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Integration of Bribery and Corruption Offenses into the National Criminal Code

(Conflict of the Principles *Lex Specialis Derogat Legi Generali* and *Lex Posterior Derogat Legi Priori)*

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ABSTRACT

The Law Number 1 of 2023 on the Criminal Code (New Criminal Code), which will take effect in 2026, has integrated the offenses of bribery and corruption previously regulated specifically in Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of Corruption Crimes (Anti-Corruption Law). This integration is based on the principle of *lex posterior derogat legi priori,* where the New Criminal Code, as a newer law, replaces the previous provisions. However, the author argues that this approach creates normative conflicts because it violates the principle of *lex specialis derogat legi generali*, where the Anti-Corruption Law, as a special criminal law, should remain applicable to corruption as an extraordinary crime. This analysis also discusses the differing opinions between Prof. Edward Omar Sharif Hiariej (Eddy Hiariej), who supports integration for legal decolonization and social reintegration, and Prof. Romli Atmasasmita, who opposes it because it downgrades corruption to an ordinary offense. The discussion results indicate potential legal chaos, uncertainty for law enforcers, and weakening of anti-corruption efforts.

KEYWORDS

Bribery Offense; Corruption Offense; National Criminal Code; Conflict of Principles

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INTRODUCTION

The enactment of the National Criminal Code (KUHP Nasional) through Law No. 1 of 2023 in 2026 marks an important milestone in the reform of Indonesian criminal law. This reform aims to achieve decolonization from the Dutch colonial legal heritage, as reflected in the Wetboek van Strafrecht (WvS) of 1918, and to apply restorative justice principles that are more humane and oriented towards the social reintegration of offenders.[1] However, amid this progressive narrative, one crucial issue that has arisen is the integration of corruption offenses, including bribery, gratification, and acts that cause financial loss to the state, from Law No. 31 of 1999 on Eradication of Corruption Crimes (Tipikor Law) as amended by Law -Law Number 20 of 2001 into the National Criminal Code, specifically in Articles 603 to 606. This integration changes the status of corruption offenses from extraordinary crimes to general crimes, which normatively reduces the specificity of their handling and potentially weakens the effectiveness of eradicating corruption as an endemic threat to state integrity.

Historically, the Anti-Corruption Law was designed as an extraordinary instrument to combat corruption after the 1998 reform, in which corruption was recognized as a crime that undermined the economic and social foundations of the state, as stated in MPR Decree No. XI/MPR/1998 on Clean and Corruption, Collusion, and Nepotism-Free State Administration.[2] This law establishes heavier criminal penalties, including a minimum sentence of four years' imprisonment for crimes causing financial loss to the state (Article 2), as well as special procedures, such as the reverse burden of proof, wiretapping, and exclusive authority for institutions like the Corruption Eradication Commission (KPK). Its integration into the National Criminal Code, based on the principle of *lex posterior derogat legi priori* (the new law supersedes the old), appears to be aimed at avoiding duplication of norms and simplifying the national criminal justice system. However, this approach has the potential to conflict with the principle of *lex specialis derogat legi generalis* (special laws override general laws), because the National Criminal Code, as a general law, could erode the specificity of the Anti-Corruption Law as a special law, thereby giving rise to conflicts in the interpretation of norms during the transition period until 2026.

From a normative legal perspective, this integration raises fundamental questions about the hierarchy of norms in the Indonesian criminal justice system. The principle of lex posterior does give priority to the National Criminal Code as the newer law, but without adequate harmonization, this could result in disparities in punishment—for example, a reduction in the minimum penalty from 4 years to 2 years for certain offenses—as well as a loss of the deterrent effect that is essential to eradicating corruption. Furthermore, this integration has the potential to be inconsistent with Indonesia's international commitment to the 2003 United Nations Convention Against Corruption (UNCAC), which was ratified through Law Number 7 of 2006,[3] where the state is required to comprehensively criminalize corruption

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[1] General Explanation of Law Number 1 of 2023 on the Criminal Code.

[2] Decree of the People's Consultative Assembly on the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, TAP MPR No. XI/MPR/1998.

