

Recriminalization in the New Criminal Code Against the Criminal Justice System Article on Information and Electronic Transactions

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The results of the discussion conclude that the principle of recriminalization or regulation of new criminal acts that were previously not clearly regulated or new articles related to computer crimes and electronic transactions as well as related to the criminal justice system and law enforcement policies to balance the interests of law enforcement of electronic transactions. This shows that the new Criminal Code attempts to combine the principle of substantive justice while maintaining criminal law as a last resort in resolving legal conflicts. The research method used is normative juridical, with a literature study of the New Criminal Code, national legal literature, and scientific articles discussing the principle of *ultimum remedium* and Criminal Code reform.

Keywords: 2023 Criminal Code, Criminal Justice System, Electronic Information and Transactions

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1. Introduction

The old Criminal Code which is inheritance Dutch colonial (*Wetboek van Strafrecht for Nederlandsch-Indië*) has valid more from One century without fundamental changes to values living law in Indonesian society. New Criminal Code born with Spirit decolonization law, namely replace system law criminal colonial with law criminal law rooted in the values of Pancasila, humanity and justice social. During the new Criminal Code change paradigm criminalization from retributive (retribution) becomes restorative (recovery), rehabilitative, and emphasize settlement conflict and balance social. Updates law criminal must directed to make it real balance between protection community and protection individual " so that law criminal No only nature repressive but also preventive and educational (Barda Nawawi Arief 2022: 45).

Technological advances and social change also influence the background to changes to the Criminal Code. The digital and internet era brings new challenges to criminal law, such as cybercrime, the spread of negative content, and privacy violations. Therefore, relevant and effective legal adjustments are needed to address these technological developments and social changes. Over the past few decades, the Indonesian Criminal Code has undergone significant revisions. The government and relevant institutions have collaborated to improve and update the Criminal Code to suit the needs of modern society. Some of the changes include the elimination of discriminatory articles, increased penalties for serious crimes, protection of victims' rights, child protection, and adaptation to technological developments. (Parningotan Malau, 2023).

The 2023 Criminal Code recognizes the development of information and communication technology, where electronic/computer systems become tools or targets of crime. Computer-based cybercrime is defined as an unlawful act involving digital devices, the internet, and electronic systems that harms the victim.

The cyber world impacts everyone's daily lives. A worrying cyber threat is hacking, the impact of which can disrupt national security. Selling personal data is rampant in cyberspace. This shows apparatus still weak in personal data protection public especially in the banking sector. The Criminal Code (KUHP) has enough wide arrangement crime cyber (*cybercrime*). But, is it the settings already adequate.

Arrangement action criminal cyber in the 2023 Criminal Code and the 2024 ITE Law shows mutual approach complete. However, still different in focus and characteristics regulations. The New Criminal Code (Law No. 1 of 2023) updates the Cyber Law (ITE Law) with adopt and reformulate a number of chapter digital crime for customized with technology latest. The focus covering arrangement action criminal cyber like access illegal, wiretapping (interception), distribution news lies (hoaxes), and pollution Name good, useful strengthen digital security and systems justice IT- based.

Even though it has promulgated since three last year, Law Number 1 of 2023 concerning the new Criminal Code (KUHP) just came into effect on January 2, 2026. On the same day, the law is passed and enforced Number 1 of 2026 concerning Adjustment Crime that changes a number of provision in Constitution Number 1 of 2023 concerning the Criminal Code. In total there are as many as fifty five points change the articles contained in Constitution Number 1 of 2023 concerning the Criminal Code.

The 2023 Criminal Code emphasizes aspects technical and protection system electronic in a way structural, while the 2024 ITE Law is more highlight aspect content, communication, and protection public from impact negative technology. Although second regulations This has experience modernization and show effort harmonization to principles law criminal, such as principle legality, proportionality, and protection of human rights, still there is inconsistency in definitions, terminology, and techniques potential formulation cause conflict normative and interpretative in implementation law in the field.

