

## THE URGENCY OF MERGING SPECIAL CRIMES IN REFORMING THE CRIMINAL CODE

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### Abstract

The new Criminal Code (KUHP) has been ratified by the government as Law Number 1 of 2023. The formulation of the problem that will be raised in this research is the urgency and legal consequences of combining specific criminal acts in the renewal of the criminal code. and What are the specific types of criminal acts in Law Number 1 of 2023 concerning the Criminal Code. This research uses a normative type of research, using secondary data, namely data obtained directly through library materials. The results of the research concluded that combining general and special criminal law into the new Criminal Code appears to be due to considerations of making the Criminal Code more comprehensive, the urgency of implementing special criminal law will be able to better accommodate the interests of all levels of Indonesian society. There are five types of special crimes in the new Criminal Code, such as serious crimes against human rights, terrorism crimes, corruption crimes, money laundering crimes and narcotics crimes.

Keywords: Urgency, Special Crimes, Reform, New Criminal Code

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### 1. Introduction

Criminal law in Indonesia has long recognized the distinction between general criminal law and special criminal law. It is understood that general criminal law is all crimes regulated in the Criminal Code (KUHP) and special criminal law is regulated outside the Criminal Code or regulated in special laws. General crimes can be categorized as a collection of ordinary crimes and special crimes of a special nature as extraordinary crimes.

Sudarto defines special criminal acts as criminal laws that are determined for special groups of people or relate to special acts. This includes military criminal law (special groups of people) and fiscal criminal law (special actions). The essence is that criminal acts are specific to specific perpetrators or people and specific actions. [1]

On December 6 2022, the government and the House of Representatives approved the Draft Law on the Criminal Code (KUHP) to become law, which was then ratified as Law Number 1 of 2023 concerning the Code of Laws. Criminal Law by the President on January 2 2023. However, there will be a transition period for the next three years since

it was passed into national criminal law. There are two things that will be implemented by the government, namely first, socialization of the substance of the Criminal Code to the public and law enforcement officials. Second, conduct training or training of trainers for law enforcement officers regarding the implementation of this new Criminal Code. [2]

The new Criminal Code combines general and special criminal offenses in Book Two. There are at least five types of special criminal acts which have been regulated in their own special laws, but were later included in the Criminal Code. Such as serious criminal acts against Human Rights (HAM), criminal acts of terrorism, criminal acts of corruption, criminal acts of money laundering, and criminal acts of narcotics. Combining general and special crimes into the Criminal Code seems to be based on considerations of making the Criminal Code more comprehensive. However, the consequences of including special types of criminal offenses in the Criminal Code could have the effect of becoming blurred between general and special crimes in different laws.

## **2. Theoretical Background**

Based on the above background, the problem formulation that will be raised in this research is:

- a. What is the urgency and legal consequences of combining specific criminal acts in the reform of the criminal code?
- b. What are the specific types of criminal acts in Law Number 1 of 2023 concerning the Criminal Code?

## **3. Methods**

Legal research is a scientific activity, which uses certain methods, systematics, and reasoning, to study one or several particular legal phenomena, by analyzing them. Apart from that, an in-depth examination of the legal facts must be carried out, and efforts must be made to resolve problems arising from these legal phenomena. [3]

This research uses a type of normative research, using secondary data, namely data obtained directly through library materials through documentation studies, which consist of primary legal materials, scilicet attaching lawful materials related to the examination theme, secondary legal materials, and tertiary legal materials. [4]

## **4. Results and Discussion**

### **4.1 The Urgency and Legal Consequences of Merging Special Crimes in the Reform of the Criminal Code**

The new Criminal Code (KUHP) has been ratified by the government as Law Number 1 of 2023. This ratification is a historic moment in Indonesia in the administration of criminal law. After years of using the Dutch colonial Criminal Code, Indonesia now has its own Criminal Code. The period of validity of the Dutch Criminal Code in Indonesia since 1918, if calculated up to now, has been 104 years. Indonesia itself has been formulating criminal law reforms since 1963. It is felt that the Dutch product of the

Criminal Code is no longer relevant to the current conditions, developments in the situation and needs of criminal law in Indonesia. This is one of the urgencies for ratifying the Criminal Code.

