

RECODIFICATION OF CORE CRIMES IN SPECIAL CRIMINAL ACTS WITHIN LAW NUMBER 1 OF 2023 CONCERNING THE PENAL CODE

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Abstract

This research focuses on investigating the Recodification of Core Crimes in Special Criminal Acts within Law Number 1 of 2023 concerning the Penal Code. The study is motivated by the enactment of Law Number 1 of 2023 concerning the Penal Code (National Penal Code) through the process of criminal law recodification, which has sparked controversy among institutions and law enforcement officials. This controversy arises due to the inclusion of core crimes from special criminal acts in the National Penal Code. The issues addressed in this research are the regulation of core crimes from special criminal acts within the National Penal Code and the implications of this regulation for other criminal laws outside the Penal Code, using normative research methods to uncover the truth behind two key issues. The research findings indicate that the inclusion of core crimes from special criminal acts in the National Penal Code will not create ambiguity with existing special criminal laws outside the Penal Code nor complicate the law enforcement process. The inclusion of core crimes from special criminal acts in the Penal Code aims to provide a bridging mechanism so that if a new offense or development of an offense arises, there will still be a reference to the National Penal Code, ensuring that the fundamental principles remain aligned with the National Penal Code, as most current regulations on special criminal acts deviate from general principles or their enforcement.

Keywords: Core Crime, National Penal Code, Criminal Law Recodification, Special Criminal Acts

1. Introduction

Criminal law reform in Indonesia began in 1963 and culminated in the drafting of the Penal Code as an effort to achieve national objectives. The 1980 National Criminal Law Reform Symposium Report stated that in line with criminal law politics, the aim of sentencing should be directed towards protecting society from crime, as well as maintaining balance and harmony within society by taking into account the interests of the community, the state, the victims, and the offenders (BPHN Departemen Kehakiman, 1980).

On January 2, 2023, the Indonesian government enacted Law Number 1 of 2023, officially establishing the National Penal Code. This legislation stands out due to its distinctive characteristics, emerging from the recodification of Indonesia's criminal law. Unlike previous legislative drafts, the National Penal Code systematically consolidates all criminal provisions into a single, unified text, providing a comprehensive legal framework within a dedicated book. This recodification process represents a significant evolution in Indonesian law, aiming to create a more cohesive and organized criminal justice system.

The existence of criminal law codification is important for the government and the House of Representatives (DPR) because their task in Indonesia's national legal politics

is to modernize, codify, and unify criminal law (Widyawati & Muftie Holish, 2019). Especially since, until now, Indonesia's criminal law system is still divided between the criminal law formulated in the Penal Code and the criminal law outside the Penal Code.

The success of legal codification development is also supported by the values embedded in the goals of codification aimed at improving the legal order. Furthermore, it raises questions about the type of codification model applied in the National Penal Code. The current codification model will impact sectoral laws that contain general criminal provisions (generic crime) outside the Penal Code, the reassessment of administrative crimes, criminal provisions in Regional Regulations (Perda), customary criminal law, and a number of international legal instruments that may apply to Indonesia after the establishment of the Penal Code.

The National Penal Code provides a new legal foundation for handling special criminal acts, leading to significant recodification within Indonesia's criminal law system. One of the main focuses is the regulation of core crimes in special criminal acts. The inclusion of core crimes from laws outside the Penal Code into the National Penal Code is driven by the need for the alignment of criminal law to strengthen the integrity and effectiveness of law enforcement in Indonesia (Kementerian Hukum dan HAM Republik Indonesia, 2015).

The integration of core crimes helps fill legal gaps in the criminal justice system, ensuring that serious offenses such as corruption, narcotics, and terrorism are handled comprehensively and consistently. This step also provides legal clarity, reduces ambiguity, and enhances public trust in the justice system. Therefore, the inclusion of core crimes from special criminal acts outside the Penal Code into the National Penal Code is a strategic effort to strengthen the legal foundation for combating crime and promoting justice.

The development of the Criminal Procedure Code (RUU KUHAP) also demands alignment with the National Penal Code in its implementation to ensure the continuity of an effective and fair criminal justice system in Indonesia (Ferels & Firmansyah, 2023). This alignment is necessary so that the legal procedures in criminal law enforcement regulated by the RUU KUHAP are in line with the provisions in the National Penal Code, including in addressing serious crimes such as corruption, narcotics, and terrorism. Thus, the RUU KUHAP, adjusted to the national legal framework, will strengthen the country's legal foundation in upholding justice and achieving equal legal protection for all citizens.

