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Exceptional Crimes, Codification, and Human Rights: Reconstructing Lex Specialis in Indonesia's Penal Reform

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Abstract: *The enactment of Indonesia's Law No. 1 of 2023 on the Criminal Code represents a paradigmatic shift toward a fully codified legal system through an open codification model. While this reform seeks to modernize national criminal law and dismantle the colonial legacy of the Wetboek van Strafrecht, it simultaneously generates a fundamental normative tension concerning the legal status of exceptional crimes traditionally governed by special statutes. This tension raises broader concerns regarding the protection of human rights in the governance of extraordinary crimes, particularly in balancing legal certainty, institutional authority, and the need for exceptional enforcement mechanisms. This article aims to examine whether the incorporation of core offenses such as corruption, terrorism, gross human rights violations, narcotics, and money laundering into Chapter 35 of the new Criminal Code transforms their legal character, enforcement regimes, and human rights implications. Using a normative juridical method with statutory and conceptual approaches, this study analyzes the structural consequences of this integration within a broader framework of codification and legal pluralism. The article argues that Chapter 35 does not dilute the exceptional nature of these crimes nor undermine the operation of the lex specialis derogat legi generali principle. Instead, it establishes a layered and hybrid normative framework in which the Criminal Code functions as an internal special regime that systematically interacts with external special laws while preserving institutional authority. This study further proposes a reconceptualization of lex specialis as a multi-dimensional construct encompassing material specificity, differentiated sanctioning regimes, institutional design, and human rights safeguards. By situating Indonesia's penal reform within broader debates on codification and legal pluralism, this article contributes to comparative discussions on how contemporary legal systems reconcile unified codification with the protection of fundamental rights in addressing exceptional crimes.*

Keywords: *Good Faith, Inheritance Land, High Inheritance Custom*

INTRODUCTION

The enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) is a monumental milestone in the restructuring of Indonesia's substantive criminal law system. This long-delayed legislative project carries the noble aspiration to end the dominance of

the Wetboek van Strafrecht as a colonial legacy and replace it with a codification that reflects the values of humanity, restorative justice, and Indonesian national character.(Eddy O.S. Hiariej ; Topo Santoso, 2025) More than just an update, this initiative is a serious effort toward the unification of national criminal law (Teguh Sulistia; Aria Zurnetti, 2011), making it responsive to the dynamics of global and contemporary crime. However, behind this spirit of renewal and unification, a fundamental legal controversy arises, centered on the clash between the ambition of codification and established legal principles, namely the principle of lex specialis derogat legi generali, especially after the New Criminal Code decided to integrate or absorb several offenses that have so far been outside the general codification.

Fundamentally, the Indonesian criminal law system operates on two separate pillars: general criminal law, which is traditionally embedded in the Criminal Code (KUHP), and special criminal law, which is spread across various separate laws outside of the codification. The existence of this dualism is legally legitimized by the principle of lex specialis derogat legi generali, which is a legal interpretation rule that requires laws regulating specific matters to take precedence over laws regulating general matters. (Shinta Agustina, 2015a) This principle is not merely a theory, but has become a practical and essential legal preference principle in addressing potential overlaps (norm overlapping) between regulations(Shinta Agustina, 2015b), It has even been codified in Article 63 paragraph (2) of the old Criminal Code (Edward Omar Sharif Hiariej, 2021). The verse explicitly stipulates that if an act is regulated by both general criminal provisions and special criminal provisions, then the special criminal provisions must be applied by law enforcement officers.