The ratification of the Criminal Code is not only a historical moment for the Indonesian nation, it is also the starting point for reforming criminal administration in Indonesia through expanding the types of punishment that can be imposed on perpetrators of criminal acts. There are three penalties regulated in it, namely basic penalties, additional penalties and special penalties. In terms of basic crimes, the Criminal Code does not only regulate imprisonment and fines, but also adds criminal penalties, supervision penalties, and social work penalties. "The basic difference is that the Criminal Code no longer places the death penalty as the main punishment, but rather a special punishment which is threatened alternatively and imposed with a probation period of ten years. Apart from the death penalty, prison sentences have also been reformed by setting guidelines regarding certain circumstances so that as far as possible, imprisonment is not imposed on perpetrators of criminal acts. These circumstances include, if the defendant is a child, is committing a crime for the first time, including if the defendant is over 75 years old, and several other circumstances.

Apart from that, provisions are also regulated regarding exceptions to certain circumstances. Namely, crimes that are punishable by imprisonment for five years or more, crimes that are punishable by a special minimum sentence, or crimes that harm society and harm the country's economy. Furthermore, perpetrators of criminal acts can be subject to additional crimes in the form of revocation of certain rights, confiscation of goods, announcement of the judge's decision, payment of compensation, revocation of permits, and fulfillment of local customary obligations. Perpetrators of criminal acts can also be sentenced to action, as a concrete manifestation of the implementation of the double track system in Indonesian punishment.

Reform in the field of law, especially reform of criminal law, does not only build legal institutions, but must also include the development of the substance of legal products which are the result of a legal system in the form of criminal law regulations and which are cultural in nature, namely attitudes and values that influence the implementation of the legal system. [5]

Efforts to reform criminal law in the formation of a national Criminal Code is a basic need for society to create fair law enforcement. Criminal law is an effort to overcome crime through legal laws crime, so that the fear of crime can be avoided through law enforcement criminal with criminal sanctions. Criminal law with the threat of criminal sanctions cannot become a legal guarantee or the main threat to human freedom in social and state life. The criminal sanctions referred to here are for restore the original situation as a result of legal violations committed by a person or group of people needs certainty and enforcement law. Such criminal sanctions will be obtained with the establishment of the Criminal Code National which reflects the values of Indonesian society, no longer the Criminal Code enforced by the colonial nation for the colonized nation only for the sake of interest colonialism is not in the national interest of enforcing Indonesian law.

In reforming criminal law, the aim of punishment is not only to provide suffering to perpetrators of criminal acts. Criminal law is essentially a tool to achieve goals and how to formulate these goals in the concept or material of a law which its creators want to enforce by including criminal penalties. The aim of punishment is to protect society and protect or guide the perpetrator. [6]

According to Barda Nawawi Arief, criminal law reform does not only concern matters of substance, but is always related to existing values. For this reason, in his view, he stated: Criminal law reform essentially means an effort to reorient and reform criminal law in accordance with the socio-political, socio-philosophical and socio-cultural values of Indonesian society which underlie social policy, criminal policy and law enforcement policy in Indonesia. Indonesia. [7]

The renewal of the Criminal Code is like a symbol of the civilization of a nation that is independent and sovereign and upholds the principles of nationalism and appreciates community participation, therefore the struggle of the Akita nation to have a new Criminal Code. The ratification of the Criminal Code is the application of the modern criminal law paradigm which includes collective justice, restorative justice and rehabilitative justice and renewal of the Criminal Code is needed to provide legal certainty.

Law Number 1 of 2023 concerning the Criminal Code was ratified on January 2 2023. This law was born after a long struggle and struggle of thought from Indonesian criminal law experts since independence. Ending the implementation of WvS inherited from the colonial era which tends to be portrayed as a "retributive view". Realize the vision of Indonesian Criminal Law Reform; and the main mission: the decolonialization process in the form of systemic open recodification. Of the many formulations that have given rise to resistance from the public, one of them is regarding the regulation of a separate chapter on special criminal acts in the Criminal Code. [8]

The connection between special criminal acts in the new Criminal Code is based on the placement of criminal acts in a separate chapter, which is contained in the new Criminal Code, based on special characteristics. The specificity of special criminal acts lies in the principles, formulation of criminal law norms and criminal threats which must be recognized as deviating from existing standards of criminal law and general punishment.

