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Reduction Of Criminal Penalties for Corruption Criminal Acts as Regulated in Law No. 1 of 2023 Concerning the Criminal Code

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Article

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Abstract

The crime of corruption is an extraordinary crime, which should be able to deter the perpetrators from committing the crime again. However, the new rules made in Law No.1 of 2023 concerning the Criminal Code have lightened the prison sanctions and fines for perpetrators of corruption when compared to Law No.31 of 1999 concerning corruption. The purpose of this research is to find out what is the basis for the rules of corruption offenses to be included in the National Criminal Code and to find out the basis for reducing the sentences for corruption offenses in the National Criminal Code. So that problems related to the reduction of criminal sanctions for corruption motivate the author to conduct research using normative legal research methods with a statutory approach, conceptual approach, and historical approach. The data collected is then analyzed prescriptively. The result of the research is that corruption can be included in the National Criminal Code through the principle of codification and it can be seen that the reduction of punishment for corruption offenders is based on the politics of criminal law, individualization of punishment, and punishment. However, this is not in accordance with the existing facts considering that this corruption case is detrimental not only to the state but also to society.

INTRODUCTION

In written criminal law, there are regulations outside the Criminal Code or criminal acts regulated outside the Criminal Code, one of which is the regulation that regulates special crimes, such as in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Corruption Law). (Alamin, 2020)Criminal acts of corruption that are specifically regulated are also regulated in Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code). So, a problem arises if the general law regulates and the specific one regulates, then which one can be applied if a criminal act of corruption occurs? Based on this can it be The National Criminal Code regulates criminal acts of corruption due to acts criminal corruption is *extraordinary crime* (crime outside usual)

which the rules made in a way special in outside Criminal Code that is on Law Corruption.

The development of the law regulated in Article 187 of the National Criminal Code explains that " The provisions in Chapter I to Chapter V of Book One also apply to acts that are punishable according to other laws and regulations, unless otherwise determined by law." The sentence " unless otherwise determined by law " means that it is permissible to regulate criminal law outside the Criminal Code based on the general provisions of Chapters 1 to V of the Criminal Code. So, it can be seen from this article that it is permissible to make special regulations outside the Criminal Code as long as the regulations do not conflict. However, the National Criminal Code has revoked several articles in the Corruption Law. The provisions regarding criminal acts of corruption that have been revoked are in Article 2 paragraph (1), Article 3, and Article 11 of the Corruption Law.

Several articles in the Corruption Law that were repealed by the National Criminal Code stipulated reduced prison sentences and fines imposed on perpetrators. These are shown in the following table:

Table 1. Regulation of Criminal Acts of Corruption in the Corruption Law and the National Criminal Code

No	Corruption Law	National Criminal Code
1.	Article 2 paragraph 1 of the Corruption Law reads: "Any person who unlawfully commits an act of enriching himself or another person or a corporation which may be detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)." In this article, the minimum prison sentence imposed is 4 years and the minimum fine is IDR 200,000,000.	Article 603 of the National Criminal Code reads: "Any person who unlawfully commits an act of enriching himself or another person or a corporation which can harm state finances or the state economy, shall be punished with life imprisonment or a prison sentence of at least 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and at most category VI . " This article revokes Article 2 paragraph 1 of the Corruption Law by changing the minimum limit of imprisonment to 2 years and a minimum fine of IDR 10,000,000.

2.	Article 3 of the Corruption Law reads: "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him due to his position or position which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) . " This article regulates criminal fines of at least IDR 50,000,000.	Article 604 of the National Criminal Code reads: " Any person who, with the aim of benefiting himself, another person, or a corporation, abuses the authority, opportunity, or means available to him due to his position or position which is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI . " This article revokes and changes the minimum fine limit in Article 3 of the Corruption Law, namely IDR 10,000,000.

The revocation of these articles aims to codify national criminal law by unifying criminal acts that fall outside the Criminal Code, such as the crime of corruption.