The birth and rapid development of special criminal law in Indonesia in the late 20th century and early 21st century cannot be separated from the urgent need to respond to extraordinary crimes(Michael Barama, 2015). Crimes such as Corruption, Terrorism, Narcotics, and Serious Human Rights Violations have distinctive characteristics. Their modus operandi is organized and sophisticated, causing massive losses (both to state finances and humanity), as well as having a transnational dimension. The particular handling of these types of crimes requires a set of rules that deviate (afwijkend) from the general criminal law regime. This specificity lies in three crucial dimensions. First, in the material realm, the elements of the offense are formulated more specifically, for example, by including the

element of state financial loss in corruption, so it cannot be adequately addressed by general fraud or embezzlement offenses (Roni Efendi, 2021). Second, in terms of sanctions (criminal penalties), by establishing a specific minimum sentence designed to provide a stronger deterrent effect. Third, in the procedural dimension, which includes unique mechanisms for investigation, inquiry, and evidence (such as reverse burden of proof)(Munawa, 2017), as well as support from specialized institutions such as the Corruption Eradication Commission (KPK)(Shinta Agustina;Roni Saputra ; Alex Argo Hernowo ; Ariehta Eleison Sembiring, 2016). Before the enactment of the New Criminal Code, all of those Special Laws consistently held the position as lex specialis laws that absolutely took precedence over the old Criminal Code, which functioned as the sole lex generalis.

However, the legal reality has now drastically shifted with the implementation of Law Number 1 of 2023 concerning the Criminal Code. Open Codification Policy.(Mahmud Mulyadi, 2021) The adopted [policy/system/code] has incorporated several aspects of Gross Violations of Human Rights, Terrorism Crimes, Corruption Crimes, Money Laundering Crimes, and Narcotics Crimes.(Eddy O.S. Hiariej ; Topo Santoso, 2025) A The consequence of incorporating these offenses is the emergence of a complex and unresolved condition of normative overlap. A specific criminal act, which previously had a single legal umbrella under a Special Law, is now regulated by two laws that both possess a horizontal formal hierarchy. This creates serious ambiguity in practice, because while the old KUHP was clearly the lex generalis (general law) superseded by the Special Law, the New KUHP itself, through its codification, now contains provisions that are lex specialis (special law) and potentially conflict with the existing lex specialis.

A deep gap also emerges between the normative ideal of prioritizing the Special Law and the reality of a new general norm that nonetheless encompasses special offenses. This gap manifests as a conflict between the principle of lex specialis and the principle of lex posterior derogat legi priori.(Elita Rahmi, 2024) Doctrinally, the lex specialis principle is always prioritized regardless of its time of enactment; however, the New KUHP is positioned as the lex posterior. Doctrinally, the lex specialis principle is always prioritized regardless of its time of enactment; however, the New KUHP is positioned as the lex posterior. The emergence of conflict(Nurfaqih Irfan, 2020) the collision between the lex

posterior generalis (New KUHP) and the lex priori specialis (older Special Law) creates a dilemma for law enforcement officials. If the lex posterior principle is prioritized, there is a risk that criminal provisions which may be lighter or lack a mandatory minimum sentence in the New KUHP will be applied, thereby simultaneously disregarding the institutional and evidentiary mechanisms that exist only in the Special Law. The worst consequence of an incorrect application is a serious threat to the effectiveness of efforts to combat extraordinary crimes, which philosophically require far harsher sanctions and procedures.

The greatest concern lies in the potential philosophical erosion of these offenses(Mahrus Ali, 2018), Special criminal law is deliberately designed to deviate from the general codification in order to understand offenses outside the KUHP(Taroman Pasyah; Jemmi Angga Syaputra, 2024) and to affirm its status as an extraordinary crime.(T. Mangarap Sirait, 2021)

When these offenses are re-absorbed into the framework of general codification, there is a risk of losing the unique character and specificity that underpin stringent sentencing. For instance, if the core offense of corruption can be processed through the New KUHP, which does not explicitly accommodate a specialized body like the KPK (Corruption Eradication Commission) and the procedure of reverse burden of proof, the lex specialis principle which previously served as the shield for strict case handling will be distorted. Therefore, to ensure consistency and legal certainty, a profound juridical analysis and systematic interpretation of the position of the lex specialis derogat legi generali principle following the New KUHP are necessary. As long as the relevant Special Laws have not been explicitly repealed, the lex specialis principle must be maintained and interpreted by viewing the systematic specificity which encompasses the material, sanctions, and institutional procedure specificities in its entirety as an essential legal shield. This analysis is crucial to confirm through research that the spirit of unifying the National Criminal Code does not, in fact, sacrifice the strength in handling extraordinary crimes that has been built up over time.