[3] United Nations Convention Against Corruption (UNCAC), 2003, ratified by Indonesia through Law Number 7 of 2006.

with effective and proportionate sanctions. If corruption is reduced to a general offense, then specific mechanisms such as asset recovery and prevention through governance strengthening may be disrupted, as criticized in a comparative study of corruption sanctions that highlights the inconsistency between the Anti-Corruption Law and the National Criminal Code. Furthermore, this contradiction may conflict with the 2005-2025 National Long-Term Development Plan (RPJPN), which emphasizes the eradication of corruption as a key pillar of sustainable development.

The author disagrees with this partial integration approach, as it has the normative potential to cause legal chaos, transitional norm conflicts (including the application of the *lex favor reo* principle that benefits the defendant), and weaken the commitment to eradicating corruption as a national priority. This article analyzes these implications through the lens of criminal law principles, the doctrine of recodification, and expert opinions, focusing on the conflict between Prof. Eddy O.S. Hiariej, who supports integration as a step toward decolonization and efficiency.[4] and Prof. Romli Atmasasmita, who criticizes it as a setback in the fight against economic crime.[5] In addition, the discussion will explore concrete case studies in Indonesia, international comparisons with anti-corruption models in countries such as Singapore or Brazil that maintain specific laws, and the long-term impact on the criminal justice system, including the potential increase in the perception of impunity and the urgency of revising the Anti-Corruption Law to accommodate contemporary legal challenges. Through this analysis, it is hoped that normative recommendations for better harmonization can be provided, so that criminal law reform does not sacrifice the integrity of the state.

METHOD

This study uses a normative legal research method, which focuses on analyzing legal norms through a statute approach to examine conflicts of legal principles in the integration of bribery and corruption offenses into the National Criminal Code. This normative legal approach was chosen because of the abstract and normative nature of the issue, where primary data in the form of laws such as Law No. 1 of 2023 on the Criminal Code and the Anti-Corruption Law were analyzed systematically to identify conflicts between norms. The statute approach was carried out by examining all relevant laws and regulations, including doctrinal interpretations and jurisprudence, to ensure a comprehensive analysis without empirical field elements.

This method is in line with the approach presented in the Airlangga University (Unair) repository, as in the thesis “The Concept of Default in Fiduciary Guarantees after Constitutional Court Decision Number 18/PUU-XVII/2019” (2020) by a researcher at Unair, who used the statute approach in normative legal research to analyze legislation related to fiduciary guarantees. Similarly, in “The Application of the Principle of Preference in Criminal Cases” (2019) from the Unair repository, this approach was applied to explore conflicts of criminal norms through statutory review. In addition, the article “Deconstructing the Simple Evidence System in Bankruptcy” (2019) on the Unair website emphasizes the use of the statute

[4] Eddy OS Hiariej, *Paradigma Baru Hukum Pidana Nasional* (Jakarta, 2023).
[5] Romli Atmasasmita, *Rekonstruksi Asas-Asas Hukum Pidana dan Hukum Acara Pidana Indonesia* (Jakarta: Prenada Media Group, 2022).

approach in normative jurisprudence for the deconstruction of norms, which is similar to the analysis of the conflict between the principles of lex specialis and lex posterior here. This approach is also supported by "Acquisition of Land Rights Derived from Land Use Permits" (Unair repository, no specific date), which states the advantages of this method in gaining an in-depth understanding of positive law.

Secondary data includes legal literature, journals, and expert opinions such as the works of E.O.S. Hiariej and Romli Atmasasmita, which were analyzed descriptively and analytically to draw normative conclusions. Data collection was conducted through a literature review, while analysis used grammatical and systematic interpretation methods to avoid subjective bias. Thus, this study ensures objectivity and relevance to contemporary legal issues in Indonesia.