Characteristics of special criminal law which is a deviation from general criminal law. One of the main characteristics of special criminal law is that it contains various deviations from general principles of criminal law. Deviations from the perspective of material criminal law and formal criminal law, as well as deviations which are exceptions that are forced to be made. The new Criminal Code has implications for the meaning of special criminal acts which are no longer interpreted as criminal acts regulated outside of codification. There are two categories of special criminal acts, namely special criminal acts in the Criminal Code and special criminal acts outside the Criminal Code. [9]

Special criminal law was originally criminal law that was outside general criminal law, namely the Criminal Code (KUHP) as a codification of criminal law. These special

criminal laws and regulations were formed as a refinement of existing provisions in the Criminal Code as well as to complement existing provisions and are very necessary to meet the legal needs of society.

Special criminal law is part of criminal law spread across various laws that were formed to regulate specific legal matters. [10] According to Sudarto, general criminal law is criminal law that can be applied to everyone in general, while special criminal law is intended for certain people only or is a law that regulates only certain offenses. [11]

As a special rule of a special nature, regulations outside the Criminal Code must remain and be within the limits permitted by formal and material criminal law. According to Bagir Manan, as a *lex specialis* you must fulfill several requirements, including: [12]

- a. The principle that all general rules apply and prevail unless specifically regulated differently;
- b. In the definition of *lex specialis*, it also includes principles and rules that add to general rules that are applied cumulatively between general rules and special rules and do not only regulate deviations;
- c. In *lex specialis*, the intention is to deviate or regulate differently from *lex generalis*, it must be with the motive of further strengthening general principles and rules, not to weaken general rules, apart from that, it must also be able to show a special need to be achieved which is not sufficient just to use general rules;
- d. All *lex specialis* rules must be specifically regulated as rules (norms) and not something that is simply based on general principles or general conclusions;
- e. All *lex specialis* rules must be in the same legal regime and regulated at the same level of legislation as the *lex generalis* rules.

The fact that the Criminal Code combines general and special criminal offenses in Book Two. There are at least five types of special criminal acts which have been regulated in their own special laws, but were later included in the KUHP. Such as serious criminal acts against Human Rights (HAM), criminal acts of terrorism, criminal acts of corruption, criminal acts of money laundering, and criminal acts of narcotics. The Criminal Code does not provide convincing reasons for the urgency of including this particular criminal offense in the Criminal Code.

Combining general and special crimes into the new Criminal Code seems to be due to considerations to make the Criminal Code more comprehensive. Incorporating the provisions for the five special types of crimes into the Criminal Code is as if implementing the omnibus law method. According to him, the consequences of including special types of criminal offenses in the Criminal Code could have the effect of becoming blurred between general and special crimes in different laws. The use of the term or principle of *lex specialis* for laws regarding specific criminal offenses and the term *lex generali* for the new Criminal Code is no longer clear.

In the explanation of the second book of the new Criminal Code, placement in a separate chapter is based on special characteristics, namely:

- a. The impact of victimization (victims) is large;
- b. Often transnationally organized (Transnational Organized Crime);

- c. The criminal procedural arrangements are special;
- d. Often deviates from the general principles of material criminal law;
- e. The existence of institutions supporting law enforcement that have special characteristics and authority (for example, the Corruption Eradication Commission, the National Narcotics Agency, and the National Human Rights Commission);
- f. Supported by various international conventions, both those that have been ratified and those that have not been ratified; And
- g. This is an act that is considered very evil (*super mala per se*) and despicable and is strongly condemned by society (strong people condemnation).

The assessment is that there is no problem with including special crimes in the new Criminal Code as long as it does not eliminate the specificity of special criminal acts so that there is a unified system. We have to think, codified criminal law is not something that comes out of the Criminal Code. Through codification determines a good system. The basic consideration for law makers in including special criminal acts is as an effort to reconstruct the national criminal law system in order to realize several national criminal law reform missions. Then the consequences of the inclusion of these special criminal acts are the revocation of several provisions of the special criminal offense articles contained in the special criminal law that regulates them as well as the application of the principle of *lex specialis derogate legi generali* over the provisions of material criminal law principles and formal criminal law principles regarding the provisions special criminal offense articles included in the Law on the Criminal Code.