The importance of this research lies in the substantial changes in handling core crimes of special criminal acts as regulated in the National Penal Code. The recodification provides a clearer and more comprehensive legal basis concerning the definitions, elements, and criminal sanctions for each core crime included in the National Penal Code. Additionally, handling special criminal acts often involves various law enforcement agencies. In this context, conflicts of authority become an issue that must be addressed comprehensively. Investigations involving the Corruption Eradication Commission (KPK) as an investigator and the National Narcotics Agency (BNN) serve as concrete examples of problems that can arise due to overlapping authorities, which should ideally not intersect.

In the discussion, Kurniawan mentioned that the laws within the National Penal Code are still laden with controversy. Additionally, based on his research, Larensius pointed out that the differences in authority and duties between the KPK and BNN could lead to tensions and ineffective coordination in handling special criminal acts (Basuki Kurniawan, 2021). Therefore, Abdul Kadir in his research also considers the urgency of

the laws within the National Penal Code as a question that must be addressed first before they are ultimately ratified and enacted into law (Kadir & Suparji Achmad, 2023). In this context, this study will examine the impact of recodification on the enforcement of laws related to core crimes in special criminal acts.

Based on the phenomena that has been discussed, the researcher conducted a study on the Recodification of Core Crimes in Special Criminal Acts within Law Number 1 of 2023 concerning the Penal Code. This research can provide a deep understanding of legal changes, their practical consequences, as well as the potential for conflicts of authority between the law enforcement agencies involved (Christopher Soler, 2019).

Thus, this study not only examines the substantive aspects of the law but also explores the implications of its implementation within the institutional framework that involves several law enforcement agencies. The insights gained from this research are expected to make a positive contribution to the improvement of the criminal justice system in Indonesia.

2. Theoretical Background

A conceptual framework illustrates the relationship between certain concepts that will be studied. These concepts consist of elements of theory, legislation, and the issues being researched. According to De Los Mozos, recodification is an effort to revise codified provisions and incorporate them with other provisions related to the original ones, and these two provisions are substituted with new provisions, so the obsolescence of previously codified provisions can be avoided (Eddyono, 2015).

In criminal law terms, core crime is defined as a subsequent crime that results from a primary crime. The concept of Core Crime in criminal law refers to fundamental criminal acts that are considered the essence of a criminal offense (Horder, 2016). According to Rochmat Soemitro, special criminal acts are those that are regulated separately in special laws that provide specific rules regarding the investigation, prosecution, examination, and sanctions that deviate from the provisions contained in the Penal Code (KUHP).

The Penal Code (Wetboek van Strafrecht) is the legislation that governs material criminal acts in Indonesia and serves as the foundation for enforcing criminal law in Indonesia. This Penal Code has been in effect since January 1, 1918, and is still derived from Dutch colonial law. Officially, the new Indonesian Penal Code is called Law Number 1 of 2023 concerning the Penal Code, which replaces the colonial-era Dutch Penal Code (Wetboek van Strafrecht). The National Penal Code has been expanded to 43 chapters, 624 articles, and is divided into 2 books. Book I on General Provisions consists of 6 chapters and 128 articles, while Book II on Crimes consists of 37 chapters and 437 articles. The National Penal Code will come into effect on January 2, 2026, and will automatically repeal and declare the Penal Code (Wetboek van Strafrecht) no longer in force (Malau, 2023).

Legal Certainty, as defined by Jan Michiel Otto, involves several key aspects: First, it refers to the presence of clear, consistent, and easily accessible rules that are officially published and recognized by the authority of the state. Second, it requires that government agencies, acting as authorities, consistently enforce these legal rules and also adhere to and comply with them themselves. Third, it implies that citizens, in general, align their behavior in accordance with these rules.

3. Methods

The research method used in this thesis is the normative juridical method, which focuses on the analysis of legislation and related legal documents. The study aims to understand and interpret legal provisions as well as analyze the regulations and their implications within the context of the recodification of core crimes related to special criminal acts in the National Criminal Code (KUHP Nasional). This research employs a literature review, which involves the collection and analysis of relevant literature and sources to gain an understanding of the concepts, theories, principles, and applications of core crimes in special criminal acts (Ali, 2021).

The sources of the data used in this research are secondary data, including primary legal materials such as Law No. 1 of 1946 and Law No. 1 of 2023 concerning the National Criminal Code, as well as secondary legal materials like previous research and official documents. Additionally, tertiary legal materials, such as legal dictionaries and international legal instruments like the United Nations Convention against Corruption (2003) and the Rome Statute of the International Criminal Court (1998), are also utilized. The data collection technique involves document analysis, where documents relevant to the research topic are identified, selected, and analyzed to gather important information.

