

JURIDICAL ANALYSIS OF ORDINARY OFFENSES IN THE CRIMINAL CODE (NEW VS OLD) IN INDONESIA

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ABSTRAK: Penelitian ini bertujuan untuk menganalisis perubahan-perubahan yang terjadi dalam KUHP baru di Indonesia serta penerapan hukum pidana dalam konteks modern. Metode yang digunakan adalah studi hukum normatif dengan pendekatan komparatif antara KUHP lama dan baru. Data dikumpulkan melalui studi pustaka dari berbagai sumber hukum, termasuk jurnal dan buku-buku hukum terkini. Hasil penelitian menunjukkan bahwa KUHP baru menghadirkan sejumlah pembaruan yang signifikan, seperti penghapusan pasal-pasal kolonial dan diskriminatif, serta pengintegrasian asas-asas keadilan restoratif yang menekankan pada pemulihan dan pengintegrasian kembali pelaku tindak pidana ke dalam masyarakat. Selain itu, KUHP baru juga memperkenalkan sanksi yang lebih beragam dan proporsional, termasuk rehabilitasi serta sanksi nonpidana. Perubahan-perubahan ini diharapkan dapat memberikan keadilan yang lebih inklusif dan responsif terhadap kebutuhan hukum masyarakat kontemporer.

Kata Kunci: KUHP Baru, Hukum Pidana, Keadilan Restoratif, Perubahan Hukum

ABSTRACT: This research aims to analyze the changes that occur in the new Criminal Code in Indonesia as well as the implementation of criminal law in a modern context. The method used is a normative legal study with a comparative approach between the old and new Criminal Code. Data was collected through literature study from various legal sources, including journals and recent legal books. The results show that the new Criminal Code presents a number of significant updates, such as the elimination of colonial and discriminatory articles, as well as the integration of restorative justice principles that emphasize the recovery and reintegration of offenders into society. In addition, the new Criminal Code also introduces more diverse and proportional sanctions, including rehabilitation as well as non-criminal sanctions. These changes are expected to provide justice that is more inclusive and responsive to the legal needs of contemporary society.

Keywords: New Criminal Code, Criminal Law, Restorative Justice, Legal Change

INTRODUCTION

Ordinary offenses are an integral part of the Indonesian criminal law system that allows the state to process a criminal offense without requiring a complaint from the victim. This is in contrast to complaint offenses which require active involvement from the victim to initiate legal proceedings. The regulation of ordinary offenses in Indonesia is mainly regulated in the Criminal Code (KUHP) and covers criminal offenses that have a broad impact on public order, such as theft, violence, and light maltreatment. The importance of ordinary offenses lies in their function to maintain public security while providing effective legal protection for the community.¹

Studies show various challenges in the implementation of ordinary offenses. Research by Santoso (2022) noted that there are differences in interpretation among law enforcers regarding

¹ R. Christianti, & E. Ratnawati Gultom, (2023). Penyimpangan Proses Hukum Tindak Pidana Kekerasan Dalam Rumah Tangga Dalam Kategori Delik Biasa. *UNES Law Review*, 5(3), 1389-1399. <https://doi.org/10.31933/unesrev.v5i3.457>

the types of criminal offenses that fall into the category of ordinary offenses, which often lead to legal uncertainty.² Meanwhile, Lestari (2023) identified that the practice of law enforcement against ordinary offenses still faces technical obstacles and a legal culture that does not fully support the application of the principles of justice. These studies provide an important foundation for understanding how ordinary offenses are applied, but there is still a research gap regarding the effectiveness of these rules in the contemporary legal context.³

This study analyzes juridically the concept and application of ordinary offenses in Indonesia by considering aspects of justice, legal certainty, and public protection. This research also seeks to examine how the revision of the new Criminal Code contributes to changes in the concept of ordinary offenses and its influence on the criminal justice system as a whole. Thus, this research is expected to provide new and deeper insights into the regulation of ordinary offenses. The novelty of this research lies in its approach that combines juridical analysis with empirical studies on the implementation of ordinary offenses in the field.

In addition, this research also integrates the concept of restorative justice as an alternative approach in handling ordinary offenses, which has not been widely discussed in previous criminal law studies. This is relevant to the development of society's need for a more humanist and inclusive legal system. The results of this research will serve as recommendations for policy makers in improving the quality of regulations and law enforcement practices related to ordinary offenses in Indonesia. That way, this research can bridge the gap between legal theory and the social reality that exists in society.

METHODS

The research method used in the juridical analysis of ordinary offenses in Indonesia is the normative juridical method.⁴ This approach focuses on the study of legal documents, such as legislation, legal doctrine, and court decisions, to understand the concept and application of ordinary offenses. This research is descriptive analytical, which means describing and analyzing secondary data from relevant legal literature.