Beyond doctrinal concerns, the integration of exceptional crimes into a codified criminal system also raises critical questions regarding the protection of human rights. The governance of crimes such as corruption, terrorism, and gross human rights violations inherently involves tensions between state authority, procedural guarantees, and the

safeguarding of fundamental rights. In this context, the shift toward codification may reshape how legal systems balance effective enforcement with human rights protections.

While existing scholarship has extensively discussed criminal law codification and the principle of lex specialis, limited attention has been given to how codification affects the structural relationship between exceptional crimes, institutional authority, and human rights protection within a unified legal system.

Building on this gap, this article addresses the following research questions: (1) To what extent does the codification of exceptional crimes alter their legal character and enforcement regimes? (2) Does the integration of such crimes into the Criminal Code undermine the operation of the lex specialis principle and the authority of specialized institutions? (3) What are the implications of this transformation for the protection of human rights within the criminal justice system?

This article is structured as follows. The first section examines the theoretical framework of codification and the principle of lex specialis. The second section analyzes the integration of exceptional crimes into Indonesia's new Criminal Code. The third section discusses the implications of this transformation for institutional authority and human rights protection. The final section concludes with key findings and recommendations.

METHOD

This study employs a normative juridical method to analyze the legal implications of incorporating exceptional crimes into Indonesia's codified criminal law system. This approach is particularly appropriate for examining normative conflicts arising from the interaction between general codification and special criminal law regimes, as well as for assessing the continued relevance of the lex specialis derogat legi generali principle. The research adopts a statutory approach by examining relevant legal instruments, including Indonesia's Law No. 1 of 2023 on the Criminal Code and various special statutes governing exceptional crimes such as corruption, terrorism, gross human rights violations, narcotics, and money laundering. In addition, a conceptual approach is employed to analyze key legal doctrines, including codification theory, lex specialis, institutional authority, and human rights protection.

To strengthen the analytical framework, this study also incorporates a limited comparative perspective by referring to broader developments in criminal law systems that address similar tensions between codification and legal

pluralism. This perspective is used to situate Indonesia's reform within wider debates on the governance of exceptional crimes. The analysis is conducted through qualitative legal reasoning, focusing on the interpretation of legal norms, the identification of structural relationships between legal regimes, and the evaluation of their implications for institutional authority and the protection of human rights within the criminal justice system.

RESULT AND DISCUSSION

The Impact of Codifying Exceptional Crimes on Their Legal Character and Enforcement Regimes

The enactment of the National Criminal Code (KUHP Nasional) marks the beginning of a new chapter in the history of Indonesian criminal law. After a process spanning more than seven decades, Indonesia finally succeeded in having a new criminal law codification, which was officially enacted on January 2, 2023. Previously, criminal law in Indonesia was based on the Wetboek van Strafrecht (WvS), the enforceability of which was confirmed by Law Number 1 of 1946 concerning Criminal Law Regulations. Although the WvS was once considered the constitution of criminal law, it was deemed no longer relevant because it failed to keep pace with the evolving paradigms of criminal law. The modern criminal law paradigm has shifted from the Classical School, which predominantly prioritized the criminal act (daad-strafrecht), toward the Neoclassical School, which is now more offender oriented (daad-daderstrafrecht)(Muladi, 2019).

In addition, the principle of het recht hink achter de feiten aan (the law always limps behind the facts or reality in society) feels highly relevant, considering that the provisions in the Wetboek van Strafrecht (WvS) are no longer adequate to address the status quo. As a clear example, the WvS did not regulate corporate criminal liability as a legal subject. Furthermore, the WvS was felt to be incapable of accommodating the richness of Indonesian law, including the recognition of law that lives in society (living law). The need to adjust the WvS to legal developments was also pressing because many new laws forming criminal norms had been created outside the codification, such as Law Number 26 of 2000 concerning Human Rights Courts, Law Number 5 of 2018 concerning Terrorism, Law Number 20 of 2001 concerning Corruption Crimes, Law Number 8 of 2010 concerning Money Laundering Crimes, Law Number 35 of 2009 concerning Narcotics, and Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE). Proceeding from this background,

the Government began to initiate the formation of a new KUHP as a replacement for the WvS in Indonesia. This effort at criminal law reform actually started in 1958, marked by the establishment of the National Law Development Institution (LPHN). Subsequently, the First National Law Seminar in 1963 further strengthened this initiative by producing resolutions, one of which emphasized the formulation of a new Criminal Code.(Tim Perumus UU KUHP, 2023)