Data processing is carried out through several stages, including editing, systematization, and description, to ensure that the data obtained is complete, valid, and logically structured. The data analysis techniques used include content analysis, comparative analysis, and policy analysis, which aim to identify relevant themes, concepts, and legal provisions, as well as to examine the policies and implications of recodification concerning core crimes in special criminal acts.

4. Results And Discussion

4.1 Regulation of Core Crime Special Criminal Offenses in the National Criminal Code

In the framework of a rule of law state, the law serves as a fundamental pillar for governance and the safeguarding of citizens' rights (Fedina & Povalena, 2023). Achieving this requires effective synchronization between existing regulations and the institutions or agencies responsible for enforcing and implementing these laws. In this regard, legal certainty emerges as a critical value that must be embedded in every piece of legislation to ensure that the law can effectively deliver justice. The value of legal certainty guarantees that laws are enforced correctly and accurately, as the primary objective of any legal system is to provide certainty. Without this certainty, the essence and purpose of the law become obscured. It is important to recognize that legal certainty is deeply intertwined with positive legal instruments and the state's role in realizing these laws.

The content of the National Criminal Code (KUHP) reflects a shift towards a modern criminal law paradigm that prioritizes not retributive measures but the principles of corrective, restorative, and rehabilitative justice. Corrective justice pertains to the punishment and correction of offenders, while restorative justice emphasizes the restoration and healing of victims. Rehabilitative justice, on the other hand, aims to address the needs of both victims and offenders, fostering their recovery and reintegration into society (Flora et al., 2023).

In the National Criminal Code, the regulation of special criminal offenses is grouped into a separate chapter, namely the Chapter on Special Criminal Offenses, which is formulated generally or as Core Crimes in Book Two on Criminal Offenses. Although the National Criminal Code was enacted and established at the beginning of 2023, it will only be implemented in 2026, so the current reference for handling special criminal

offenses is the regulation of special laws outside the Criminal Code. The National Criminal Code, with its principles of open and limited recodification, has created the Chapter on Special Criminal Offenses as a bridging element between the Criminal Code and special laws outside the Criminal Code that regulate Special Criminal Offenses. However, this principle of recodification does not apply to all special criminal offenses and is limited to only five special criminal offenses. The National Criminal Code only incorporates 2 or 3 articles from each law related to special criminal offenses. The articles on special criminal offenses included in the National Criminal Code are those considered "core crimes" or the essence of the offenses.

For example, corruption offenses under articles 2 and 3 of the Anti-Corruption Law are not only addressed in the Anti-Corruption Law but are similarly treated in the Narcotics Law and other laws outside the Criminal Code. Regarding the regulation of serious offenses against Human Rights adopted in the National Criminal Code, only 2 core crimes are addressed: genocide and crimes against humanity, with sanctions adjusted based on expert opinions (modified Delphi method). Therefore, special regulations related to human rights will continue to refer to the Human Rights Court Law, which stipulates no statute of limitations and retroactive applicability. The classification of offenses under a distinct chapter as Special Criminal Offenses is grounded in several defining characteristics. These include the profound impact on victims, the frequent involvement of transnational organized networks, and the application of special procedural regulations that often diverge from the general principles of substantive criminal law. Additionally, these offenses are managed by specialized law enforcement agencies, such as the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), and the National Human Rights Commission (KOMNAS HAM), which possess unique authorities. The legal framework for these offenses is further supported by various international conventions, some of which have been ratified while others have not. Special Criminal Offenses are also recognized for their exceptionally severe nature (*super mala per se*) and the widespread public condemnation they attract.

4.2 Implications of Regulating Core Crimes in Special Criminal Offenses within the National Criminal Code on Laws Outside the Criminal Code

The National Criminal Code (KUHP) has met public expectations by finally realizing a distinctive Indonesian criminal law (Sudarto, 1998). Currently, the National Criminal Code is undergoing a 3-year transitional period before it takes effect and enters the socialization phase. However, various debates have emerged regarding the inclusion of core crimes in special criminal offenses within the National Criminal Code among law enforcement agencies. This is due to the extensive influence of the reform on the Criminal Code, which may have implications for all existing criminal law regulations. Specialized agencies like the Corruption Eradication Commission (KPK) still prefer that corruption offenses not be regulated under the National Criminal Code, as there is already an Anti-Corruption Law and the extra-ordinary nature of corruption crimes would be diminished if included in the National Criminal Code (Wirjono Prodjodikoro, 1997).

