



LEGAL POLITICS OF REVOKING THE EXTRAORDINARY CRIME STATUS OF CORRUPTION CRIMINAL ACT THROUGH THE NEW KUHP AND ITS IMPLICATIONS FOR THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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Article Info	Abstract
<p>Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01</p> <p>Keywords: <i>Extraordinary Crime, 2023 Criminal Code, Corruption, Criminal Justice System</i></p>	<p>After independence, the Indonesian Criminal Code (KUHP) was implemented nationwide through Law No. 73 of 1958, ending legal dualism in Indonesia. In 1971, anti-corruption efforts were formalized through Law No. 3 of 1971, later updated by Law No. 31 of 1999 and Law no. 20 of 2001. These changes introduced the principle of reverse burden of evidence and severe sanctions for corruption offenders. Subsequent Constitutional Court decisions reinforced the legality of corruption cases by restricting criminal acts to explicitly defined legal actions. However, the removal of the extraordinary crime status for corruption under Law No. 1 of 2023 raises concerns over the reduced deterrent effect and the weakening of the KPK's authority. Comprehensive reform is needed to ensure anti-corruption enforcement remains grounded in Pancasila and the Constitution.</p>

I. INTRODUCTION

The current development of criminal law can be seen from the changes in a number of articles related to criminal acts of corruption which were previously regulated in the Corruption Law, then the reference was transferred to the Republic of Indonesia Law Number 1 of 2023 concerning the Criminal Code Part Three (KUHP Law). In relation to the abandonment of the principle of *lex specialis derogat legi generalis*, this is an implication of the revocation of five articles in Law Number 31 of 1999 as amended by Law Number 21 of 2001, namely Article 2 paragraph (1), Article 3, Article 5, Article 11, and Article 13, as regulated in Article 622 paragraph (1) letter l of the New Criminal Code.

When the crime of corruption (*tipikor*) is no longer considered an extraordinary crime but rather a general or ordinary crime and is equated with conventional crime phrases such as theft with violence or embezzlement, the legal consequences of this condition imply that there is no longer any special authority among law enforcement officers, starting from the Police, the Prosecutor's Office, to the Corruption Eradication Commission (KPK) in carrying out their duties. Based on this, it is necessary to examine the direction of the legal policy of revoking the extraordinary crime status of the crime of corruption through the New Criminal Code and

how the legal relationship is between law enforcement agencies for corruption and its implications for the criminal justice system in Indonesia.

In relation to the shift in the concept of the principle of *lex specialis derogat legi generalis*, this is an implication of the revocation of five articles in Law Number 31 of 1999 as amended by Law Number 21 of 2001, namely Article 2 paragraph (1), Article 3, Article 5, Article 11, and Article 13, as regulated in Article 622 paragraph (1) letter l of the New Criminal Code. The revocation of these articles indicates that the crime of corruption is no longer treated as a crime that requires special treatment in the Indonesian legal system. The principle of *lex specialis derogat legi generali* (special law overrides general law) is one of the principles of preference known in legal science. This principle of preference determines which legal rule should be prioritized when there is a legal event that involves or violates several different legal regulations.

When corruption is no longer considered an extraordinary crime and is equated with conventional crimes such as theft or embezzlement, this has an impact on the loss of the special authority of law enforcement officers, including the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK). Previously, these three institutions had special authority in eradicating corruption as regulated

by law. However, with the elimination of the extraordinary crime status, this special authority can be lost, so that the handling of corruption cases is carried out like other general crimes. Therefore, it is important to examine the direction of legal politics related to the revocation of the extraordinary crime status in the New Criminal Code to understand the reasons and impacts on the commitment to eradicating corruption.

II. RESEARCH METHODS

This research is a normative-juridical research with a focus on the revocation of extraordinary crime status in corruption crimes after Law Number 1 of 2023 concerning the Criminal Code. The normative-juridical approach is an approach used to examine applicable legal norms or rules. This approach involves an analysis of relevant laws and regulations, legal doctrines, and court decisions. In this study, the normative-juridical approach is used to understand and analyze laws and regulations governing the revocation of extraordinary crime status in corruption crimes, as well as how legal doctrines and court decisions support or influence these changes.

