Shifts in the Criminalization Policy for Corruption Crimes in Law Number 1 of 2023 from a Justice Perspective

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Abstract

The ratification of Law Number 1 of 2023 concerning the Criminal Code (KUHP), which came into effect on January 2, 2026, brought fundamental changes to the national criminal law architecture, including the regulation of corruption crimes, which were previously subject to the special regime of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. This article aims to analyze the shift in the policy of criminalizing corruption crimes in the new Criminal Code and assess it from a justice perspective. The research uses a normative juridical method with a statutory and conceptual approach, supported by primary, secondary, and tertiary legal materials analyzed qualitatively and descriptively. The results of the study indicate that Articles 603 to 606 of the new Criminal Code re-codify core corruption offenses, introduce an eight-category fine structure, and open up space for alternative types of punishment such as supervision and community service. This shift raises concerns about the weakening of corruption's status as an extraordinary crime and the potential for overlapping norms with the Corruption Crimes Law. This article concludes that the principle of lex specialis derogat legi generali must remain upheld to ensure that corruption criminalization policies remain proportional, provide a deterrent effect, and reflect a sense of justice for the public.

Keywords: Criminal Policy; Corruption Crimes; Criminal Code; Justice.

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Introduction

Corruption has long been considered an extraordinary crime in Indonesia due to its systemic impact on state finances, governance, and the socio-economic rights of the people. This extraordinary status gave rise to a special law enforcement mechanism through Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption, which grants the Corruption Eradication Commission (KPK) extraordinary powers, including wiretapping, limited reversal of evidence, and special minimum penalties. For more than two decades, this legal framework has served as the backbone of national anti-corruption policy.

The enactment of Law Number 1 of 2023 concerning the Criminal Code on January 2, 2023, which came into effect on January 2, 2026 after a three-year transition period, significantly changed the landscape. The new Criminal Code replaced the Wetboek van Strafrecht voor Nederlandsch-Indie, a colonial legal product that had been in effect for more than a century, with a codification of national criminal law consisting of 37 chapters and 624 articles. One of the important contents of this codification was the inclusion of the crime of corruption into the body of the Criminal Code through Articles 603 to 606, which simultaneously revoked the provisions of Article 2 paragraph (1), Article 3, Article 5, Article 11, and Article 13 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001.

This codification has sparked academic debate and legal practice, particularly regarding the shift in the status of corruption from an extraordinary crime to an offense regulated alongside other conventional crimes in a single general code. Some believe this shift has the potential to reduce the specificity of corruption handling, while others view it as a step forward toward a more codified and consistent criminal law system. Against this backdrop, this article examines two main issues: first, how the policy on criminalizing corruption crimes has shifted in Law Number 1 of 2023; and second, how this shift is assessed from a justice perspective. This study is expected to provide academic contributions to legislators, law enforcement, and the public in responding to the new era of national criminal law codification.

Literature Review

According to Barda Nawawi Arief, criminal law policy (penal policy) is part of a crime prevention policy that includes the formulation, application, and execution stages, where the formulation stage is the most strategic stage because it becomes the basis of legitimacy for the following stages [4]. Muladi and Barda Nawawi Arief emphasized that the formulation of criminal policy must consider the objectives of punishment, namely not only retributive, but also community protection, perpetrator improvement, and general and specific prevention [5]. This theory is relevant to reading the direction of corruption punishment policy in the new Criminal Code, which introduces alternative types of punishment such as supervision and social work as part of a more restorative punishment paradigm [6].

The crime of corruption is doctrinally understood as a special crime (bijzonder delict), as reflected in the principle of lex specialis derogat legi generali which places Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 as the main legal basis for eradicating corruption in Indonesia. Andi Hamzah explains that the extraordinary crime nature of corruption lies in its widespread impact on the foundations of state life, thus requiring procedural and institutional legal instruments that are different from criminal acts in general [8]. Moeljatno also distinguishes between delicta commune, which is a crime that can be committed by anyone, and delicta propria which requires special qualities of the perpetrator such as a public official; this distinction is relevant to understanding the character of Article 603 and Article 604 of the new Criminal Code [9].

From a justice perspective, John Rawls argued that justice as fairness demands that legal rules be applied consistently and not create unequal treatment between citizens [10]. In the context of criminalizing corruption, justice is not only interpreted as proportionality between errors and sanctions, but also as legal certainty arising from harmony between laws and

regulations. The Institute for Criminal Justice Reform noted that the disharmony of norms between the new Criminal Code and the Corruption Crime Law has the potential to create legal uncertainty in law enforcement practices, particularly regarding the choice of law that will be used by law enforcement officers [7]. Previous studies generally agree that the existence of two corruption regulatory regimes requires further harmonization so as not to weaken the corruption eradication agenda.