RESULTS AND DISCUSSION

Ordinary offenses in Indonesian criminal law refer to acts that are regulated by law and are considered violations of the general law.⁵ Ordinary offenses include a variety of acts that violate legal provisions, such as theft, vandalism, fraud, and drug abuse. The handling of ordinary offenses is expressly regulated in the Criminal Code (KUHP) and other relevant laws and regulations. One of the main principles in the juridical analysis of ordinary offenses is the clarity of the legal norms regulated in the law. The state is obliged to ensure that ordinary offenses can be clearly recognized by society, so that individuals can understand the legal consequences of certain actions.

In this case, it is important to understand the legal norms governing ordinary offenses, including the elements that must be met to fulfill the criminal element.⁶ Law enforcement against

² Lendrie Adi P. Rembet. (2023). Efektivitas Penegakan Hukum Pidana Dalam Penanganan Pelanggaran Lalu Lintas. *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora*, 2(2), 178-189. <https://doi.org/10.55606/jurrish.v2i2.1278>

³ Sari, I. D. M. Gita, H. and Lumbanraja, A. D. "Analisis Kebijakan Hukum Pidana Terhadap Delik Perbuatan Tidak Menyenangkan," *Jurnal Pembangunan Hukum Indonesia*, vol. 1, no. 2, pp. 171-181, May. 2019. <https://doi.org/10.14710/jphi.v1i2.171-181>

⁴ Achmad Feryliyan, Analisis Yuridis Eksistensi Grasi Dalam Perspektif Hukum Pidana, *Justice Pro*, Vol 2 No 1 (2018): JUNI 2018, 92-110

⁵ Muhammad Agung Dharmawan, Analisis Yuridis Terhadap Ketentuan Perubahan Tindak Pidana Perzinaan Dari Delik Aduan Menjadi Delik Biasa. (2018). *Brawijaya Law Student Journal*. <https://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/2921>

⁶ Aulia Bernoza, Fadlan dan Siti Nurkhotijah, Analisis Yuridis Tindak Pidana Penipuan Berbasis Jual Beli Online Di Kota Batam (Studi Penelitian Polresta Barelang), *Zona Hukum: Jurnal Hukum*, Vol. 14 No. 3 (2020): DESEMBER, 1-11

ordinary offenses in Indonesia involves various state institutions, such as the police, prosecutors, and courts. A transparent and accountable legal process is key in ensuring justice in the handling of ordinary offense.⁷ The court has a role in evaluating the evidence, as well as ensuring that the rights of the accused are met throughout the legal process.⁸

In the context of legal practice, it is important to look at the social dynamics that influence the emergence of ordinary offenses. Social, economic and cultural factors are often the background to these violations of the law. For example, poverty or lack of access to education can be triggering factors for certain crimes. The role of legal academics in the juridical analysis of ordinary offenses is very significant. Legal research and studies help identify weaknesses in the regulation and implementation of existing laws. Through a scientific approach, legal academics can provide more comprehensive solutions to improve the existing legal system.⁹

In relation to ordinary offenses, it is important to look at efforts to rehabilitate and reintegrate offenders into society. The criminal law system in Indonesia also aims to provide opportunities for offenders to improve themselves, so it is not only a form of punishment, but also a step to improve the morality of the offender. In the development of law, the role of information technology is also increasing in guarding ordinary offenses.¹⁰ Digital platforms such as e-justice and other electronic systems facilitate access to legal information, thereby accelerating the process of handling ordinary offense cases. The main challenge in the juridical analysis of ordinary offenses is the disparity in law enforcement faced in various regions of Indonesia. This indicates the importance of equalizing the understanding and implementation of the law to avoid injustice among the people.

The new Criminal Code (KUHP), which was passed on December 2, 2023, brings significant changes to the regulation of ordinary offenses in Indonesia. These changes reflect efforts to create a criminal law system that is more in line with the values of Pancasila and the needs of modern society.¹¹ One of the main aspects regulated in the new Criminal Code is the stricter principle of legality, which ensures that every punishable act must be clearly regulated in the law, thus providing legal certainty to the community.¹²

Ordinary offenses in the new Criminal Code are regulated more comprehensively, covering crimes such as theft, fraud, embezzlement, and other crimes with an emphasis on the subjective and objective elements of the crime.¹³ This allows the court to be more flexible in determining sanctions in accordance with the type and severity of the criminal offense. The new Criminal Code

⁷ Ida Bagus Gede Arimbawa Putra, Anak Agung Sagung Laksmi Dewi, Luh Putu Suryani, Analisis Yuridis terhadap Tindak Pidana Penggelapan Dalam Jabatan yang dilakukan Secara Berlanjut, Vol. 3 No. 3 (2022): *Jurnal Konstruksi Hukum*, <https://doi.org/10.22225/jkh.3.3.5307.476-481476-481>