RESULT & DISCUSSION

I. Analysis of the Principles of Lex Specialis Derogat Legi Generali and Lex Posterior Derogat Legi Priori in the Context of Indonesian Criminal Law

The principle of lex specialis derogat legi generali states that special laws prevail over general laws when both regulate the same matter. In the context of criminal acts of corruption, the Anti-Corruption Law is a special criminal law designed to deal with corruption as an extraordinary crime, with provisions such as the death penalty in certain circumstances (Article 2 paragraph (2) of the Anti-Corruption Law) and specific calculations of state losses. This principle has been widely applied in Indonesian jurisprudence, where courts often give precedence to specific norms to ensure the effectiveness of law enforcement against systemic crimes such as corruption.

Conversely, the New Criminal Code regulates corruption as a general offense (for example, Article 603 of the New Criminal Code adopts Article 2 of the Anti-Corruption Law with modifications), thereby lowering its status to delicta commune. The author disagrees with the application of the principle of lex posterior derogat legi priori—where the New Criminal Code, as a newer law, replaces the provisions of the Anti-Corruption Law—because this ignores the specific nature of corruption, which requires a firm approach to prevent massive losses to the state. This integration has the potential to create conflicts of norms, such as differences in criminal penalties (for example, lighter minimum penalties in the New Criminal Code compared to the Anti-Corruption Law), which can lead to uncertainty in law enforcement.

Furthermore, the principle of lex specialis is often associated with the principle of systematische, whereby specific norms not only override general norms but also complement them. In cases of corruption, the Anti-Corruption Law not only provides for heavier criminal penalties but also reverse burden of proof procedures and the authority of institutions such as the Corruption Eradication Commission (KPK), which are not fully covered in the New Criminal Code. The absolute application of the lex posterior principle can lead to anomalies, where new laws actually weaken specific instruments that have proven to be effective.[6] This analysis is supported by international legal doctrine, in which lex specialis is often used to

[6] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Cahaya Atma Pustaka, 2010).

protect specific legal regimes such as human rights or the environment, similar to corruption as a threat to state stability.

In Indonesian court practice, conflicts between norms are often resolved through judicial interpretation. For example, in Supreme Court decisions related to corruption crimes, courts tend to apply the Anti-Corruption Law as lex specialis to avoid disparities in sentencing. However, with the enactment of the New Criminal Code, judges may face a dilemma: whether to follow the new, more lenient norms or to maintain the extraordinary spirit of the Anti-Corruption Law? This could lead to inconsistent rulings, where similar cases are treated differently based on conflicting interpretations of principles.[7]

Furthermore, the economic implications of this conflict of norms should not be overlooked. Corruption causes trillions of rupiah in losses to the state each year, and downgrading it to a general criminal offense could reduce its deterrent effect, thereby increasing the prevalence of corruption. The author argues that the lex posterior approach is not in line with the objectives of criminal law reform, which should strengthen, not weaken, the fight against corruption.

II. Integration of Corruption Offenses into the National Criminal Code (Law No. 1 of 2023)

The integration of corruption offenses into the National Criminal Code has sparked debate among Indonesian criminal law experts. On the one hand, supporters of integration—such as Prof. Eddy O.S. Hiariej—see it as a progressive step toward legal decolonization, efficient recodification, and a more humanistic criminalization paradigm with a restorative justice and social reintegration approach. This integration is considered to avoid duplication of norms between the Anti-Corruption Law and the Criminal Code, while maintaining the principle of lex specialis for the special handling of corruption, including the authority of institutions such as the Corruption Eradication Commission (KPK). Prof. Eddy emphasized that the National Criminal Code does not weaken the eradication of corruption, but rather simplifies the system by placing core corruption crimes (such as causing financial loss to the state and bribery) as bridging articles, so that the Anti-Corruption Law remains in force as a special umbrella without significant conflict. This approach also supports judicial efficiency and focuses on prevention rather than retribution alone.

