this article is that necrophilia should not be classified as ordinary rape or sexual violence against a living person. Its legal character is different because the protected interest lies in the dignity of the deceased, the respect owed to human remains, and the public morality attached to death. Article 271 is relevant because it protects corpses from uncivilized treatment, but it does not yet provide a sufficiently clear legal category for sexual acts against corpses. Therefore, Indonesian criminal law needs a more specific construction that places necrophilia within the framework of offences against corpses with a clear sexual element. This approach would better preserve the doctrinal distinction between living victims and corpses while maintaining the dignity-based protection that criminal law is expected to provide.

Vagueness of Article 271 of the National Criminal Code under the Principle of Legality

The vagueness of Article 271 of the National Criminal Code emerges from the tension between moral condemnation and criminal law certainty. Sexual acts against corpses are undoubtedly degrading, but criminal law cannot operate only on the basis of moral disgust.

The state may punish a person only when the prohibited conduct has been formulated in a clear criminal norm. This is the point at which necrophilia becomes difficult to qualify under Article 271. The phrase “treating a corpse in an uncivilized manner” has a strong moral meaning, yet it does not directly specify the kind of conduct that constitutes the offence.

The principle of legality requires more than the mere existence of a written provision. It also requires that the provision be sufficiently clear for citizens, prosecutors, and judges. In criminal law, clarity is not a technical luxury; it is a constitutional safeguard against arbitrary prosecution. Ali (2010) explains that the requirement of *lex certa* obliges lawmakers to formulate criminal provisions carefully and precisely, because unclear criminal norms may generate legal uncertainty. This reasoning is relevant to Article 271 because the provision contains a criminal prohibition, but the key phrase “uncivilized manner” remains evaluative and undefined.

Article 271 can indeed be read as a protective norm for corpses. Its structure prohibits several concrete acts, such as digging up graves, dismantling graves, taking corpses, moving corpses, and transporting corpses. These acts are relatively easier to identify because they involve visible physical conduct. The problem appears in the last formulation: “treating a corpse in an uncivilized manner.” Unlike the previous acts, this phrase does not describe a specific physical action. It points to a moral quality of conduct. In the case of necrophilia, this creates a legal question: must the prosecution prove a sexual act, the degradation of the corpse, the intent of sexual gratification, or merely the fact that the conduct is socially considered uncivilized?

This distinction matters because criminal proof depends on the elements of the offence. If the element is formulated as “sexual penetration of a corpse,” the prosecution must prove penetration, the object of the act, and the mental element of the perpetrator. If the element is formulated only as “uncivilized treatment,” the prosecution must first explain what makes the act uncivilized in criminal law terms. This turns legal proof into a debate over moral evaluation. Such a formulation may invite inconsistent interpretation, especially when the same phrase is used to cover very different acts, such as mutilation, improper burial, sexual contact, recording a corpse, insulting a corpse, or moving a corpse without authority.

The principle of legality does not prohibit interpretation altogether. Judges inevitably interpret statutes because legal language cannot anticipate every possible factual variation. However, interpretation in criminal law has stricter limits than interpretation in other fields. A judge may clarify a norm, but should not create a new offence that the legislature did not

formulate. Suhariyanto (2016) notes that judges may engage in legal discovery when legislation is incomplete or unclear, but such discovery must still operate within the framework of legality and should not turn into arbitrary punishment. This is particularly important for necrophilia because the moral seriousness of the act may tempt legal actors to expand Article 271 beyond its textual limits.

The phrase “uncivilized manner” also creates a risk of unequal application. A prosecutor may argue that necrophilia is clearly included because sexual conduct toward a corpse violates human dignity. Another prosecutor may hesitate because the article does not mention sexual conduct. A judge may accept the broader interpretation based on the purpose of protecting corpses. Another judge may reject it based on *lex certa*. These different possibilities do not arise because the act is morally ambiguous, but because the norm does not provide sufficient criteria for legal qualification. Satria (2016) shows that ambiguous and multi-interpretive provisions may be questioned under the principle of *lex certa* because they weaken the protection that criminal law should provide against uncertainty.

In this article, Article 271 is not treated as irrelevant. It remains the closest provision for protecting corpses from degrading treatment. The difficulty lies in the gap between relevance and certainty. A provision may be morally relevant to a case but still normatively insufficient for precise criminal prosecution. Necrophilia is relevant to Article 271 because it is a form of conduct against a corpse. However, the provision does not clearly state whether the sexual nature of the act is an element of the offence. This lack of specification affects the construction of indictment, evidentiary direction, judicial reasoning, and sentencing.