The urgency of implementing a special criminal law will be able to better accommodate the interests of all levels of Indonesian society which consists of various ethnicities and cultures which are the basis for the formation of the new Criminal Code. This needs to be considered by the government and law enforcers so that there is no confusion in the application of the National Criminal Law. the new one.

#### 4.2 Types of Special Crimes in Law Number 1 of 2023 concerning the Criminal Code

Special criminal acts refer to types of criminal cases whose legal regulations are outside the Criminal Code (KUHP), which is a codified code of law. Special criminal acts have special and specific characteristics and case handling, both in terms of the legal rules applied, the procedural law used, the law enforcers involved, and the lawyers who handle them. As a special law, its legal basis and application may differ from the general provisions contained in the First Book of the Criminal Procedure Code (KUHP), and special criminal procedural law provisions may also differ from the General Provisions in the Criminal Procedure Code (KUHAP ). Special criminal law laws and regulations are legal regulations that regulate special situations outside the scope of general criminal law. As a result, the basis of the decision comes from the actions set by the perpetrator of the crime, the punishment and the judicial process itself. In the case of specific criminal offenses, criminals may include not only individuals, but also legal entities. In the case of the punishment process, the order of words and threats of sanctions may differ from the provisions of general criminal law. Meanwhile, the substance of a special criminal act

includes three elements, namely criminal responsibility, punishment and the punishment process. [13]

Reform of the criminal code as part of criminal politics is in place and it is time to implement it. This law will also influence the formulation of special criminal laws, in accordance with the legal needs of society in the era of openness.

On January 2 2023, Indonesia ratified and promulgated Law Number 1 of 2023 concerning the Criminal Code, aka the new Criminal Code. However, this new Indonesian Criminal Code will only come into effect three years after it is promulgated, namely in 2026. The system for formulating criminal acts, for serious crimes against human rights, criminal acts of terrorism, criminal acts of corruption, criminal acts of money laundering, criminal acts of narcotics are grouped in 1 (one) separate chapter called the special criminal offenses chapter. With the regulation of this special chapter, the existing authority of law enforcement agencies is not reduced and remains the authority to handle matters.

Previously, criminal acts of corruption (tipikor) had been regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. In the Corruption Law, 30 acts that qualify as corruption are regulated which are grouped into seven forms of criminal acts of corruption. These seven forms are unlawful acts that harm state finances, bribery, embezzlement in office, extortion, gratification, fraudulent acts, and conflicts of interest in procurement. Of the 30 acts of corruption, five crucial articles were reformulated into the Criminal Code. The five articles include Article 2 paragraph (1), Article 3, Article 5, Article 11 and Article 13 which regulate state financial losses and bribery. This has the implication that the anti-corruption articles refer to Articles 603, 604, 605 and 606 of the new Criminal Code.

The new Criminal Code regulates serious human rights which in fact are special crimes. Meanwhile serious human rights cases have been specifically regulated in Law Number 26 of 2000 concerning Human Rights Courts. The new Criminal Code regulates serious crimes against human rights. In Article 598, it is written that perpetrators of genocide or exterminating certain groups can be sentenced to prison for a minimum of 5 years and a maximum of 20 years up to the death penalty. Then, systematic and widespread criminal acts against civil society are also regulated in Article 599 of the Criminal Code. The minimum sentence imposed is 5 years in prison.

Law Number 5 of 2018 concerning criminal acts of terrorism as a replacement for Law Number 15 of 2003 is a special legal regulation which is currently used in handling terrorism cases. One thing that is quite different in the new Criminal Code is that criminal acts of terrorism and criminal acts of financing terrorism are not separated. What is aligned with the pattern in the Criminal Code is the omission of the word intentionally, because intentionality is considered an inherent element in this provision. The regulation of criminal acts of terrorism in the new Criminal Code is regulated in Articles 600, 601 and 602.