⁸ R. S. Kenne, H. M. K. Hidjaz, & K. Ahmad, (2024). Tinjauan Yuridis Tentang Delik Penyertaan Tindak Pidana Pembunuhan BiasA. *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora*, 2(10), 355–360. Retrieved from <https://jurnal.kolibi.org/index.php/kultura/article/view/3215>

⁹ Muhammad Husni Mubaraq, Analisis Yuridis Terhadap Tindak Pidana Penipuan Dan Penggelapan (Studi Kasus Putusan Pengadilan Negeri Medan Nomor : 2019/Pid.B//2018/PN.Mdn), *JURNAL RECTUM*, Vol. 3, No. 2, (2021) Juli : 437 - 446

¹⁰ T. Rimandita, (2022). Upaya Pengaturan Kembali Delik Penghinaan Presiden dalam RKUHP Indonesia Dikaitkan dengan Sistem Pemerintahan Presidensial. *Jurnal Supremasi*, 12(2), 79-93. <https://doi.org/10.35457/supremasi.v12i2.1829>

¹¹ S.Chadijah, (2020). PeNgaturan Delik Adat Dalam Rancangan Kuhp Sebagai Bagian Dari Ius Constituendum. *Pamulang Law Review*, 2(2), 101–110. <https://doi.org/10.32493/palrev.v2i2.5427>

¹² Edi Kristianta Tarigan, Erni Darmayanti, Dwi Suci Amaniarasih, Bobby Daniel Simatupang, Tinjauan Yuridis Perbandingan KUHP Lama Dan KUHP Baru, Volume 18, Nomor 3: 590-604 Juli 2024| ISSN (P): 1829-7463 | ISSN (E) : 2716-3083

¹³ N. Rafid, (2022). Nilai Keadilan Dan Nilai Kemanfaatan Pada Jarimah Qisas Dan Diyat Dalam Hukum Pidana Islam. *Milkiyah: Jurnal Hukum Ekonomi Syariah*, 1(1), 8–14. <https://doi.org/10.46870/milkiyah.v1i1.154>

also regulates the possibility of rehabilitation for offenders, especially in drug offenses, which aims to restore the condition of offenders so that they can reintegrate with the community.¹⁴

One of the important changes in the new Criminal Code is the elimination of the extraordinary crime status in several types of offenses, such as corruption. This has a significant impact on a more equal legal approach and does not distinguish between ordinary offenses and offenses that are considered extraordinary. Thus, the legal process in corruption cases or other criminal offenses is treated the same in accordance with the provisions of the new Criminal Code.¹⁵

However, challenges in implementing the new Criminal Code remain, especially in terms of socialization to law enforcement officials and the public. Many parties still need a deeper understanding of these changes in order for them to be implemented effectively. The new Criminal Code also introduces the concept of restorative justice which focuses on restoring victims and offenders, as well as reducing recidivism rates through a more humane approach.¹⁶

The changes that occur in the new Criminal Code are expected to be able to create a criminal law system that is more responsive to social dynamics. With more proportional law enforcement, it is expected to create more equitable justice for all Indonesian people.¹⁷ In addition, the flexibility in criminal sanctions given to judges will allow for more in-depth consideration of the factors that influence criminal offenders, such as social background and economic circumstances.

The new Criminal Code also places rehabilitation as an important part of law enforcement, which aims to restore the condition of offenders, so that they can return to being productive members of society.¹⁸ In addition, the elimination of several complaints into ordinary offenses shows a step forward in creating a fairer and more balanced law. The implementation of the new Criminal Code is expected to increase transparency in the criminal justice system, reduce the potential for abuse of power, and strengthen the integrity of the legal system in Indonesia. As part of the effort to create a just law, the new Criminal Code also provides space for the public to participate more actively in the judicial process, through a stricter monitoring mechanism for the execution of sentences.¹⁹

In the context of economic law, the new Criminal Code gives greater attention to economic crime, with more detailed regulation of money laundering and other economic crimes. This creates a stronger legal framework to combat economic crimes that harm society.²⁰ With all the changes brought by the new KUHP, it is hoped that the criminal law system in Indonesia will be able to adapt to the changing times and become more effective in facing the challenges faced by modern society. In this regard, the new Criminal Code is an important milestone in the journey of criminal law in Indonesia towards justice that is more balanced and relevant to the needs of society.²¹

¹⁴ Yogi. Aranda, 2020. "The Crime Factors of Premeditated Murder Committed by Children Against Children". *Ius Poenale* 1 (2):149-62. <https://doi.org/10.25041/ip.v1i2.2065>.