On the contrary, sharp criticism came from Prof. Romli Atmasasmita, who considered this integration a fatal setback. According to him, the removal of corruption offenses from the Criminal Code causes them to lose their status as extraordinary crimes, becoming ordinary offenses equivalent to conventional crimes such as theft or embezzlement. This abandons the principle of lex specialis derogat legi generalis, causing the loss of the special authority of law enforcement agencies (the National Police, the Attorney General's Office, and the Corruption Eradication Commission), disparities in punishment, and weakening the deterrent effect. Prof. Romli argues that this partial recodification is misguided because Article 2 of the Anti-Corruption Law, as a core crime, should remain independent to deal

[7] Romli Atmasasmita, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan* (Jakarta: Prenada Media Group, 2010).

with corruption as an endemic threat in Indonesia, which causes massive damage to state finances and violates the socio-economic rights of the people. This integration is considered a failure in the mission of true decolonization, as it ignores the local context and international commitments (such as UNCAC).

Similar opinions were expressed by institutions such as Indonesia Corruption Watch (ICW), which noted at least four major weaknesses: the loss of the specificity of corruption crimes, the reduction of the minimum criminal penalty (for example, from 4 years to 2 years for certain offenses), potential obstacles to investigation, and inconsistency with the recommendations of the UN anti-corruption convention, which have not been fully criminalized. This criticism is reinforced by Indonesia's stagnant or declining corruption perception index, indicating that integration risks reducing the effectiveness of corruption eradication amid endemic practices.

However, some experts, such as Prof. Andi Hamzah (although more focused on general principles of criminal law), implicitly support the need for specific norms to avoid excessive criminalization of public policy, which is in line with concerns about the loss of specificity. This debate is not only academic, but reflects a broader polarization: one side (supported by the government's agenda) sees reform as modern and efficient progress, while the other side (including civil society, such as ICW and critical academic voices) considers it a setback that threatens the national anti-corruption commitment.

The author agrees with the critical views of Prof. Romli Atmasasmita and ICW, because this integration has the potential to cause systemic chaos—such as a decrease in deterrent effects, transitional norm conflicts (including the application of the lex favor reo principle), and the weakening of special law enforcement mechanisms. This debate underscores the need for an in-depth evaluation after the National Criminal Code comes into effect in 2026, so that eradicating corruption remains a priority amid Indonesia's endemic challenges.

III. Potential for Normative Conflict and Legal Chaos

The enactment of the New Criminal Code will cause normative conflicts due to the revocation of articles in the Anti-Corruption Law (such as Articles 2, 3, 5, 6, 11, 12, and 13) and their replacement with new articles in the Criminal Code (for example Articles 603-610), which carry lighter criminal penalties and modifications to the Delphy system. This could cause uncertainty for law enforcement officials, where corruption loses its special status, potentially increasing the trend of lenient sentences and weakening the commitment to anti-corruption.

As an empirical example, the trend in corruption case verdicts in 2024 shows an increase in lenient sentences, which could worsen under the New Criminal Code. In the e-KTP case, the application of the Anti-Corruption Law allows for severe penalties, but under the New Criminal Code, modifications to the offense may result in more lenient verdicts, creating injustice.[8] In addition, conflicts of norms can arise in procedures, such as the absence of the reverse burden of proof, making it difficult for the KPK to prove state losses.

From an international perspective, countries such as Singapore maintain specific anti-corruption laws (Corrupt Practices Investigation Bureau Act) that

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[8] Eddy O S Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2014).

operate independently of the general criminal code, resulting in low levels of corruption. In Indonesia, this integration conflicts with the UNCAC (United Nations Convention Against Corruption), which encourages a special regime for corruption. Long-term implications include a decline in Indonesia's corruption perception index, which currently ranks 110th in the world, and the potential for increased state losses.[9]

Furthermore, legal chaos can affect foreign investment, where uncertainty in norms hinders business due to the risk of uncontrolled corruption. The author recommends revising the New Criminal Code to integrate specific elements of the Anti-Corruption Law, such as the death penalty for massive cases, to avoid this conflict.

IV. Implications of the Integration of Corruption Offenses into the National Criminal Code (Law No. 1 of 2023) on Efforts to Eradicate Corruption

The integration of some corruption offenses into the National Criminal Code through Articles 603 to 606 has had various implications for the effectiveness of corruption eradication in Indonesia. On the one hand, this approach is intended to avoid duplication of norms and simplify the criminal justice system through recodification, while maintaining the principle of lex specialis so that Law No. 31 of 1999 on Eradicating Corruption Crimes (Tipikor Law), as amended by Law No. 20 of 2001, remains in force as a special umbrella law. However, on the other hand, this integration raises concerns that corruption will lose its status as an extraordinary crime, becoming equivalent to general criminal offenses, which has the potential to reduce the deterrent effect, disparity in punishment, and the specificity of law enforcement mechanisms.