According to Satjioto Rahardjo, the general objective of legal codification is to create a collection of laws and regulations that are simple, easy to understand, harmonious, logical, and clear (Oktavira, 2023). In addition, there are at least four other ways to codify laws: unifying applicable provisions, grouping and logically arranging similar materials, eliminating detailed technical provisions, and eliminating duplicate and contradictory provisions. First, unifying applicable provisions. This means that legal codes only unify existing regulations and do not create new regulations. Second, grouping and logically arranging similar materials. Because codification is a combination of various existing regulations, it needs to be divided into several chapters according to the regulations to make each section easier to understand. Third, eliminating detailed technical provisions. Existing regulations need to be made as simple as possible to be easily understood and continue to survive over time and as society develops. Fourth, eliminating duplicate and contradictory provisions. To avoid duplication and conflict, codification must be based on three legal principles, namely, higher rules trump lower rules (*lex superior derogat legi inferiori),* second, new rules trump old rules *(lex fosterior derogat legi priori),* and third, special rules trump general rules *(lex specialist derogat legi generalis).* In the purpose of changing the articles in the Corruption

Law, it cannot be said to be codification because it does not comply with the method used to codify laws and regulations.

Previously, Indonesia itself had two choices of discussion models for the RKUHP which will also be used to review the new KUHP, namely open codification and total codification (*full codification)*. So after conducting various considerations, it was decided to use total codification which is expected to prevent the regulation of new criminal law principles in laws and regulations outside the KUHP that have not been integrated into the general provisions in Book I of the KUHP, thereby preventing the occurrence of criminalization in laws and regulations outside the KUHP specifically or generally.

The National Criminal Code, which reduces penalties for corruption, could lead to an increase in corruption. Even before the reduction in penalties for corruption, the number of cases in Indonesia was already increasing, as illustrated in the graph below:

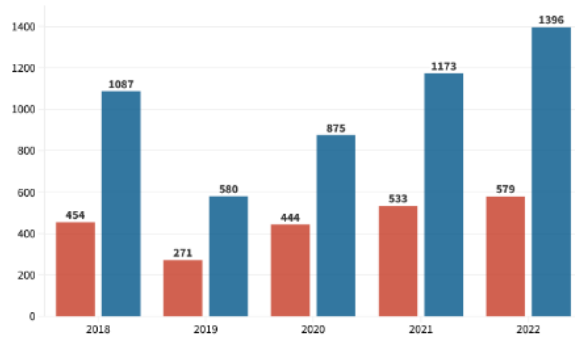


Figure 1. Graph of the Number of Corruption Cases Prosecuted in Indonesia in 2018-2022 Sumber: *Indonesia Corruption Watch (ICW)*

The data above represents the number of corruption cases prosecuted in Indonesia from 2018 to 2022. The red section represents the number of cases, and the blue section represents the number of suspects. According to data from *the Indonesia Corruption Watch (ICW),* 579 corruption cases were prosecuted in Indonesia in 2020. This represents an 8.63% increase from the previous year, with 533 cases being prosecuted. Of these cases, 1,396 people were named suspects in domestic corruption cases in 2022, a 19.01% increase compared to 2021, with a total of 1,173 suspects.

Of the 138 corruption cases that occurred, 307 suspects were processed by the National Police. Meanwhile, the Corruption Eradication Commission (KPK) has only handled 36 cases involving 150 suspects. In 2022, the rural sector recorded the highest number of corruption cases, with 155 cases, or 26.77% of all cases handled by law enforcement officials at that time. Furthermore, in 2022, there were 88 corruption cases, primarily in the utilities sector (88 cases), followed by 54 cases in government, 40 cases in education, and 35 cases in mining and banking.(Bayu, 2023)

Based on this data, corruption rates in Indonesia are quite high, so regulations should impose harsher penalties, rather than replacing them with lighter ones, as in the National Criminal Code. Reducing these penalties could lead to a lack of deterrence among perpetrators, increased national debt, increased poverty, a loss of government function, ineffective laws and regulations, and a loss of public trust in the state.