Attention regarding the New KUHP is focused on the placement of Chapter 35 concerning Special Criminal Offenses, which indeed becomes the core value of this article. Namely, the placement of special criminal law within the National KUHP codification is normatively based on Article 187, which states: 'The provisions in Chapter I through Chapter V of Book One shall also apply to acts punishable under other legislation, unless otherwise provided by Law.' According to Eddy O.S. Hiariej and Topo Santoso, the phrase 'by Law' in this provision only relates to a Law that specifically regulates criminal offenses which are, by their nature, (unique or special):(Eddy O.S. Hiariej ; Topo Santoso, 2025)

First, the impact of victimization (the victims) is large in number; Second, they are often transnational and organized (Trans-National Organized Crime). To gain a clearer understanding of TOC, the following definition of TOC from UNCTOC (specifically Article 3, Paragraph 2) is quoted: '…an offence is trans-national in nature if: (a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State.(Iwan Sulistyo, 2022) TOC (Transnational Organized Crime) is understood and formulated by authorities possessing full jurisdiction and sovereignty in this context, specifically the European Union (EU) and the United Kingdom (UK), as also adopted by various countries and regional organizations worldwide. Both the EU and the UK recognize that TOC constitutes a serious threat to security, is destructive in a broad sense, and clearly violates legal provisions. Although both are still based on UNCTOC (United Nations Convention against Transnational Organized Crime) and its Protocols Thereto, their implementation is not rigidly confined to the definition contained within. This means there is room for expanding the meaning

and, in some cases, adding certain elements categorized as TOC. This expansion is primarily due to a change in the perception of evolving threats, driven by the dynamic environment in the European region and at the global level, and is also dependent on the application of criminal law in the respective EU member states.(Iwan Sulistyo, 2022)

Third, the criminal procedure regulations are specialized; Special criminal law is a set of rules that stands independently because it regulates specific (special) provisions and deviates from the general criminal provisions. According to Teguh Prasetyo, this law has distinct material and formal characteristics. Materially (Substantively): It is elastic; it allows for the extension of the territorial principle (extraterritoriality); it regulates special legal subjects, especially those related to state financial losses and civil servants; it has an open nature that allows the inclusion of criminal offenses from other Laws; and it implements deviations in sentencing such as corporate fines increased by one-third, asset forfeiture, and criminal threats for attempt and assistance (in committing a crime). This law also specifically regulates transnational and political crimes. Formally (Procedurally): Its legal process also deviates by: allowing investigation to be carried out by Prosecutors or KPK (Corruption Eradication Commission) Investigators; mandating prioritized case handling; allowing for the possibility of civil lawsuits against corruption defendants and the re-prosecution of acquittals that harm the state; being tried in special courts; adopting in absentia trials and the reverse burden of proof system; and prohibiting the publication of the identity of the reporter.(Lefri Mikhael, 2023)

Fourth: Often deviates from the general principles of substantive criminal law. A legal principle can be understood as an abstract, fundamental value that serves as the philosophical foundation and basis for the formation of concrete legal norms. These principles are essential in every legal system, including criminal law. Legal scholars affirm the importance of these principles; for instance, Paul Scholten defines them as tendencies demanded by moral views in law, while A. R. Lacey states that legal principles are important because they contain the ethical values and demands that underpin a particular law. In the context of criminal law enforcement, the presence of legal principles holds special significance. Besides functioning as abstract values, these principles can also be concretized or embodied into clear legal regulations. Indonesia has accommodated several of these important principles into its criminal law regulations, especially those contained within the Criminal Code

(KUHP), making them a characteristic feature of the criminal law norms in the country.(Hanafi Amrani, 2019)