The first implication concerns the construction of the indictment. In criminal procedure, the indictment must describe the conduct and connect it to the elements of the offence. If necrophilia is charged under Article 271, the indictment must explain how the sexual act constitutes uncivilized treatment. The prosecution may be required to build a bridge between factual conduct and moral terminology. This bridge becomes fragile when the statutory phrase does not provide a concrete standard. Widowati and Ohoiwutun (2021) emphasize that criminal decisions require clear formulation of the charged act and its elements, especially because legality is tied to the certainty of positive law. This point is directly relevant to Article 271 because a vague element may weaken the precision of prosecution.

The second implication concerns evidentiary focus. Necrophilia cases require forensic evidence, chronology, intent, and the physical condition of the corpse. When the legal element is unclear, the evidence may be scattered. The court may focus on whether the act occurred, but not on what precise legal element it satisfies. It may also focus on social outrage rather

than on the statutory construction of the offence. This is dangerous because criminal conviction must rest on proof of legal elements, not merely on proof that an act is morally shocking.

The third implication concerns judicial reasoning. A judge who applies Article 271 to necrophilia must choose an interpretive route. A grammatical interpretation may rely on the words “treating” and “uncivilized.” A systematic interpretation may place the act within offences against corpses rather than ordinary sexual offences. A teleological interpretation may emphasize the purpose of protecting the dignity of the deceased. These interpretive routes can support the inclusion of necrophilia within Article 271. Nevertheless, the absence of an explicit sexual element means that the reasoning will remain vulnerable to criticism under *lex certa*.

The fourth implication concerns the position of the Mojokerto case. The case shows that sexual conduct toward a corpse may appear within a broader factual sequence involving serious offences. However, when necrophilia is not clearly formulated as an independent offence, the sexual act against the corpse may only appear as part of the factual background or as an aggravating circumstance. This does not fully capture the distinct wrongfulness of necrophilia. The act is not merely an extension of homicide, concealment, or violence against a living victim. It is a separate attack on the dignity of the corpse and the social meaning of death.

The fifth implication concerns legal protection for the deceased and the family. The family of the deceased may experience the act as a profound violation of dignity and grief. However, criminal law protection for that dignity must still be expressed through a clear offence. If the law relies only on a broad moral phrase, the family may face uncertainty about whether the act can be prosecuted as a distinct crime. At the same time, the accused may face uncertainty about the scope of prohibited conduct. Legal certainty protects both sides: it protects society by clearly naming the prohibited act, and it protects individuals by preventing punishment through excessive interpretation. The vagueness of Article 271 can be mapped through the following table.

Table 2. Forms of Vagueness in Article 271 of the National Criminal Code

Normative Aspect	Legal Problem	Implication for Necrophilia	Impact on Law Enforcement
Protected object	Article 271 protects corpses, but does not classify forms of harm against corpses	Necrophilia is relevant to corpse protection, but its sexual character is not expressly identified	Prosecutors may differ in deciding whether necrophilia

			should be charged under Article 271
Phrase “uncivilized manner”	The phrase is evaluative and open-ended	Sexual acts may be included through moral interpretation, but not through clear statutory wording	Judicial reasoning may depend heavily on subjective moral assessment
Actus reus	The provision does not mention penetration, sexual contact, sexual touching, or sexual exploitation	The prohibited sexual conduct remains uncertain	Evidence may not be directed toward specific criminal elements
Mens rea	The provision does not specify whether sexual purpose, knowledge, or intent is required	It is unclear whether the prosecution must prove sexual intent or only degrading treatment	The mental element may be inconsistently assessed
Principle of legality	The norm may not fully satisfy lex certa when applied to necrophilia	Criminalization may be challenged as relying on extensive interpretation	The risk of arbitrary or inconsistent application increases
Case construction	There is no independent offence of necrophilia	The sexual act against a corpse may become only a factual narrative or aggravating circumstance	The distinct wrongfulness of necrophilia may not be fully addressed

Source: Processed by the author based on Indonesian criminal law principles and doctrinal analysis.