Therefore, the author is interested in examining problems related to criminal acts of corruption through a thesis entitled " REDUCTION OF CRIMINAL PENALTIES FOR CRIMINAL ACTS OF CORRUPTION AS REGULATED IN LAW NO. 1 OF 2023 CONCERNING THE CRIMINAL CODE". In addition, based on the background above, the following problem formulation was obtained:

a. What is the basis for the inclusion of criminal regulations on corruption in the National Criminal Code?
b. What is the basis for reducing sentences for corruption convicts as regulated in the National Criminal Code?

METHOD

This study uses a normative legal research type because it examines Article 603, Article 604, and Article 606 paragraph 2 of the National Criminal Code in relation to the Corruption Law. In this study, primary and secondary legal sources are used, where the primary legal materials use Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, Law Number 13 of 2022 concerning the second amendment to Law Number 12 of 2011 concerning the formation of laws and regulations, and the Academic Manuscript of the Criminal Code Bill. In addition, secondary legal materials use books, theses, journals, and legal websites as well as official government websites. This study employed a legal data collection technique, namely a literature review of legal sources, both primary and secondary. This literature review involves identifying and analyzing the legal materials obtained in accordance with the research objectives and problems.(Achmad & Fajar, 2010) The legal analysis technique used in this study is a prescriptive technique. This prescriptive technique provides arguments based on research conducted regarding the basis for reducing sentences for those convicted of corruption.

RESULTS AND DISCUSSION

The Basics of Corruption Crimes Are Included in the National Criminal Code

a. Initially, the Criminal Code was viewed as a form of codification and unification. However, when it was enacted, it was considered incomplete because it still adopted the Dutch legal system, making it incompatible with the needs and developments of society. From a philosophical perspective, colonial government legislation, including the Criminal Code, was created with a different philosophical foundation and therefore needed to be replaced. The Criminal Code currently in use is a product of Dutch law and therefore needs

to be adapted to Indonesian society. Furthermore, the fourth paragraph of the 1945 Constitution must serve as a benchmark for criminal law reform. Therefore, it is important to achieve at least two objectives: internal and external objectives. Internal objectives mean that criminal law reform is carried out as a form of welfare and protection for society, while external objectives are participation in creating world order related to the development of international crime.

In relation to protecting society by enforcing the law and criminal reforms carried out, the aim is to:

1. The purpose of criminalization is to prevent and combat crime, so that criminal reform is expected to provide protection for society from anti-social behavior that is detrimental and dangerous to society.
2. Punishment aims to provide protection to society from a person's dangerous behavior by correcting the perpetrator of the crime by influencing his actions so that he can return to obeying the rules and become a good member of society.
3. Criminalization as a prevention of arbitrary acts outside the law, it provides protection to society from the misuse of sanctions from law enforcement or from society itself.
4. Public security must be protected from the imbalance of various interests and values that arise as a result of crime, so that law enforcers must be able to overcome problems caused by crime and restore balance and bring peace to society.(Sriwidodo, 2023)

Based on the explanation above which explains that criminalization should indeed be a protection for the community, however in this discussion regarding protection for the community it needs to be questioned again because there is a reduction in sanctions for perpetrators of corruption crimes, namely in Article 2 paragraph 1 of the Corruption Law which was replaced by Article 603 of the National Criminal Code, Article 3 of the Corruption Law which was replaced by Article 604 of the National Criminal Code, and Article 11 of the Corruption Law which was replaced by Article 606 paragraph 2 of the National Criminal Code, which clearly shows that the impacts caused are very detrimental to the community and the state and if these regulations are used, of course this protection cannot be realized in society as desired.