Research Methodology

This research uses a normative legal research method (normative juridical), namely research that examines law as written norms (law in book) by examining legal principles, legal systematics, and legal synchronization between laws and regulations. The approach used is a statute approach, which examines Law Number 1 of 2023 concerning the Criminal Code and Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, as well as a conceptual approach to examine the concept of criminal policy and justice.

The legal materials used consist of primary legal materials in the form of related laws and regulations, secondary legal materials in the form of books, scientific journals, and academic study results, and tertiary legal materials in the form of legal dictionaries and encyclopedias. The legal materials collection technique is carried out through library research, while data analysis is carried out qualitatively-descriptively with grammatical and systematic interpretation techniques to answer the research problem formulation.

Results

4.1 Shifting Regulations on Corruption Crimes in the New Criminal Code

Law Number 1 of 2023 includes the crime of corruption into the codification of national criminal law through Articles 603 to 606, which simultaneously revoke the provisions of Article 2 paragraph (1), Article 3, Article 5, Article 11, and Article 13 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. Article 603 of the new Criminal Code is a re-codification of the core crime of corruption which is oriented towards state financial losses and acts of unlawful enrichment of oneself or others, equivalent to Article 2 paragraph (1) of the Corruption Eradication Law, but is formulated as a general crime (delicta commune) which does not require the quality of the perpetrator as a public official so that it can be applied to ordinary citizens and corporations. Meanwhile, Article 604 of the new Criminal Code is formulated as a delicta propria which requires the perpetrator to have the status of a public official, in line with the provisions on abuse of authority in Article 3 of the Corruption Eradication Law.

In addition to the reformulation of crimes, the new Criminal Code also changes the structure of the threat of criminal fines into eight categories as regulated in Article 79 paragraph (1), with the highest category reaching Rp. 50,000,000,000.00 (fifty billion rupiah), and introduces alternative types of punishment in the form of supervision and community service punishment which were previously unknown in the colonial Criminal Code. To maintain the specificity of handling serious crimes, the adjustment law that accompanied the implementation of the new Criminal Code expressly exempts the crime of corruption, along with serious crimes against human rights, terrorism, and money laundering, from the elimination of the threat of special minimum penalties that apply to other crimes outside the Criminal Code. This provision shows that the legislators still maintain some of the specificity of handling corruption even though the crime has been codified into the Criminal Code.

4.2 Shifts in Criminal Policy from a Justice Perspective

From a criminal justice policy perspective, the shift of corruption offenses into the Criminal Code (KUHP) has two opposing consequences. On the one hand, this codification provides consistency in the national criminal law system and facilitates the harmonization of general principles of punishment, such as the principle of legality, the principle of culpability, and the more structured sentencing guidelines in Book One of the Criminal Code. On the other

hand, placing corruption alongside conventional offenses such as theft and embezzlement raises concerns that public and law enforcement perceptions of the extraordinary nature of corruption will be eroded. This, in turn, could impact the courage and seriousness of enforcement, including the potential limitation of the special powers of anti-corruption agencies.

From a justice perspective, the principle of lex specialis derogat legi generali remains key to maintaining a balance between legal certainty and substantive justice. As long as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 is not completely revoked, these provisions remain in effect as the primary legal basis for eradicating corruption, while Articles 603 to 606 of the Criminal Code serve as bridging rules that strengthen, rather than replace, this special legal regime. Justice in this context demands that law enforcement consistently prioritize the application of special laws for corruption cases that have a broad impact on state finances, while general provisions in the Criminal Code can be complementary in cases not specifically regulated. Without clear harmonization between the two regimes, the potential for disparity in decisions and legal uncertainty can harm the sense of justice, both for perpetrators and for the public as indirect victims of corruption.

Conclusion

The enactment of Law Number 1 of 2023 concerning the Criminal Code brings a significant shift in the policy of criminalizing corruption, from being regulated exclusively in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 to being codified in Articles 603 to 606 of the Criminal Code. This shift includes a reformulation of the core offense of corruption, a restructuring of the structure of fines, and the introduction of alternative types of punishment that are more oriented towards a restorative approach.

From a justice perspective, this shift does not necessarily weaken the eradication of corruption as long as the principle of lex specialis derogat legi generali remains consistently enforced, so that the Corruption Crime Law remains the primary legal basis while the provisions of the Criminal Code function as a complement to the national codification system. To maintain legal certainty and substantive justice, further harmonization is needed between the new Criminal Code and specific laws and regulations on corruption eradication, both through guidelines for the application of law for law enforcement officers and through strengthening the authority of anti-corruption institutions, so that the spirit of eradicating corruption as an extraordinary crime is not reduced by the process of codification of national criminal law.

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