III. RESULTS AND DISCUSSION

A. Legal Regulations on Criminal Acts of Corruption Before the Enactment of Law Number 1 of 2023 Concerning the Criminal Code

After Indonesia's independence, the Criminal Code came into effect through Law Number 73 of 1958, which stipulated the application of Law Number 1 of 1946 throughout the territory of the Republic of Indonesia. This step ended the dualism of criminal law based on Emergency Law Number 1 of 1946, the Criminal Code in Indonesia came into effect on February 26, 1946, but only for the regions of Java and Madura. Then, on August 8, 1946, through Government Regulation of the Republic of Indonesia Number 8 of 1946 published in News II Number 20-21, the Criminal Code was extended to the entire region of Sumatra. However, at that time, the Dutch East Indies Federal government had already controlled several regions of the Republic and implemented different Criminal Codes in the areas they controlled.

Changes to the Criminal Code (KUHP) through Law No. 73 of 1958 include the addition of Articles 52a, 142a, and 154a, which regulate increased penalties if crimes are committed using

national symbols and insulting the national flag and state emblem. Although they do not directly regulate criminal acts of corruption, these regulations reflect the importance of protecting the integrity of the state. Law No. 73 of 1958 also plays a role in creating a more consistent legal system throughout Indonesia, supporting more effective law enforcement, and building public trust in the legal system, including in handling corruption.

On March 29, 1971, Indonesia enacted Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption, which was later revoked during the administration of President BJ Habibie and replaced by Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. This law was then amended through Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (UU PTPK).

One of the important elements of this law is the application of the principle of reverse burden of proof. In this principle, defendants in corruption cases are required to prove that the assets or wealth they own are not the result of corruption. If the defendant fails to prove the origin of their assets, then the assets are considered the result of corruption and can be confiscated by the state. In addition, this law also stipulates severe criminal sanctions for perpetrators of corruption, including life imprisonment or imprisonment for a certain duration and large fines. Additional penalties such as confiscation of assets and the obligation to pay compensation are also regulated to ensure the return of state losses.

In accordance with the mandate of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, article 41 states that the community has the opportunity to contribute to the prevention and eradication of criminal acts of corruption. This is intended as an effort to raise public awareness of the problem of corruption that requires active participation from the community.

Law Number 20 of 2001 as an amendment to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption aims to prevent and eradicate corruption more effectively. After the Constitutional Court Decision Number 25/PUU-XV/2016, the Constitutional Court stated that the use of the word "can" in Article 2 paragraph (1) and Article (3) of the

Corruption Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, so that criminal acts of corruption have changed into material crimes.

In addition to the Constitutional Court Decision Number 25/PUU-XV/2016, there are two Constitutional Court decisions, namely 003/PUU-IV/2006 and 21/PUU-XIV/2016, emphasizing the importance of legal certainty in corruption crimes. The first decision rejects the explanation in Article 2 paragraph (1) of the Corruption Law which expands the meaning of "against the law" to include actions that are only considered inconsistent with the norms of justice, ensuring that only actions that are formally regulated in legislation can be punished. The second decision clarifies the meaning of "evil conspiracy" in Article 15 as an agreement made by two equal parties and limits the scope of the intended corruption crime, ensuring that only criminal acts that are explicitly regulated in the relevant article can be used. Both decisions emphasize the principle of legality and prevent misuse of the law.

The concept of extraordinary crime is a widely recognized idea in the Indonesian legal system. This concept is applied to a number of crimes in the law, such as serious violations of human rights, corruption, acts of terrorism, and crimes of sexual violence against children. Article 2 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption states that anyone who unlawfully commits an act of enriching themselves or others that can harm state finances or the state economy can be subject to life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years and a fine of at least IDR 200 million and a maximum of IDR 1 billion.

The resolution of corruption cases as extraordinary crimes cannot be done through conventional methods and institutions, but requires innovative approaches and institutions. Given that corruption has taken root in Indonesian society, a special solution is needed. One of the steps taken is the establishment of the Corruption Eradication Commission (KPK) as an answer to this need.

The KPK has the authority regulated in Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, which gives the KPK special powers to conduct investigations, inquiries, and

prosecutions of corruption cases. This strong law enforcement aims to uphold integrity in state governance and prevent abuse of power.