- a. Article 169 (Related to association / organization): Generally articles around number This arrange about inclusion in prohibited gatherings or forbidden.
- b. Article 170 (Related to Violence / Mob Attack): Article 170 of the 2023 Criminal Code (adopting the old Criminal Code) regulates about :

One of fundamental aspects in discourse the update of the Criminal Code is issue decriminalization that is deletion or release a number of actions from realm criminal Because No Again relevant or No in accordance with development dynamics social society. -Instead criminalize every form behavior that is considered No in accordance with certain moral norms, forming Constitution- now more selective in determine offense criminal law. For example, the provisions about a number of offense that has been This considered controversial or has only moral connotations has deleted or revised in the New Criminal Code (Ramadani, 2025).

The phenomena of decriminalization and recriminalization have generated deep theoretical debate in criminal law studies. A key question that frequently arises is: is the concept of criminal law in the New Criminal Code consistent with the principle of *ultimum remedium*? The principle of *ultimum remedium* asserts that the use of criminal law should be a last resort after all other non- -criminal resolution mechanisms, such as administrative sanctions or restorative remedies, have been explored and deemed inadequate (Safitri, Damayanti, & Sulistiyono, 2025).

Furthermore, harmonization between the New Criminal Code and other legal norms is also an important issue to consider in the context of the *ultimum remedium* principle. The New Criminal Code does not stand alone within the national legal system; it must be aligned with specific regulations, administrative

regulations, and other relevant policies. Policy approach law criminal need pay attention to the goal in development national that is For realize life a just and prosperous society as well as give certainty law.

2. Method

Methods used in study This is method juridical normative that is approach study laws that emphasize analyst regulation legislation, doctrine law, as well as literacy relevant laws. (Saebani, 2021). This method chosen Because focus study is examine in a way systematic norm law criminal in the New Criminal Code especially related phenomenon decriminalization and recriminalization as well as the relationship with principle ultimate remedium. Juridical approach normative allows researchers evaluate substance norm criminal, mechanism its application and its relevance with theory law modern criminal law.

Source study is Constitution Number 1 of 2023 concerning the New Criminal Code and regulations legislation that includes its implementation. Data collection techniques through studies bibliography and review document. In text Criminal Law Journal, Book text, and analysis law. Analysis results Then synthesized For produce comprehensive, conclusions regarding balance between the New Criminal Code 2023, with No Right to Use or Access Computers and Systems Electronics.

3. Results and Discussion

Recriminalization This occurs, for example, in a number of actions that are seen impact to interest public, including violation to security national, violation to values- social certain, as well as arrangement new related with law customs and laws that live in society (Zico et al., 2023). The phenomena of decriminalization and recriminalization have generated deep theoretical debate in criminal law studies. A key question that frequently arises is: is the concept of criminal law in the New Criminal Code consistent with the principle of *ultimum remedium*? The principle of *ultimum remedium* asserts that the use of criminal law should be a last resort after all other non- criminal resolution mechanisms, such as administrative sanctions or restorative remedies, have been explored and deemed inadequate (Safitri, Damayanti, & Sulistiyono, 2025).

Based on Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), the rules about interception or tapping experience changes and alignment, where provisions This absorb and replace previous rules There is in the Information and Transactions Law Electronics (ITE). Following is bullet points important related rule tapping in the New Criminal Code (Law 1/2023): In the replacement ITE Regulations : New Criminal Code formulate repeat action criminal previous wiretapping (interception) arranged in Article 31 of the ITE Law, unites it to in codification law criminal national.

Lex specialis derogat legi generali is a principle of legal interpretation which states that special law (*lex specialis*) overrides general law (*lex generalis*). According to Bagir Manan, there are several rules, namely:

- a. The provisions found in general legal rules remain valid, except those specifically regulated in the special legal rules;
- b. Terms and Conditions *lex specialis* must equal with provisions of *lex generalis* (laws) with Constitution);
- c. Terms and Conditions *lex specialis* must is at in environment the same law (regime) with *lex generalis*. Commercial Code and Civil Code You're welcome including environment law civil law.