One of the main implications is a reduction in the minimum criminal penalties for certain offenses. For example, the minimum criminal penalty for acts that cause financial loss to the state (similar to Article 2 of the Anti-Corruption Law) has been reduced from 4 years to 2 years imprisonment, while the minimum fine has been significantly reduced. This is considered to weaken the deterrent effect, especially in the midst of endemic corruption that harms the socio-economic rights of the community. In addition, the loss of procedural specificity has the potential to affect the authority of institutions such as the Corruption Eradication Commission (KPK), even though the Anti-Corruption Law retains special mechanisms such as wiretapping and reverse burden of proof. Other consequences include the potential for regulatory conflicts during the transition period until the National Criminal Code comes into full effect in 2026, as well as inconsistencies with international obligations under the United Nations Convention Against Corruption (UNCAC), where some recommendations on criminalization have not been fully adopted.

Empirical data reinforces these concerns. Transparency International's Corruption Perceptions Index (CPI) for 2024 shows Indonesia's score at 37 out of 100, a slight improvement but still poor and lagging behind neighboring ASEAN countries such as Malaysia and Vietnam. A public survey in 2025 found that around

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[9] Transparency International, *Corruption Perceptions Index 2023* (Berlin: Transparency International, 2024).

35% of respondents rated the eradication of corruption as poor, while this stagnation or regression was attributed to a lack of systematic initiatives from the government, including the impact of new regulations on anti-corruption commitments.

However, this integration also brings positive potential, such as clarification of corporate criminal liability, which was previously not explicitly stated in the Anti-Corruption Law, as well as efficiency in the judicial system through the avoidance of duplication. However, the main challenges remain the risk of reduced coordination between institutions (the National Police, the Attorney General's Office, and the Corruption Eradication Commission), obstacles to investigation, and an increased perception of impunity in the public sector. To address these implications, several policy recommendations can be considered objectively:

a. Harmonization of Norms: Formation of a special inter-agency team (involving the Ministry of Law and Human Rights, the Corruption Eradication Commission, the Attorney General's Office, and civil society organizations such as ICW) to revise the Anti-Corruption Law so that it is in line with the National Criminal Code, without eliminating the essence of the specificity of extraordinary crimes and strengthening asset recovery mechanisms.[10]
b. Enhancing the Capacity of Law Enforcement Officials: Intensive training programs for investigators, prosecutors, and judges on the application of transitional norms, including the interpretation of bridging articles and the principle of lex specialis, as well as adaptation to a more restorative sentencing paradigm.[11]
c. Monitoring and Evaluation: Periodic monitoring through forums such as Focus Group Discussions (FGD) conducted by the Attorney General's Office, as well as independent evaluations after 2026 to measure the impact on the number of cases, the rate of recovery of state losses, and the corruption perception index.[12]
d. Strengthening Supporting Regulations: Accelerating the ratification of the Asset Seizure Bill and other revisions to fill gaps in the UNCAC, as well as optimizing prevention through strengthening governance in vulnerable sectors such as procurement of goods/services and vital commodities.[13]

With a balanced approach, reform through the National Criminal Code can support more effective and sustainable corruption eradication, while maintaining the national commitment to justice and integrity. A thorough evaluation is needed to ensure that these changes do not compromise the priority of combating corruption as a systemic threat to Indonesia's development.

[10] Komisi Pemberantasan Korupsi (KPK), *Naskah Akademik Urgensi Perubahan UU Pemberantasan Tindak Pidana Korupsi dalam Menghadapi Kodifikasi KUHP* (Jakarta: Direktorat Jejaring Pendidikan KPK, 2023).

[11] Muladi & Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana*, ed. revisi ed (Bandung: Alumni, 2018).