The approach used to eradicate corruption as an extraordinary crime also involves harmonization with international norms, such as those stipulated in the United Nations Convention Against Corruption (UNCAC), which has been ratified by Indonesia through Law Number 7 of 2006. This ratification confirms Indonesia's commitment to combating corruption in accordance with international standards, including in terms of prevention, prosecution, and asset recovery. UNCAC provides a framework for countries to adopt more effective measures to eradicate corruption, including protection for witnesses and whistleblowers and action against obstruction of justice.

In addition, Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which has been amended by Law Number 31 of 2014, provides a legal basis for the protection of witnesses and informants in corruption cases. This protection is considered crucial to ensure that witnesses and informants can provide testimony without fear of threats or intimidation, which ultimately supports efforts to eradicate corruption more effectively. In this context, firm and uncompromising law enforcement, including policies related to remission, is an important element in the national strategy to break the chain of corruption that has taken root in Indonesia. The challenges in eradicating corruption have a major impact on public governance and public trust. Through a focus on the role of supervisory institutions and the implementation of electronic procurement systems, the need for firm and consistent policies in eradicating corruption

B. Implications of Revocation of Extraordinary Crime Status for Corruption Crimes in Law Number 1 of 2023 Concerning the Criminal Code on the Criminal Justice System in Indonesia

There is no legal definition of the concept of extraordinary crimes in legislation or Constitutional Court decisions. Definitions are given by experts based on the type of extraordinary crime. Using gross violations of human rights as a reference, Muladi defines the concept of extraordinary crimes as crimes that, from a criminological and victimological perspective, have the potential to harm various dimensions of interest, such as security and order,

are systematic or organized, threaten political stability, future development, and others. In the context of corruption, Romli Atmasasmita at the 22nd Prosecutor's Seminar at the University of North Sumatra on June 6, 2015 defined the concept of extraordinary crimes from the perspective of legal impact as crimes that are massive and systemic. From these two definitions, the concept of extraordinary crimes must meet two elements: crime and impact. The crime must be carried out systematically, and the impact must be massive. Prahassacitta also highlighted that the application of this concept has consequences in the formulation of criminal policies, which must take into account not only aspects of criminalization and punishment, but also broader strategies for eradicating crime and protecting welfare.

On the other hand, a study conducted by Nur Rohim Yunus and his colleagues emphasized that corruption is considered an extraordinary crime because of its impact on the country's economy, democracy, and public welfare. This concept requires an extraordinary approach in prevention and enforcement efforts, including the establishment of a special institution such as the Corruption Eradication Commission (KPK). Yunus emphasized that corruption not only has an impact on state financial losses, but also eliminates the social and economic rights of the community. In addition, corruption has damaged democracy and the rule of law, which in turn leads to violations of human rights. Another impact is that corruption also weakens the values of life by triggering various additional crimes.

Corruption is considered a "serious crime" that deeply disrupts the economic and social rights of society and the state on a large scale. Therefore, its handling must be carried out with an "extraordinary treatment" approach, which involves professional and independent evidentiary measures. State administrators in this context refer to public officials or apparatus who meet the criteria, namely being appointed by official authorities, holding a position or office, and carrying out part of the functions of the state or state apparatus.

The revocation of the extraordinary crime status for corruption in Law Number 1 of 2023 concerning the Criminal Code (KUHP) has significant implications for handling corruption in Indonesia. The previous extraordinary crime status provided the basis for special treatment for perpetrators of corruption, including increased penalties and different legal treatment compared

to ordinary crimes. With the revocation of this status, corruption will be treated the same as other crimes in the new criminal law system. This can raise concerns about a decrease in the deterrent effect and a weakening of the state's commitment to eradicating corruption, which was previously considered a crime that is very detrimental to the state and society.

However, this change can also be seen as part of a broader and integrated effort to harmonize criminal law in the new Criminal Code. In this context, the purpose of imposing criminal penalties in the 2023 Criminal Code is to prevent criminal acts, provide guidance to perpetrators, and restore balance in society. With an approach that focuses more on rehabilitation and restorative justice, the new legal system has the potential to create a more humane approach. However, this must be balanced with a strong oversight mechanism to ensure that corruption is still handled seriously.