In a way normative, overlapping overlap This potential violate fundamental principles of law criminal like principle legality, ne bis in idem, and proportionality, as well as cause ambiguity in implementation lex specialis principle derogatory legion generali.

If the existing rules assessed Already adequate, not need make rule new. Published rule new similar will disturbing draft criminal as ultimate remedium and unity in do enforcement law. When existing regulations felt Not yet adequate, so that needed regulation new must analyzed more Formerly For determine in a way specific What issues that must be arranged.

The rules that govern use system electronic is in the Action Chapter Criminal to Public Order. Article 169 of the 2023 Criminal Code defines : " computer as tool For processing electronic, magnetic, optical, or digital data the system that implements function logic, arithmetic, and storage."

Article 170 of the 2023 Criminal Code concerning : " information electronic is One or a set of electronic data including but No limited to writing, sound, images in a way electronic, electronic mail, telegram, copying long distance or similar, letters, signs, numbers, Access Codes, symbols, or perforation that has been processed which has meaning or can understood by capable people understand it."

Without the Right to Use or Access Computers and Electronic Systems Article 333 of the 2023 Criminal Code

Any person who: shall be punished with imprisonment for a maximum of 7 (seven) years or a maximum fine of category VI.

- a. without the right to use or access the computer or electronic systems in any way, with the intention of obtaining, changing, destroying, or eliminating national defense information or international relations that can cause disturbance or danger to the state or relations with the subject of international law;
- b. without authorization to perform actions that cause the transmission of programs, information, codes or commands A computer or electronic system protected by the state becomes damaged;
- c. without the right to use or access the computer or government-owned electronic systems;
- d. without rights or exceeding his authority to use or accessing a computer or electronic system that protected by the state, which resulted in Computers or the electronic system becomes damaged;
- e. without rights or exceeding his authority to use or accessing a computer or electronic system that protected by society, which results The computer or electronic system becomes damaged;
- f. or cause disruption Computers or electronic systems used by government;
- g. distribute, trade, or utilize Access Code or similar information, which can be used to break into a computer or electronic system for the purpose of misuse of a computer or electronic system used or protected by the government; or
- h. perform actions within the framework of a relationship international with the intent to damage a computer or other electronic systems that are protected by the state and are within the jurisdiction of Indonesia and are intended to anyone.

Article 335 of the 2023 Criminal Code

Any person who without authority uses or accesses a computer or electronic system in any way, with the intent to obtain, change, damage, or removing government-owned information because his status must be kept secret with a maximum prison sentence of 12 (twelve) years or maximum fine of category VII. Provision criminal in Constitution Information and Transactions Electronic Number 1 of 2024 has been No valid and

replaced with Constitution Number 1 of 2023 but with notes, actions criminal weighting with means technology.

In terms of this, settings about informatics and electronics only expanded with paragraph 2, namely without right use or access computers and systems electronics. Without right use his authority use or access computer or system electronics, good from in and abroad for get information from computer or system state- protected electronics. Like example, Ministry Communication and Digital as effort For supervise content in the digital realm. System This start implemented as of February 2025, aims ensure User Generated content (PSE UCG) complies regulations set by the government For ward off content negative which is often difficult controlled. (Antara, 2025).

The organizers of digital platforms and internal evaluations have Indonesia's protected digital space as a healthy, productive and supportive space progress Nation. So that content online gambling and content illegal Can exterminated in a way firm. Socialization System Justice Criminal Integrated based Technology Information and Restorative Justice is integration all over system justice based like easy and fast web applications, databases, and software accessible to the parties involved in the judicial process. In addition restorative justice is something approach alternative in settlement problem law, which places recovery and reconciliation as objective main. This approach focus on improving connection between perpetrators, victims, and affected communities, as well as repair losses incurred consequence action criminal.