Regulations regarding the crime of money laundering (TPPU) were previously regulated *lex specialis* in Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. However, since the promulgation of Law Number 1 of 2023 concerning the Criminal Code (KUHP) on January 2 2023, the provisions in Article 2 paragraph (1), Article 3, Article 4 and Article 5 of the PTPPU Law have been revoked and declared invalid. The imposition of TPPU sanctions which were previously regulated in Article 3, Article 4 and Article 5 of the PTPPU Law was also amended with Article 607 of the new Criminal Code with 3 (three) categories, and also the reporting relationship is regulated in Article 608 of the new Criminal Code.

The Criminal Code which was passed through Law Number 1 of 2023 concerning the Criminal Code is still problematic and threatens civil liberties, democracy and the right to life, especially the formulation that regulates criminal penalties for narcotics users. Some of the formulations in the New Criminal Code regarding narcotics contained in Article 609 are similar in material to Article 111 and Article 112 of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) which regulates possessing, controlling, providing and storing narcotics. Apart from that, it is also regulated in Articles 610 and 611 of the new Criminal Code.

## 5. Conclusion

- a. Efforts to reform criminal law in the formation of a national Criminal Code is a basic need for society to create fair law enforcement. Combining general and special crimes into the new Criminal Code seems to be due to considerations to make the Criminal Code more comprehensive. The urgency of implementing special criminal law will be able to better accommodate the interests of all levels of Indonesian society.
- b. Law Number 1 of 2023 concerning the Criminal Code, for serious crimes against human rights, criminal acts of terrorism, criminal acts of corruption, criminal acts of money laundering, criminal acts of narcotics are grouped in 1 (one) separate chapter called special criminal offenses chapter.

## References

- Rodliyah dan Salim HS. *Hukum Pidana Khusus Unsur Sanksi Pidananya*. Depok: RajaGrafindo Persada. 2019. Hal. 2-3.  
<https://www.hukumonline.com/berita/a/upaya-pemerintah-pasca-pengesahan-kuhp-baru-lt63f7ab08ebc31/>
- Soerjono Soekanto. *Pengantar Penelitian Hukum*. Jakarta: Penerbit Universitas Indonesia (UI-Press). 2021. Hal. 43.
- Zainudin Ali. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika. 2022. Hal. 22-24.
- Satjipto Rahardjo. *Hukum dan Masyarakat*. Bandung: Angkasa. 1980. Hal. 84-86.
- Septa Chandra. *Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonesia*. Jurnal Rechtsvinding Volume 2 Nomor 2, Agustus 2013.
- Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti. 2002. Hal. 28.



Elwi Danil. *Tindak Pidana Khusus dan Aturan Peralihan dalam KUHP*. Makalah disampaikan pada Penataran KUHP baru yang diselenggarakan oleh MAHUPIKI dan Universitas Pancasila, Jakarta 7-9 Februari 2023.

Elwi Danil. *Tindak Pidana Khusus dan Aturan Peralihan dalam KUHP*. Makalah disampaikan pada Penataran KUHP baru yang diselenggarakan oleh MAHUPIKI dan Universitas Pancasila, Jakarta 7-9 Februari 2023.

Ruslan Renggong. *Hukum Pidana Khusus*. Jakarta: Penerbit Kencana. 2016. Hal. 31.

Andi Zainal Abidin Farid. *Hukum Pidana I*. Jakarta: Sinar Grafika. 2007. Hal. 1.

Bagir Manan, *Sistem Peradilan Berwibawa Suatu Pencarian*. Yogyakarta: FH UII Press. 2005. Hal. 90.

<https://fahum.umsu.ac.id/pengertian-tindak-pidana-khusus-beserta-jenisnya/>

Abdul Kadir. *Law Number 1 of 2023 Concerning the Criminal Code*. Tangerang: Akridaz. 2023.

Abdul Kadir, Zudan Arief Fakrulloh, Ahmad Redi. *Update Of Criminal Objectives In Law Number 1 Of 2023 Concerning The Book Of Criminal Law*. Proceeding of the 3rd International Conference on Law, Social Science, Economics, and Education. 2023.