Furthermore, as explained previously that the status of corruption in the Indonesian criminal law system, it should be noted that corruption is a special crime that is regulated separately from the general Criminal Code. As described in the study, corruption is regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption. This regulation shows that corruption is treated differently from general crimes because of its extraordinary nature, which has a broad impact on the economy, politics, and society.

Corruption is a part of special criminal law that has its own characteristics, different from general criminal law. If explained further, corruption has certain specifications, including deviations in procedural law and regulated materials, which aim to minimize leakage and misuse of state finances and economy. For example, in handling corruption cases, the procedural law procedures applied are *lex specialis*, which allows for the acceleration of the investigation, prosecution, and examination process in court. Thus, law enforcement against corruption requires a more intensive and comprehensive approach, involving many institutions such as the Corruption Eradication Committee (KPK), the Police, the Prosecutor's Office, and the Corruption Court. The existence of an institution such as the KPK is very important in this context, because the KPK has strong and independent authority in eradicating corruption, making it the spearhead in fighting corruption in Indonesia.

The discussion on the comparison between the provisions on corruption crimes in the Corruption Eradication Law and the new Criminal Code (KUHP) shows several important differences in legal arrangements. One of the most prominent differences is the change in the punishment structure, where the minimum sentence for several types of corruption crimes has been reduced in the new Criminal Code compared to the previous law. For example, the minimum sentence for illegal enrichment has been reduced from four years to two years, and the minimum fine has also been significantly reduced.

However, despite the decrease in the minimum sentence, the new Criminal Code also introduces a more proportional principle of criminal responsibility as in Article 604 of the New Criminal Code, which is a revised form of Article 3 of the Corruption Law, there is an increase in the minimum sentence from 1 year to 2 years in prison, although according to Dimas Akbar Sawung. Et., al., (2023), this is considered less balanced when compared to the legal subjects, namely state officials or administrators.

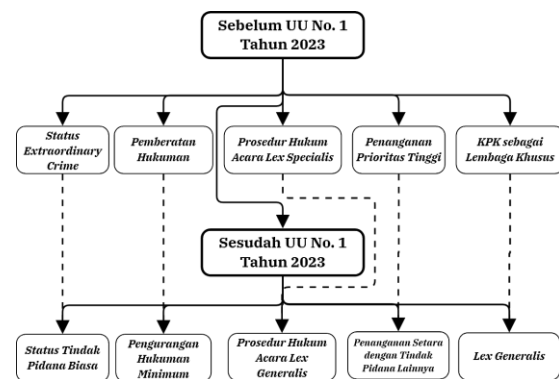
This principle is in line with the theory of dignified justice based on Pancasila, dignified justice requires human treatment in accordance with dignity without discrimination, where legal equality is the responsibility of the state. This theory strengthens the principle of humanizing humans in law, considering the same degree of humans as social beings and God's creations. In addition, the new Criminal Code also introduces variations in the types of punishments, one of which is social punishment. Community service is now included in the new Criminal Code (KUHP) as part of criminal law reform in Indonesia. In the new Criminal Code, community service is classified as a type of Principal Crime, as regulated in Article 65.

This change also has the potential to affect the authority of law enforcement agencies such as the Corruption Eradication Commission (KPK), which previously had a central role in handling corruption cases as extraordinary crimes. With corruption no longer recognized as an extraordinary crime, the KPK may no longer have certain privileges in law enforcement methods, such as wiretapping without court permission, which was previously an important tool in uncovering corruption. This raises concerns that regulatory changes in the National Criminal Code could weaken efforts to eradicate corruption in Indonesia and reduce the ability of law

enforcement to handle complex corruption cases involving great political power.

Furthermore, according to Fathor Rahman (2024), the regulation of corruption crimes in the New Criminal Code in Indonesia is contrary to the objectives of the 2005-2025 National Long-Term Development Plan (RPJPN). While the RPJPN emphasizes the importance of eradicating corruption as an effort to support national development, the regulation in the New Criminal Code is not in line with this spirit. In the New Criminal Code, the regulation of corruption crimes creates obstacles in substantial aspects, especially because the criteria and provisions for increasing penalties for corruption are made lighter than the previous Corruption Eradication Law. This has the potential to reduce the deterrent effect for perpetrators of corruption.