Restorative justice provides an opportunity for perpetrators to correct their actions and repair damaged relationships with victims and the community. can done through mediation, dialogue, or form reconciliation others. With restorative justice, the goal main is not punishment, but rather recovery and reconciliation involving all parties affected by the action Restorative justice is considered a more humane and effective approach to addressing legal issues, as it focuses more on addressing the root of the problem rather than simply punishing the perpetrator.

Adjustment law This demand balance between enforcement security cyber and protection right privacy as well as freedom opinion. law mainly through the ITE Law (Number 11 of 2008 as amended) becoming Law Number 19 of 2016 and Number 1 of 2024), the Personal Data Protection Law (Law No. 27 of 2022), and ratification of the new Criminal Code (Law No. 1 of 2023). Adjustments This aim increase protection law and effectiveness enforcement rules in the digital space. 4 institutions enforcer law in System Justice Criminal Integrated Based Technology Information (SPPT TI) namely data exchange involves Police (EMP), Prosecutor's Office (CMS), Supreme Court / Court (SIPP/e- Berpadu) and Directorate General of PAS, Ministry of Law and Human Rights (SDP).

The focus of figuralization is exchange document electronically, such as SPDP (Notification Letter) The Beginning Investigation) and files case other in a way fast, reduce use paper, and improve data security. Benefits: Speeds up handling case, preventing overstaying in prison, making things easier planning budgeting, and improving transparency for public.

System justice criminal integrated or integrated criminal justice system according to Herbert L. Packer, is system from common law where public identify, accuse or prosecute, examine, decide and convict those who violate provision criminal with pattern organization justice case criminal in a way the whole and unity (administration of the criminal justice system) which consists of from a number of components that is investigation carried out by the police, prosecution by the prosecutor, trial by the court with help jury.

As a criminal justice system, there are three approaches, namely the normative, administrative, and social approaches as implementing institutions for applicable laws and regulations, so that law enforcement officers are an inseparable part of the law enforcement system itself. The term criminal justice system or known as the criminal justice system was initially put forward by criminal law experts and experts in the United States known as " criminal justice science " then a legal expert Frank Remington from the United States in 1958 as a reaction to dissatisfaction with the working mechanisms of law enforcement officers who were unable to overcome the increasing crime in the 1960s. Until Herbert L. Packer, introduced several models of justice criminal namely Crime Control Model, Due Process Model, Family Model and Integrated Model.

Criminal policy is an integral part of social politics which is an effort to overcome a crime with a policy approach, namely a combination of social politics and criminal politics as well as efforts to overcome crime, namely penal and non-penal policies (Barda Nawawi Arief: 2008). Penal policy (law) criminal) is effort in countermeasures that focus on eradication (repressive), namely after crime the happened, while non - penal policies focus on prevention, namely before crime the happen. Means of penal policy in Criminal policy matters not regardless of effort countermeasures non-penal crimes, because effort This is effort be outside system justice crimes that are influenced to something business in internal countermeasures society (Muladi: 2002).

ITE Law without give definition such as ' means technology information ' as arranged Articles 219, 228, 241 paragraph (1), 243 paragraph (1), 247, 250 paragraph (1), 259 letter c, 301 paragraph (1), and 441 of the National Criminal Code. Then the term 'electronic document' as in Articles 158, 258, and 332 paragraph (2) of the National Criminal Code. The absence of definitions of these various terms in the National Criminal Code has the potential to cause problems, one of which is multiple interpretations.

Related crime cyber in the National Criminal Code is clarified. As effort For anticipate potential emergence multiple interpretations in implementation provision the implications. arrangement crime cyber in the National Criminal Code at least covers 2 things. First, space scope crime cyber in the National Criminal Code has become very broad. Second, adjustments draft search and seizure. Such as search access system electronics. Confiscation including securing computer data, securing system computer or storage media. Create and store copy proof electronics. Make proof electronic in system computer so as not to can accessed.