During discussions with relevant agencies on special criminal offenses, the government explained that the National Criminal Code will not weaken the KPK and will continue to prioritize special laws (*lex specialis*), as stated in Article 729 of the National Criminal Code, which reads: "Upon the enactment of this Law, the provisions on special criminal offenses in each respective Law will continue to be implemented based on the institutional authority regulated in each respective Law." This provision is considered a

legal umbrella for handling corruption offenses as special crimes. However, the KPK fears that this article could be a trap as it might still lead to legal uncertainty (Bawole Y. A. Bawole, 2021).

The enforcement of special criminal offenses will face serious challenges in the future. Article 729 of the National Criminal Code ensures the authority of agencies according to special laws. This aligns with the principle of *lex specialis derogat legi generalis*, which means that special laws override general laws. However, defense lawyers in corruption cases might argue that *lex posterior derogat legi generali*, where new laws (National Criminal Code) could override older laws (Anti-Corruption Law), applies. Since the early discussions of the Criminal Code Bill, the KPK has insisted that corruption offenses should not be included in the Criminal Code Bill. Despite only being core crimes, the KPK argues that all articles in the Anti-Corruption Law are essential and that including them in the National Criminal Code would undermine the special status of corruption crimes, which have always been classified as extra-ordinary crimes.

Integrating corruption offenses into the National Criminal Code raises concerns regarding the position and role of the Corruption Eradication Commission (KPK), an agency specifically established by the government to combat corruption under the Anti-Corruption Law. Incorporating the provisions of the Anti-Corruption Law into the National Criminal Code could significantly alter the operational framework of the KPK. Moreover, the potential reduction in the severity of penalties for corruption offenses within the National Criminal Code is perceived as insufficient to effectively deter offenders. The decrease in fines associated with these offenses might also fail to produce the necessary deterrent effect, thereby undermining the overall effort to combat corruption.

Additionally, the inclusion of serious human rights violations in the National Criminal Code raises concerns about the potential reduction in the authority of the National Commission on Human Rights (Komnas HAM). By subsuming serious human rights violations under the National Criminal Code, the distinct role and jurisdiction of Komnas HAM may be diminished. Furthermore, the statute of limitations provisions within the National Criminal Code could complicate the prosecution of serious human rights violations. This is particularly problematic when such violations are perpetrated by a ruling government, as these offenses may not be immediately prosecutable, thereby hindering justice and accountability.

Regarding the principle of retroactivity, Law No. 26 of 2000 on the Human Rights Court recognizes the retroactive principle. In the National Criminal Code, this is referred to as core crimes, but there is concern that special laws might become less prominent. This could impact ongoing human rights violation cases handled by Komnas HAM. For serious human rights violations, *mens rea* (guilty mind) is not required, as the structure of power that commits the act is enough. Law enforcement does not need to prove the existence of *mens rea*, whereas the National Criminal Code contains *mens rea* requirements. This could obscure who is most responsible for serious human rights violations.

Drug offenses also have specific considerations for drug abuse. These considerations refer to various international conventions, so drug laws are not only national but also international. Additionally, in the National Criminal Code, drug laws, which are more focused on public health rather than criminal penalties, could create ambiguity and conflict between the National Criminal Code and legal instruments containing criminal provisions outside the Criminal Code.

Material criminal law, criminal procedure law, and the execution of penalties are fundamental components of the national criminal justice system. Material criminal law outlines the specific elements of criminal offenses, requiring prosecutors to establish the presence of both a guilty mind (*mens rea*) and a wrongful act (*actus reus*), leading to harm beyond a reasonable doubt. Criminal procedure law governs the procedures involved in investigation, prosecution, and trial, ensuring that law enforcement officials operate within established legal frameworks. The enforcement of criminal law is thus deeply influenced by procedural law, which defines the scope of authority for law enforcement agencies. The reform of the National Criminal Code (KUHP) carries significant implications, particularly highlighting the need to reform the criminal procedure law. Since the National Criminal Code serves as the foundation of Indonesia's criminal justice system, its revision inevitably necessitates corresponding changes in procedural law. These reforms in material law have far-reaching consequences, potentially impacting all existing criminal law regulations.

During the National Criminal Code 2022 Consultation Seminar, Fachrizal Affandi emphasized the importance of maintaining the principle of functional differentiation in the Criminal Procedure Code Bill. This principle asserts that each law enforcement official within the criminal justice system should have distinct and clearly defined duties and functions. Failure to uphold this principle may increase the risk of power abuse in coercive measures, consequently weakening judicial oversight and the accountability of law enforcement officials.