The table shows that the problem of Article 271 is not the absence of protection, but the incompleteness of the protection. The provision protects corpses in a general sense, but does not provide a precise legal category for sexual acts against corpses. This creates a fragile legal position. Necrophilia may be morally covered by the phrase “uncivilized treatment,” but criminal prosecution requires more than moral coverage. It requires elements that can be charged, proven, reasoned, and reviewed.

A careful reading of Article 271 leads to a balanced conclusion. The provision should not be dismissed as useless because it provides an important normative foundation for protecting corpses. However, it should also not be treated as a complete solution for necrophilia. The open-ended phrase may serve as a temporary interpretive entry point, but it does not provide the level of certainty expected from criminal law. The more serious the stigma and punishment attached to an offence, the stronger the need for precise formulation.

Based on this analysis, the second finding of this article is that Article 271 of the National Criminal Code remains normatively relevant but legally insufficient for the clear criminalization of necrophilia. Its vagueness lies in the absence of explicit sexual elements, unclear mental requirements, and reliance on the moral phrase “uncivilized manner.” Under the principle of legality, particularly *lex certa*, Indonesian criminal law needs a more precise formulation so that sexual acts against corpses can be punished without excessive interpretation. The protection of corpse dignity must therefore be strengthened not by expanding vague wording, but by formulating a clearer criminal norm.

Constructing a Clearer Regulation of Necrophilia through Comparative Criminal Law

The construction of necrophilia regulation in Indonesian criminal law must begin from a precise doctrinal placement. Necrophilia should not be placed within the ordinary offence of rape because rape presupposes a living victim. It should also not be left entirely under the open phrase “treating a corpse in an uncivilized manner,” because that formulation does not provide a clear sexual element. The more coherent approach is to construct necrophilia as a specific sexual act against a corpse within the broader regime of offences against corpses. This placement protects the dignity of the deceased without confusing the elements of sexual offences against living persons.

Criminal law reform requires more than the addition of new prohibitions. It requires a careful selection of protected legal interests, prohibited conduct, mental elements, exceptions, and proportional sanctions. Marbun (2014) argues that the design of Indonesian criminal law must be built systematically within the constitutional and Pancasila-based legal order, rather than through fragmented and reactive criminalization. This idea is relevant because necrophilia involves a strong moral reaction, but criminalization cannot be based only on public disgust. The law must translate that moral reaction into a clear, limited, and enforceable criminal norm.

Comparative criminal law offers useful models for formulating such a norm. England and Wales provide the clearest model through Section 70 of the Sexual Offences Act 2003. The provision criminalizes sexual penetration of a corpse by identifying the act of penetration, the object of the act, the knowledge or recklessness of the perpetrator regarding the corpse, and the sexual nature of the act (Sexual Offences Act 2003, s. 70). This model is valuable because it avoids the need to stretch ordinary rape provisions. It treats sexual penetration of a corpse as a distinct offence with its own elements.

The English model, however, should not be adopted mechanically. Its strength lies in clarity, but its limitation lies in its focus on penetration. Necrophilia may also take the form of non-penetrative sexual contact, touching intimate parts of the corpse, or other sexual conduct directed toward the corpse. If Indonesian law only criminalizes penetration, some degrading sexual acts against corpses may remain outside the offence. Therefore, the English model is useful as a starting point, but Indonesia needs a broader formulation that distinguishes between penetrative and non-penetrative conduct.

Florida provides a different model by placing sexual abuse of a dead human body within the category of offences concerning dead bodies and graves. Florida Statutes Section 872.06 criminalizes mutilation, sexual abuse, or gross abuse of a dead human body, while also defining sexual abuse in more specific terms. This model is important because it locates the offence not as ordinary rape, but as abuse of a dead human body. The protected interest is therefore the body of the deceased and the dignity surrounding death.

California offers a more detailed construction. California Health and Safety Code Section 7052 distinguishes sexual penetration and sexual contact with a dead human body. Sexual penetration includes penetration of the vagina or anus and sexual contact between sex organs and the mouth or anus of a dead body. Sexual contact includes willful touching of an intimate part of a dead human body for sexual arousal, gratification, or abuse. This distinction is valuable for Indonesia because it allows the law to differentiate degrees of wrongdoing without placing all sexual acts against corpses into a single undifferentiated category.