[12] Kejaksaan Agung Republik Indonesia, *Laporan FGD: Mitigasi Risiko Penerapan KUHP Baru terhadap Penanganan Perkara Khusus* (Jakarta: Badiklat Kejaksaan RI, 2024).

[13] Yenti Garnasih, *Kriminalisasi Pencucian Uang dan Perampasan Aset: Tantangan Penegakan Hukum* (Jakarta: Rajawali Pers, 2022).

CONCLUSION

The integration of corruption offenses, including bribery and acts that harm state finances, into the National Criminal Code (Law No. 1 of 2023) has the potential to cause significant normative conflicts. Although based on the principle of lex posterior derogat legi priori (the new law supersedes the old), this integration could weaken the application of the principle of lex specialis derogat legi generalis (special law supersedes general law), thereby risking corruption losing its status as an extraordinary crime and becoming equivalent to ordinary criminal offenses. There are conflicting opinions supporting integration as an effort at legal decolonization, efficient recodification, and a humanistic paradigm that maintains specificity through bridging articles. On the other hand, those who oppose it criticize it as a step backward, as it has the potential to reduce the minimum criminal penalty, cause disparities in sentencing, and weaken the deterrent effect and special authority of law enforcement.

This integration could create legal chaos, uncertainty regarding transitional norms, and a decline in corruption eradication efforts amid its endemic nature in Indonesia. This is particularly relevant ahead of the full implementation of the National Criminal Code in 2026, where the risk of conflict with the Anti-Corruption Law becomes increasingly apparent without adequate harmonization. The inclusion of corruption offenses in the National Criminal Code could weaken anti-corruption efforts because such partial integration has the potential to undermine the national anti-corruption commitment, unless profound adjustments are made. Next, a revision of the National Criminal Code and/or the Anti-Corruption Law is needed to strengthen the specificity of extraordinary crimes and special mechanisms (such as reverse burden of proof and asset recovery); (2) The formation of an inter-agency harmonization team before 2026; and (3) An independent post-implementation evaluation to ensure that the priority of eradicating corruption remains intact as a systemic threat to development and social justice in Indonesia.

Based on the risk of normative conflict and the weakening of the status of corruption as an extraordinary crime due to the integration of corruption offenses into the National Criminal Code (Law No. 1 of 2023), balanced mitigation measures are needed. These recommendations take into account the benefits of decolonization, recodification efficiency, and a humanistic paradigm, while addressing criticism of the decline in deterrent effects, disparities in sentencing, and uncertainty surrounding the transition period leading up to 2026.

1. Revision of the National Criminal Code and/or Anti-Corruption Law. Conduct a thorough revision of relevant articles before the end of 2025 to strengthen the specificity of corruption, including:
   a. Maintain and strengthen special mechanisms such as the reverse burden of proof and asset recovery.
   b. Adjusting criminal penalties so that they are not lower than those stipulated in the Corruption Eradication Law, avoiding disparities while remaining humane.
   c. Adding an explicit transitional clause that prioritizes the principle of lex specialis until harmonization is complete. This maintains the efficiency of recodification without sacrificing deterrent effect.

2. Formation of an Inter-Agency Harmonization Team. Form a team immediately (early 2025) involving the Ministry of Law and Human Rights, the Corruption Eradication Commission, the Attorney General's Office, the National Police, academics, and civil society, with the following tasks:
   a. Mapping conflicts of norms and overlapping offenses.
   b. Developing interim interpretation guidelines for law enforcement officials and judges.
   c. Holding public consultations on balancing humanistic paradigms and eradicating corruption. This step ensures a smooth transition and reduces legal chaos.
3. Post-Implementation Independent Evaluation: Conduct an independent evaluation by a neutral institution (e.g., the Judicial Commission or a research institution) starting in mid-2026, focusing on:
   a. Measuring the impact on the level of corruption eradication and the effectiveness of specific mechanisms.
   b. Identify disparities in sentencing and uncertainty in norms.
   c. Assess public perception through national surveys. The results of the annual evaluation must be transparent and form the basis for further adjustments.

DECLARATION OF CONFLICTING INTERESTS

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