Arrangement crime cyber in a number of regulations like Article 28 paragraphs (1) and (3) of the ITE Law concerning news Lie cause riots. Article 28 paragraph (2) concerning SARA. Article 27 paragraph (1) concerning morality. Article 27 paragraph (2) is related to gambling. Article 27A insult. Article 27B blackmail/ threats. A number of provisions of the ITE Law adopt the norms of the Budapest Convention on Cybercrime, namely Article 35 concerns computer-related fraud. Article 30 concerns illegal access. Article 31 concerns illegal interception. Article 32 concerns data interference. Article 33 concerns system interference. Article 34 concerns device misuse.

Article 43 paragraph 2 of the ITE Law regulates investigation action criminal law in the field of technology information and transactions electronic done with notice protection to privacy, confidentiality, smoothness service public, and integrity or data integrity. First, social media encourages occurrence polarization and populism and reduce trust public to state institutions. Social media has influence behavior political globally and bring various impact bad to democracy. Article 5 paragraph (4) in the DIM of the Draft Law on Amendments required in frame give certainty just law to need law about digitalization documents, signing deed in a way electronically, implementation of GMS via teleconference, and others. That change to

something Constitution must be in accordance with development need law public For can give birth to certainty law in a country.

Next about determination qualification offense, JAW Lensing named distinction qualification offense the with "classified by statute" and "classified by doctrine. Qualifications scientific that is consists of from offense dolus, delik culpa, delik formal, crime material, crime omission, offense commissioner, crime single, offense multiple and so on. Whereas qualification judiciary that is Crime in Book II and Violations in Book III. that the ITE Law in matter This Not yet set qualification juridical the crime as crime or violation.

So the ITE Law must set qualification the crime. Because it is stated in the Criminal Code as as follows : (1) Article 53 of the Criminal Code " Attempting do crime shall be punished "; and (2) Article 54 of the Criminal Code " Attempting do violation No convicted ". in matter this also explains it as following : (a) 6 Years Prison and/ or fine of Rp. 1,000,000,000.00: Article 45 paragraph (1); [1:166,666,666]; (b) 10 years Prison and/ or fine of IDR 5,000,000,000.00: Article 45 paragraph (3) [1:500,000,000]; (c) 2 Years Prison and/ or fine of Rp. 400,000,000.00 (Article 45 paragraph (4); [1:200,000]; (d) 4 Years Prison and/ or fine of IDR 750,000,000.00 (Article 45 paragraph (5); [1:187,500]; (e) And so on.

Provision Confinement Replacement Fines (KPD) is also necessary regulated in the ITE Amendment Bill, because matter This become something very important thing in matter happen perpetrator No capable pay fine. Quote Article 30 paragraph (2), paragraph (3) and paragraph (5) of the Criminal Code as following :

- a. If the crime fine No paid, he replaced with criminal confinement ;
- b. Length of sentence confinement least substitute One days and a maximum of six month ;
- c. If there are weighting criminal fine caused by Because togetherness or repetition, or Because provision Article 52, then criminal confinement maximum replacement of eight month.

So that enforcement System Justice Criminal Integrated Indonesia uses four component enforcer law, namely police, prosecutors, courts and institutions correctional system. So that now known with system justice criminal or integrated criminal justice system for create more systems fair, accountable, and responsive and one of the the most basic principle is principle presumption No guilty "Presumption of Innocence", which states that every individual considered No guilty until proven on the contrary through decision a court of competent jurisdiction law remains which is an integral part of system justice criminal penalties that guarantee that every individual treated with fair and appropriate with applicable law. (Moh Hatta, 2008).

4. Conclusion

Based on the explanation above that has been presented by the author, that the implementation of the decriminalization process in the new Criminal Code against articles 335-351 of the 2023 Criminal Code is an effort to reduce cybercrime related to the National Criminal Code is clarified and the existence of an Integrated Criminal Justice System Based on Information Technology (SPPT TI) namely data exchange involving the Police (EMP), the Prosecutor's Office (CMS), the Supreme Court/Court (SIPP/e-Berpadu) and the Directorate General of PAS, Ministry of Law and Human Rights (SDP). As technological advances and social changes also influence the background of changes to the Criminal Code.

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