Traditionally, the Criminal Code (KUHP) adheres to the principle of liability based on the principle of fault (Geen Straf Zonder Schuld), meaning a person can only be penalized if there is an element of fault (mens rea) on the part of the offender. However, along with developments in the fields of technology and economy, the application of this fault principle became difficult, thus triggering the emergence of new doctrines outside the KUHP: strict liability and vicarious liability. These two new principles, while considered advancements in criminal law doctrine, fundamentally contradict the fault principle (mens rea) that forms the foundation of the KUHP.(Hanafi Amrani, 2019)

Fifth: The existence of supporting law enforcement institutions that are specialized and possess special authority. In principle, the integrated criminal justice system covers investigation and inquiry processes carried out by the Indonesian National Police. However, the Criminal Procedure Code (KUHAP) has outlined, through the phrase 'or other civil servant officials, a provision for them to act as investigators.(Roni Efendi ; Hebby Rahmatul Utamy, 2022) This is the entry point for giving rise to the support of other institutions or other investigators who are granted the authority to conduct investigations into special criminal offenses, such as the Corruption Eradication Commission (KPK), the National Narcotics Agency, or the National Counter Terrorism Agency. Similarly, the subsequent stages of prosecution and trial also demand the presence of special elements to resolve special criminal offenses, such as the Corruption Crime Court and the Human Rights Court.

Sixth: Supported by various international conventions, both those already ratified and those that have not yet been ratified. Another characteristic of special criminal law is the ratification of international conventions within the national criminal law system. An example is the ratification of the United Nations Convention Against Corruption, 2003.(Ulang Mangun Sosiawan, 2020) Being Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003. Seventh: Constitutes an act that is considered extremely evil (super mala per se) and is strongly condemned by society (strong public condemnation).

Thus, the existence of the nature of the criminal offenses as mentioned above is related to Article 187 of the New KUHP, and it is the exceptionality of this nature that is considered the moderate and relative

provision for integrating special criminal law rules into this New KUHP.(“Modul Pelatihan Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana,” 2023) For the analysis of the Tree of Criminal Law, especially the Functionalization of Special Criminal Law (Internal KUHP) as an independent special criminal offense and generic crimes. Examples of internal special criminal law are the Anti Corruption Law, the Law on Prevention and Eradication of Money Laundering Crimes, the Law on Eradication of Terrorism Crimes, and others.(Eddy O.S. Hiariej ; Topo Santoso, 2025)

The other part, which is Special Criminal Law (External KUHP), functions as dependent special criminal offenses and specific crimes, which constitute Impure Criminal or are often referred to as Administrative Penal Law (APL), such as Banking Crimes, Capital Market Crimes, Forestry Crimes, and Immigration Crimes(Tim Perumus UU KUHP, 2023) Narcotics Crimes, Environmental Crimes(Eddy O.S. Hiariej ; Topo Santoso, 2025) and so on, whose existence outside of this New KUHP Codification is justified.

The classification above, for the purpose of consolidation within a legal codification, groups several criminal offenses deemed to have the aforementioned nature into a separate Chapter, named the Chapter on Special Criminal Offenses. These are formulated as general offenses or core crimes which function as bridging articles between the National KUHP and the Laws outside the KUHP that regulate the Criminal Offenses contained in the Chapter on Special Criminal Offenses. These offenses are Gross Violations of Human Rights, Terrorism Crimes, Corruption Crimes, Money Laundering Crimes, and Narcotics Crimes. The inclusion of this Chapter on Special Criminal Offenses does not reduce the status of extraordinary crimes or the principle of lex specialis derogat legi generali following the enactment of this National KUHP. Furthermore, it does not affect the authority of supporting law enforcement institutions that have already been stipulated in the previous special criminal laws. The aforementioned exception also applies to the amount of criminal fines in Laws that regulate criminal offenses with the potential to cause great loss to the state or the public. The provision in this article is intended to bridge the growth of criminal law outside the codification, which is often referred to as special criminal law or bijzonder delict.(Eddy O.S. Hiariej ; Topo Santoso, 2025)

In recognition of the implementation of this Open and Limited

Codification Policy, which involves placing only 5 Special Criminal Offenses from the Internal Special Criminal Law of the KUHP that are independent generic crimes, the purpose is to serve as bridging articles between the Special Criminal Offenses Outside the New KUHP Codification and this New KUHP Codification. This integration was originally intended for the entirety of the Criminal Law rules and provisions that lie outside this New National KUHP codification, and naturally, these 5 special criminal offenses are formulated generally in the form of core crimes or principal offenses only.