Budi Prastowo also identified implications of the National Criminal Code on the Criminal Procedure Code Bill. The first implication is the issue of proving guilt. The Criminal Code (*Wetboek van Strafrecht*) uses a monistic paradigm where guilt (*Dolus* and *Culpa*) is an element of the offense. Guilt must be stated in the indictment and proven by the prosecutor, with failure to prove written elements resulting in an acquittal. In contrast, the National Criminal Code uses a dualistic paradigm where guilt is not an element of the offense. *Dolus* is not an element of the offense, while *Culpa* is always formulated as an exception. This requires a change in proof theory; the Criminal Procedure Code Bill should explicitly state that judges must consider whether guilt is proven as one of the requirements for sentencing. The second implication is that the inclusion of a Chapter on Special Criminal Offenses in the National Criminal Code creates a terminological and conceptual contradiction. Special criminal offenses also have specific procedural laws, specialized institutions, powers, and evidence. The question arises whether all these special procedural laws will remain applicable as they are currently.

Aligning the Criminal Procedure Code Bill with the National Criminal Code is crucial so that the legal procedures in criminal justice regulated in the Criminal Procedure Code Bill align with the provisions in the National Criminal Code (Artadi, 2020). The National Criminal Code adheres to the principle of balance; the death penalty is not a primary penalty, there are decisions for pardon by judges, expanded types of primary penalties such as supervision and community service, corporate liability, and strict liability and vicarious liability. Despite ongoing criticisms, the National Criminal Code has several advantages compared to the Criminal Code (*Wetboek van Strafrecht*).

Researchers argue that a key transformation in the National Criminal Code is the unification of criminal law. Prior to this change, the Criminal Code, originally a translation of the *Wetboek van Strafrecht voor Nederlandsch-Indië*, was subject to varying interpretations, primarily due to the foreign language used in its original

provisions. Moreover, the existence of multiple versions of the old Criminal Code, each containing differing articles or provisions with varying sentences, contributed to inconsistencies in the legal system. The transition to the National Criminal Code is thus anticipated to eliminate these discrepancies, as it repeals the previous versions of the code. This unification is expected to enhance legal certainty and promote a more consistent and just application of the law.

However, there is an exception in regulating core crimes in special criminal offenses, which will use the principle of *Lex Specialis Derogat Legi Generali*. This principle of legal interpretation states that specific laws (*lex specialis*) override general laws (*lex generalis*), meaning special laws outside the Criminal Code will remain the primary reference. The principle of *Lex Specialis Derogat Legi Generali* is not widely known among legal practitioners but is recognized and applied in criminal law enforcement for legal certainty. As long as it is not reversed, the principle of *Lex Specialis Derogat Legi Generali* can be applied to laws outside the Criminal Code as stipulated in Article 103 of the Criminal Code, which states that this provision applies to all actions punishable by other legislation unless otherwise specified by that law.

Article 63(2) of the Criminal Code states: "If an action falls under a general criminal provision but also under a specific provision, only the specific one applies." The principle of *Lex Specialis Derogat Legi Generali* is categorized under rule of recognition. It regulates legal rules that can be recognized as applicable and is a secondary rule, not only for regulating primary rules but also involving limitations on the authority of officials in creating repression. One of the legal rules contained in *Lex Specialis Derogat Legi Generali* applies not to addressing an act with a criminal rule in the Criminal Code but is prioritized over criminal rules in laws outside the Criminal Code.

5. Conclusion

The types of special criminal offenses in the National Criminal Code refer to cases whose legal regulations are outside the KUHP, which is the codified law. The reason for including these types of special criminal offenses in the National Criminal Code is to provide a bridging mechanism so that when new crimes or developments in crimes arise, there is still a reference to the National Criminal Code, ensuring that its fundamental principles are adhered to since most special criminal offenses currently deviate from general principles or their enforcement.

The fundamental consideration for lawmakers in including core crimes in special criminal offenses is to reconstruct the national criminal justice system to fulfill several missions of national criminal justice reform. Various debates have emerged regarding the inclusion of core crimes in the National Criminal Code among law enforcement agencies. This is due to the extensive impact of the Criminal Code reform, which may affect all existing criminal law regulations, including special laws outside the Criminal Code. However, after socialization with various legal agencies, law enforcement officials in the prosecutor's office believe that the inclusion of core crimes in the National Criminal Code will not complicate the legal enforcement process or create ambiguity concerning existing special criminal laws.

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