Chart. Implications of Revocation of Extraordinary Crime Status for Corruption Crimes on the Criminal Justice System in Indonesia



The revocation of the extraordinary crime status for corruption in Law Number 1 of 2023 concerning the Criminal Code has a major impact on the criminal justice system in Indonesia. This change causes a shift in priorities in handling corruption, which was previously considered an extraordinary crime and required intensive handling and special resource allocation. With this new status, corruption is treated on a par with other crimes, which has the potential to reduce the intensity and quality of law enforcement against corruption cases by law enforcement officers.

To overcome the impact of the revocation of extraordinary crime status on corruption, a comprehensive reform of the Indonesian criminal justice system is needed. Future reform of the Indonesian criminal justice system requires changes based on the 1945 Constitution and the values of Pancasila. This reform must cover the

entire judicial sub-system, both in terms of structure, substance, and culture, to be more in line with the basic principles of the constitution and Pancasila.

The implications of the revocation of extraordinary crime status for corruption crimes in the criminal justice system in Indonesia show that this change has a complex impact on various aspects of law enforcement. In the context of the reconstruction of the criminal justice system, the revocation of extraordinary crime status can be seen as part of an effort to normalize the handling of corruption crimes, aligning legal procedures with more general principles of justice, but this is not without risk.

One of the main challenges faced is how to ensure that the elimination of extraordinary crime status does not reduce the effectiveness of corruption eradication. In the redesigned justice system, as described by Prof. Mardjono Reksodiputro, the difference in authority between the police and the prosecutor's office in Indonesia is regulated as a division of powers to ensure mutual supervision and synergy in the Integrated Criminal Justice System, not as a complete separation. The Criminal Procedure Code prioritizes the adjudication stage, so that the judge becomes the center of authority. If the Supreme Court reform is successful, improvements in the police and prosecutor's office will be easier to implement. The Public Prosecutor and the Detective Police, which are part of the judicial power, are subject to the supervision of the judge in collecting physical evidence and witnesses, while other police divisions are not directly related to the prosecutor's office. The KPK's authority which includes investigation and indictment, different from democratic standards that separate these functions, emerged as a solution to the crisis of trust in the police and prosecutor's office, but can be better regulated through strict limitations between internal divisions to maintain the integrity of the legal process.

Furthermore, the revocation of the extraordinary crime status for corruption in Law Number 1 of 2023 concerning the Criminal Code (KUHP) regarding the criminal justice system in Indonesia must be viewed from the perspective of the theory of legal positivism that underlies many aspects of the Indonesian legal system. As described in the article, legal positivism views law as a series of rules that must be applied strictly and mechanically by judges, without considering

non-juridical elements such as morality or substantive justice.

IV. CONCLUSIONS AND RECOMMENDATIONS

After independence, the Criminal Code began to be implemented throughout Indonesia through Law No. 73 of 1958, ending the dualism of criminal law that previously only applied in certain regions such as Java and Madura. In 1971, Indonesia enacted Law No. 3 of 1971 to eradicate corruption, which was later updated with Law No. 31 of 1999 and Law No. 20 of 2001 which prioritized the principle of reverse burden of proof and severe sanctions for perpetrators of corruption. These regulations provide a legal basis for the community to contribute to efforts to prevent and eradicate corruption, considering the impact of corruption on the economy, democracy, and public welfare. The Constitutional Court's subsequent decisions emphasized the legality of corruption cases, clarified legal boundaries so that only actions that are legally clear can be punished, and strengthened eradication efforts with international principles such as those stipulated in the UNCAC.

The revocation of the extraordinary crime status for corruption in Law No. 1 of 2023 concerning the Criminal Code has triggered major changes in the handling of corruption in Indonesia, which is now treated on a par with other crimes. This change raises concerns about a decrease in the deterrent effect and intensity of law enforcement against corruption, especially with the reduction of the KPK's special authority. Although it aims to harmonize criminal law and integrate a rehabilitation approach, the removal of this status has the potential to weaken the state's commitment to fighting corruption. To address this risk, a comprehensive reform of the criminal justice system is needed, by ensuring that the principles of Pancasila and constitutional values remain a strong foundation in law enforcement efforts, especially for corruption cases that have a significant impact on national life.

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