The regulation of Special Criminal Offenses (TPK) in Chapter 35 of the New KUHP has led to a complicated perception problem, specifically regarding the legal status of those offenses. The core issue lies in the relationship between the New KUHP, which fundamentally serves as general criminal law, and the TPK, which has long been recognized as Special Criminal Law outside the codification. This conflict specifically triggers a polemic regarding the jurisdiction among Special Institutions (such as the Corruption Eradication Commission/KPK, the National Narcotics Agency/BNN, and the Prosecutor's Office in handling gross human rights violations). Concerns arise that the handling of extraordinary crimes (corruption, terrorism, money laundering crimes, and others), which has been effective through special legal instruments, will be restricted. This is due to the perceived paradigm shift: the special offenses integrated into the New KUHP are understood to have changed into General Criminal Offenses under the New KUHP regime, even though the organic laws granting special authority to those law enforcement institutions have not been repealed.

The assumption that the placement of Special Criminal Offenses in Chapter 35 of the New KUHP constitutes a form of weakening is a mistaken view. Conversely, this provision should be interpreted as the codification of core crimes (delik inti) that creates Internal Special Criminal Law within the KUHP. Based on this interpretation, the authority of Special Institutions (such as the KPK and BNN) to carry out the implementation and law enforcement of the offenses listed in Chapter 35 remains preserved in practice.(Tim Perumus UU KUHP, 2023) As stipulated in Article 620 of the National KUHP: 'Upon the commencement of this Law, the provisions in the Chapter concerning Special Criminal Offenses in this Law shall be enforced by law enforcement institutions based on the duties and authorities regulated in their respective Laws.

The Annotation to Article 620 is formulated to ensure the existence of special institutions that perform law enforcement functions related to special criminal offenses in this KUHP, such as the Corruption Eradication Commission, the National Human Rights Commission, the National Narcotics Agency, and the National Counter-Terrorism Agency.(Eddy O.S. Hiariej ; Topo Santoso, 2025)

Reconceptualizing Lex Specialis in a Codified Criminal Law System

It is naturally justifiable that questions arise from the public regarding the selective choice for codifying 5 (five) special criminal offenses into this Chapter 35. When examined against the functional basis of Special Criminal Law outside the codification, which has long been considered to regulate pure criminal offenses that are independent and generic crimes, it becomes an anomaly why only five types of special criminal offenses (namely Gross Violations of Human Rights, Terrorism, Corruption, Money Laundering, and Narcotics) were decided upon for integration into Chapter 35 of the New KUHP. The Government, supported by the Expert Team for Criminal Law, decided to integrate these pure criminal offenses, which are categorized as Internal Special Criminal Law of the KUHP, into this new national codification. This decision was made after a process of deep evaluation and analysis of the development and implementation of Criminal Law in Indonesia. The consideration for integrating these five types of special criminal offenses is based on the criteria contained in the Elucidation of Article 187 of the New KUHP, as explained above.(“Modul Pelatihan Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana,” 2023)

Furthermore, it needs to be understood that: First, Indonesia has more than 200 sectoral laws that are qualified as special criminal law because they regulate criminal acts along with their sanctions in separate legislation. Second, broadly speaking, special criminal law is divided into internal special criminal law (special criminal law in the form of a criminal statute) and external special criminal law (special criminal law that is not a criminal statute). Third, the regulation of special criminal law in Chapter 35 of this National KUHP is exclusively internal special criminal law, namely Gross Violations of Human Rights, Terrorism, Corruption, and Money Laundering Crimes. Fourth, external special criminal law is essentially administrative law to which criminal sanctions have been appended. Narcotics, fundamentally, is external special criminal law but is included in the special criminal offenses chapter because it possesses the

nature and characteristics of extraordinary crimes.