India provides a more general model. The current Bharatiya Nyaya Sanhita, 2023, under Section 301, regulates trespassing on burial places and offering indignity to a human corpse. This provision does not specifically regulate necrophilia as a sexual offence, but it reflects a legal concern for the dignity of corpses, burial places, funeral rites, and religious or social feelings. Its relevance for Indonesia lies in the recognition that criminal law may protect the dead through the dignity of the corpse and the feelings of the living community. Its limitation is that it does not provide a specific sexual element for necrophilia.

These comparative models show three possible regulatory paths. The first path is to create a specific sexual offence against a corpse, as in England and Wales. The second path is to place sexual abuse within the broader offence of abuse of a dead human body, as in Florida and California. The third path is to retain a general offence of indignity to corpses, as in India. For Indonesia, the second path is the most suitable because Article 271 of the National Criminal Code already creates a framework for offences against corpses. The task is not to abandon Article 271, but to add a more specific sexual element within or beside it.

The relevance of comparative law must still be limited by Indonesian legal principles. Suartha (2015) explains that the development of the legality principle in national criminal law reform does not eliminate legality, but requires a balance between written norms, social values, and legal certainty. This is important for necrophilia regulation. Indonesian society may strongly condemn sexual acts against corpses, but that condemnation must be formalized into a clear written offence. Otherwise, the law risks turning social morality into an uncertain basis for punishment.

A clearer construction should include at least six elements. First, the protected object must be stated as a human corpse or human remains. Second, the prohibited act must expressly include sexual penetration and sexual contact with a corpse. Third, the mental element must require intention and knowledge that the object is a corpse. Fourth, lawful acts must be excluded, including autopsy, forensic examination, identification, medical education, transplantation procedures, religious handling, burial, exhumation based on authority, and other lawful treatment of corpses. Fifth, the sanction must be proportional and may distinguish penetrative and non-penetrative acts. Sixth, aggravating circumstances should be recognized when the act is committed by a person responsible for guarding the corpse, committed against a child's corpse, committed after killing the victim, committed jointly, or recorded and disseminated.

Riyanto (2020) emphasizes that national legal reform must be responsive to social development while maintaining the coherence of the legal system. This argument supports the need for a careful regulatory model for necrophilia. The issue is not merely that society finds the act morally unacceptable. The issue is that criminal law must be able to respond to new or previously neglected forms of wrongdoing without damaging the structure of legality. A specific offence would make the law more responsive, but its formulation must remain narrow enough to prevent excessive criminalization.

The following table compares several models that may guide Indonesian criminal law reform.

Table 3. Comparative Models for Regulating Sexual Acts Against Corpses

Jurisdiction	Regulatory Model	Main Elements	Relevance for Indonesia
England and Wales	Sexual penetration of a corpse under Section 70 of the Sexual Offences Act 2003	Penetration, corpse as object, knowledge or recklessness, and sexual nature of the act	Provides a clear model for formulating sexual penetration of a corpse as a distinct offence

Florida, United States	Sexual abuse as part of abuse of a dead human body	Sexual abuse, mutilation, or gross abuse of a dead human body	Shows that necrophilia can be placed within offences against dead bodies rather than ordinary rape
California, United States	Sexual penetration and sexual contact with a dead human body	Differentiation between penetration and sexual contact; purpose of arousal, gratification, or abuse	Useful for drafting a graded offence covering penetrative and non-penetrative conduct
India	Indignity to a human corpse and trespass on burial places under Section 301 of the Bharatiya Nyaya Sanhita	Protection of corpses, burial places, funeral rites, and religious or social feelings	Relevant for dignity-based protection, but insufficient for explicit necrophilia regulation
Indonesia	Article 271 of the National Criminal Code on uncivilized treatment of corpses	General prohibition of unlawful treatment of corpses	Provides an initial framework, but requires explicit sexual elements to satisfy legal certainty

Source: Processed by the author based on comparative criminal law instruments and Indonesian criminal law reform literature.

The table shows that Indonesia does not need to copy one foreign model entirely. The most suitable approach is a hybrid construction. Article 271 may remain as a general provision for uncivilized treatment of corpses, while a specific provision may be added to regulate sexual acts against corpses. This construction preserves the existing structure of the National Criminal Code and at the same time solves the vagueness problem. It allows Article 271 to cover general indignities to corpses, while the new provision covers necrophilia with clearer elements.