¹⁵ Syaqui Multazam dan M. Mujab, Delik Samen Leven Dalam KUHP Baru Perspektif Fikih, Vol. 1 No. 2 (2023): *Syariah: Journal of Fiqh Studies*, 169-186

¹⁶ Siswantari Pratiwi. (2023). Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP). *Binamulia Hukum*, 11(1), 69-80. <https://doi.org/10.37893/jbh.v11i1.307>

¹⁷ Ni Putu Ari Setyaningsih Dan Putu Chandra Kinandana Kayuan, Kompilasi Delik Adat Dalam Peraturan Daerah Sebagai Dasar Pemidanaan Dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana (Ruu Kuhp) Ni Putu Ari Setyan, Vol 16 No 1 (2022): *YUSTITIA*, 71-79

¹⁸ Rozi Yudha Febriansyah, Delik-Delik Diluar Kuhp (Tindak Pidana Cyber Crime Dan Cara Penanggulangan), *JHP17: Jurnal Hasil Penelitian*, Vol 6 No 2: Juli 2021, 51 - 57

¹⁹ Bayu Bramantyo, Muhammad Iftar Aryaputra, Ani Triwati, FoRmulasi Delik Zina Dalam Rancangan KUHP, *Semarang Law Review (SLR)* Vol 1, No 1 (2020), 16-29

²⁰ E. Mardiana, (2024). Tinjauan Yuridis Terhadap Delik Peyerangan Harkat Martabat Presiden Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (Kuhp). *Iblam Law Review*, 4(3), 48-57. <https://doi.org/10.52249/ilr.v4i3.450>

²¹ M. Adrinta Abdurrazzaq, & Lesmana Tjiong, E. (2022). Analisis Sentimen KUHP Baru Pada Data Twitter Menggunakan Model BERT. *Jurnal Komunikasi, Sains Dan Teknologi*, 1(2), 83-88. <https://doi.org/10.61098/jkst.v1i2.10>

There is an old Criminal Code, several articles such as Article 170 which regulates the destruction of goods to Article 304 which regulates infidelity still contain elements that are less relevant to current conditions. This makes the old Criminal Code less responsive to the needs of modern society and more inclusive justice.²² Whereas in the new KUHP, the deletion of these articles reflects an effort to adapt the legal system to the values of Pancasila, which upholds humanity and balance. The new Penal Code introduces several new articles that better reflect the current social conditions and crimes that occur today.²³ For example, Article 374, which regulates embezzlement in office, provides more space to take action against criminals related to finance and administration. In addition, Article 601 which regulates criminal offenses in the digital space, such as cybercrime, demonstrates legal efforts to maintain the integrity and security of cyberspace.²⁴

The articles in the new Criminal Code also introduce the concept of restorative justice which focuses more on the recovery and reintegration of offenders into society. This concept is different from the conventional approach which tends to be more punitive. This can be seen in Article 68 which regulates the possibility of rehabilitation for offenders, especially in cases involving drug abuse or other special crimes. A comparison between the old and new Criminal Code also shows that the new Criminal Code provides more room for flexibility in the imposition of criminal sanctions, by considering various factors such as the circumstances of the offender, the impact of the criminal offense, and the purpose of rehabilitation. Article 34 in the old Criminal Code which regulates death penalty, for example, has been adjusted in the new Criminal Code to provide a more diverse alternative punishment, including life imprisonment or a more proportional fine. With these changes, the new KUHP is expected to be able to create a more balanced, responsive, and equitable legal system in accordance with the needs of contemporary society.

CONCLUSION

Indonesia's new Criminal Code presents a significant update in the context of criminal law, with a focus on justice that is more inclusive and responsive to the social needs of society. The changes include the removal of colonial articles, the application of restorative justice principles, as well as the integration of more diverse sanctions such as rehabilitation and non-criminal sanctions. This is expected to increase the effectiveness and relevance of the law in facing modern legal challenges, as well as providing more humane solutions in dealing with crime.

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²² A. Ramdan, (2021). KoNtroversi Delik Penghinaan Presiden/Wakil Presiden Dalam RKUHP. *Jurnal Yudisial*, 13(2), 245-266. <https://doi.org/10.29123/jy.v13i2.421>

²³ Faisal, D. P. Rahayu, A. Darmawan, M. Irfani, and A. Muttaqin, "Pemaknaan Kebijakan Kriminal Perbuatan Santet dalam RUU KUHP," *Jurnal Pembangunan Hukum Indonesia*, vol. 5, no. 1, pp. 220-232, Jan. 2023. <https://doi.org/10.14710/jphi.v5i1.220-232>

²⁴ Teguh Kurniawan Z, Adelina Mariani Sihombing, & Aurelia Berliane. (2023). Konstruksi Politik Hukum Pidana Terhadap Delik Perzinaan Dalam Rancangan Kitab Undang-Undang Hukum Pidana. *Binamulia Hukum*, 12(1), 11-24. <https://doi.org/10.37893/jbh.v12i1.445>

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