Fifth, the criminal law policy chosen is recodification, consolidation, and harmonization. Therefore, in the context of recodification, several articles that constitute core crimes from internal special criminal law and narcotics are included in this chapter. This is because if internal special criminal law were not included at all in this chapter, the result would be decodification. This would then contradict the criminal law policy advocating for recodification and consolidation. Sixth, the inclusion of some internal special criminal law and narcotics in this chapter does not in any way eliminate the specialized nature of those criminal offenses. Seventh, the substance regulated in these criminal offenses only consists of core crimes as bridging articles and to repeal existing laws. Eighth, using the comparative criminal law method, there is regulation of some crimes, such as Chapter 35 of the National KUHP, which only contains core crimes despite already having their own separate laws. Ninth, the regulation of special criminal offenses in Chapter 35 of the National KUHP, as previously explained, does not at all eliminate the nature and characteristics of extraordinary crimes.

A criminal offense will be designated an extraordinary crime if it meets 7 (seven) parameters: first, the offense has a very broad and multidimensional victimization impact; second, it is transnational and organized, supported by modern technology in communication and informatics; third, it constitutes the predicate crime for money laundering; fourth, it requires specialized criminal procedural law regulations; fifth, it necessitates specialized supporting law enforcement institutions with broad authority; sixth, it is based on an international convention, making it a treaty-based crime; and seventh, the offense constitutes super mala per se (extremely evil) and is highly reprehensible, being strongly condemned by society (public condemnation) both nationally and internationally.(Eddy O.S. Hiariej ; Topo Santoso, 2025)

Human Rights Implications of the Codification of Exceptional Crimes: Reconstructing Lex Specialis as a Safeguard for Legal Certainty, Due Process, and Institutional Accountability

The codification of exceptional crimes into Chapter XXXV of Law No. 1 of 2023 on the Indonesian Criminal Code (the National Criminal Code) raises issues that extend beyond the doctrinal relationship between general criminal law and special criminal legislation. More fundamentally, it invites a reassessment of

the limits of state coercive power from a human rights perspective. In a democratic state governed by the rule of law, the effectiveness of crime control cannot be divorced from the State's obligation to ensure legal certainty, equality before the law, and the protection of the procedural rights of all individuals who come into contact with the criminal justice system.(Tom Gerald Daly, 2017)

Exceptional crimes such as corruption, terrorism, money laundering, narcotics offenses, and gross human rights violations differ fundamentally from conventional crimes. Their consequences are often systemic, involving organized networks and, in many cases, transnational operations that threaten public institutions, economic stability, and collective security. In response to these distinctive features, many jurisdictions have developed specialized legal regimes that authorize the use of extraordinary investigative techniques, modified evidentiary mechanisms, and dedicated enforcement institutions vested with broader powers than those available under ordinary criminal law.(Valsamis Mitsilegas, 2023) Contemporary scholarship, however, consistently emphasizes that such departures from ordinary criminal law are justifiable only insofar as they remain subject to the principles of legality, necessity, proportionality, and effective judicial oversight.(Organized By The United Nations in Co-Operation With The Government of Japan, 1960)

In this context, human rights protection should not be regarded as an impediment to the effective prosecution of exceptional crimes. Rather, it serves as the normative benchmark against which the legitimacy of the State's exercise of punitive power must be assessed. Contemporary scholarship suggests that the legitimacy of modern criminal justice systems depends largely on their capacity to maintain an appropriate balance between public security and individual rights.(Lucia Zedner, 2015) The broader the coercive powers conferred upon the State, the greater the need for robust oversight mechanisms capable of ensuring accountability and preventing the arbitrary or abusive exercise of authority.