There are three possible drafting alternatives. The first alternative is to clarify the official explanation of Article 271 by stating that “uncivilized treatment” includes sexual acts against corpses. This option is simple, but weak. An explanation should not create a new criminal element that is absent from the body of the statute. If the explanation becomes the main basis for criminalizing necrophilia, the problem of legality will remain.

The second alternative is to add a new paragraph under Article 271. The paragraph may state that any person who intentionally commits sexual penetration or sexual contact with a human corpse shall be punished. This alternative is stronger because the sexual element is placed directly in the statutory provision. It also keeps necrophilia within the regime of

offences against corpses. This is the most proportionate option if the legislature wants to preserve the structure of Article 271.

The third alternative is to create a separate article after Article 271. This article may be titled “sexual acts against corpses” and may contain detailed elements, exceptions, sanctions, and aggravating circumstances. This option is the clearest from the perspective of drafting technique. It avoids overloading Article 271 and gives necrophilia an independent normative position. However, it requires a more substantial legislative amendment.

The ideal formulation should not be excessively broad. A possible core formulation is: “Any person who intentionally commits sexual penetration or sexual contact with a human corpse, knowing that the object is a corpse, shall be punished.” This formulation may be followed by a definition of sexual penetration and sexual contact. Sexual penetration may include penetration of the vagina, anus, or mouth of a corpse by a body part or object for a sexual purpose. Sexual contact may include touching the intimate part of a corpse for sexual arousal, gratification, or abuse. The law should also state that lawful medical, forensic, educational, religious, burial, or identification procedures are excluded when performed under legal authority.

The sanction model should be graded. Penetrative acts should receive heavier punishment than non-penetrative sexual contact because they involve a more serious invasion of the corpse. Additional punishment may apply when the perpetrator previously caused the death of the person, had a legal duty to protect or handle the corpse, acted jointly, targeted the corpse of a child, or recorded and distributed the act. This model avoids both under-criminalization and excessive criminalization. It recognizes necrophilia as a serious offence while maintaining proportionality.

Candra (2013) notes that criminal law reform in Indonesia should not be limited to punishment, but must also consider the restoration of social balance. This point is relevant because necrophilia injures not only the corpse as the immediate object of the act, but also the family and community that attach meaning to the deceased. A criminal norm on necrophilia may therefore include additional measures, such as an obligation to cover funeral restoration costs, psychological assistance for the family in serious cases, or other court-ordered measures that repair the social harm caused by the act. Such measures should not replace punishment, but may complement it.

Based on this analysis, the third finding of this article is that the future regulation of necrophilia in Indonesia should be formulated as a specific sexual offence against corpses

within the broader framework of offences against corpses. Article 271 of the National Criminal Code is useful as a general foundation, but it is not sufficient to define necrophilia with the clarity required by the principle of legality. The best construction is to add a specific provision that identifies the corpse as the protected object, defines sexual penetration and sexual contact, requires intention and knowledge, excludes lawful treatment of corpses, and provides proportional sanctions. This model would allow Indonesian criminal law to protect human dignity after death without relying on vague moral terminology or excessive interpretation.

CONCLUSION

This article concludes that Article 271 of Law Number 1 of 2023 concerning the Indonesian National Criminal Code provides an initial normative basis for protecting corpses from degrading treatment, but its formulation remains insufficient to clearly criminalize necrophilia in accordance with the principle of legality. The phrase “treating a corpse in an uncivilized manner” is morally and legally relevant because sexual acts against corpses clearly violate human dignity, social decency, and respect for the deceased. However, the phrase is still too open-ended to provide a precise basis for prosecution, evidentiary construction, and judicial reasoning. This vagueness creates uncertainty because necrophilia may be interpreted as falling within Article 271, but the provision does not expressly define sexual penetration, sexual contact, sexual purpose, or the mental element required for such an offence. Therefore, Indonesian criminal law reform should not rely solely on broad moral terminology. Necrophilia needs to be regulated explicitly as a sexual act against a corpse within the broader framework of offences against corpses, either by adding a specific paragraph under Article 271 or by establishing a separate provision after it. The ideal formulation should identify the protected object as a human corpse, define prohibited sexual acts, require intention and knowledge, exclude lawful medical, forensic, educational, religious, burial, or identification procedures, and provide proportional sanctions with possible aggravating circumstances. Such regulation would protect human dignity after death while ensuring legal certainty, limiting excessive interpretation, and strengthening the coherence of Indonesian criminal law reform.

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