From this perspective, the codification policy embodied in the National Criminal Code may be understood as an effort to strengthen legal certainty. By incorporating the core offenses of exceptional crimes into a unified national codification, the legislature has provided a more systematic and accessible normative framework. Legal certainty constitutes an essential element of the rule of law, as it enables individuals to ascertain with reasonable clarity the applicable legal norms and the

consequences attached to their conduct. From a human rights perspective, the legitimacy of criminal legislation depends on its ability to satisfy the requirements of accessibility, clarity, and foreseeability.(Paul Craig, n.d.)

Legal certainty, however, would be undermined if codification were interpreted as extinguishing the continued applicability of special statutes. Such an interpretation would create uncertainty as to the governing legal basis, the procedural framework to be applied, and the institutions vested with enforcement authority. In practice, this form of normative ambiguity may lead to inconsistent treatment and, ultimately, compromise the principles of equality before the law and the guarantees of a fair trial.(Principles and Guidlines on the Right to a Fair Trial and Legal Assistance in Africa, n.d.) Accordingly, the relationship between Chapter XXXV of the National Criminal Code and existing special legislation should be understood through the model of open codification, under which the Criminal Code functions as a general normative framework, while special statutes retain their more detailed and specialized substantive, procedural, and institutional provisions.

Within this framework, the principle of lex specialis derogat legi generali acquires a more substantive significance. It no longer operates merely as a rule of preference for resolving normative conflicts, but also functions as a constitutional safeguard that ensures the specialized regulation of exceptional crimes remains confined within legally valid and human rights compliant boundaries.(Shinta Agustina, 2015a) Accordingly, the continuing applicability of special statutes is determined not solely by differences in the formulation of offense elements, but by the broader normative architecture in which those statutes are embedded, including their sentencing regimes, evidentiary mechanisms, institutional arrangements, and safeguards for the protection of fundamental rights.

This reconstruction demonstrates that the concept of speciality comprises at least five interrelated dimensions. First, substantive speciality, reflected in offense definitions that are formulated with a higher degree of specificity than those found in ordinary criminal law. Second, sentencing speciality, which includes mechanisms such as statutory minimum penalties, supplementary sanctions, and asset recovery measures. Third, procedural speciality, encompassing techniques such as interception of communications, asset freezing, and limited reversals of the burden of proof. Fourth, institutional speciality, manifested in the allocation of

enforcement authority to specialized bodies such as the Corruption Eradication Commission (KPK) and the National Narcotics Agency (BNN). Fifth, human rights speciality, consisting of oversight mechanisms designed to ensure that any departures from ordinary criminal procedure remain subject to the principles of necessity and proportionality.

CONCLUSION

The enactment of Law No. 1 of 2023 on the National Criminal Code (KUHP Nasional) represents a major milestone in Indonesia's criminal law reform, replacing the colonial Wetboek van Strafrecht and adopting an open codification model designed to harmonize general and special criminal law. A central feature of this reform is Chapter XXXV, which codifies the core offenses of five exceptional crimes—corruption, terrorism, money laundering, narcotics, and gross human rights violations. This codification does not transform these offenses into ordinary crimes or eliminate the continuing validity of the relevant special statutes. Rather, Chapter XXXV functions as a set of "bridging provisions" that integrate the principal offense formulations into the Criminal Code while preserving the specialized substantive rules, procedural mechanisms, and institutional frameworks established under separate legislation. This interpretation is reinforced by Articles 187 and 620 of the National Criminal Code, which expressly maintain the authority of institutions such as the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), and the Human Rights Court. The study further argues that the principle of lex specialis derogat legi generali must be reconceptualized as a multidimensional doctrine encompassing five interrelated forms of speciality: substantive, sentencing, procedural, institutional, and human rights speciality. Under this framework, special laws remain applicable not merely because they regulate distinct offenses, but because they embody a broader normative architecture tailored to the unique characteristics of exceptional crimes. From a human rights perspective, codification enhances legal certainty by improving the accessibility, clarity, and coherence of criminal legislation. At the same time, the continued operation of special statutes ensures that extraordinary enforcement powers remain subject to legality, necessity, proportionality, due process, and institutional accountability. Accordingly, the codification of exceptional crimes strengthens, rather than weakens, Indonesia's capacity to combat serious crime while maintaining conformity with constitutional and international human rights standards.

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