On the other hand, many provisions of the Criminal Code are inconsistent with prevailing sociological values and do not meet the needs of society as an independent nation. Furthermore, advances in technology and science have brought with them the side effects of new criminal offenses and outdated provisions within the Criminal Code. However, from a sociological perspective, these legal reforms should be carried out to meet the legal needs of society. Developments in Indonesian society have certainly given rise to demands for legal certainty and justice, thus rendering the formulations of

criminal law within the Criminal Code unsuitable as a basis for addressing crime.

b. The Criminal Code (KUHP) is not a complete criminal justice system, as several provisions have been repealed. Therefore, new laws have been created to regulate specific crimes and specific provisions outside the Criminal Code. However, these new laws outside the Criminal Code remain within the Criminal Code (WvS).(Naskah_akademik_tentang_kuhp_dengan_lampiran, n.d.)

Although special laws regulate specific regulations that are not in accordance with the basic principles of the Criminal Code, over time these special laws lack structure (no pattern), are inconsistent, legally problematic, and even erode/tear apart their main system/structure. These legally problematic special rules or provisions, when viewed from the perspective of their criminal system, include:

1. Legislation that does not regulate the classification of criminal acts as criminal acts or violations, so that it functions to enforce general provisions of criminal law that are not specifically regulated by special laws outside the Criminal Code.
2. There are specific laws that impose specific minimum penalties, but they are not accompanied by provisions regarding their enforcement. This can cause problems because minimum penalties cannot be imposed solely by specifying them in the criminal code. Therefore, their implementation requires another subsystem to regulate them, namely, criminal regulations, which must be implemented first, as well as specific maximum penalties.(Wahyuni, n.d.)

It is not a problem to make different regulations, because this is permitted and possible based on the current criminal law system, especially with the existence of Article 103 of the Criminal Code which has now been replaced by Article 187 of the National Criminal Code.

c. Many special laws contain specific minimum penalties, but they do not specify the rules for sentencing or enforcement. The purpose of a specific minimum penalty is for the law to establish maximum and minimum criminal sanctions for a crime. Therefore, in these cases, judges cannot impose a sentence less severe than the minimum penalty prescribed by law.

The regulation of minimum criminal sanctions specifically for corruption crimes aims to create a deterrent effect on perpetrators, and the inclusion of minimum criminal sanctions in the Corruption Eradication Law aims to prevent disparity in sentencing. According to Molly Cheang, disparity in sentencing is the imposition of unequal punishments for similar and comparable crimes or offenses without clear justification.

The provision of a deterrent effect on this special minimum criminal sanction is not in accordance with the changes in the National Criminal Code in Article 603, Article 604 of the National Criminal Code, and Article 606 paragraph 2 because it has a lighter number of sanctions, so it cannot have a deterrent effect on perpetrators of criminal acts.

Members of the Criminal Code drafting team have outlined the benchmarks the team uses to determine which crimes are worthy of codification. As the head of the Criminal Code drafting team, Muladi stated that the codification concept in selecting crimes to be included in special laws (including the draft Criminal Code) is based on the criteria for general crimes (generic crimes/independent crimes) based on the following guidelines:

1. It is an independent error (not including those based on violations of previous administrative provisions in related laws and regulations).
2. The validity period is relatively long, meaning it is not linked to the issuance of administrative procedures or processes.
3. The penalty is imprisonment for more than one year.
4. Allows for administrative regulation of so-called crimes of an " *administrative dependence of environmental criminal law" nature,* both in the form of formal offenses (abstract endangerment) and material offenses (concrete endangerment).

It should be noted that the Criminal Code is *the lex generalis,* or general rules for substantive criminal law, and regulations outside the Criminal Code are *les specialis* , or specific rules. By combining the rules within the Criminal Code and those outside the Criminal Code, it is hoped that a simple, logical, and easy-to-understand set of regulations will be created.

d. By including these crimes, some of which are regulated in separate laws outside the Criminal Code, it is hoped that a complete Indonesian national criminal justice system will be created in the future through a comprehensive codification policy strengthened by parameters of justice in the field of criminal law and sentencing to ensure legal certainty and justice, as well as proper criminal prosecution.

The Basis for Reducing Sentences for Corruption Convicts Regulated in the National Criminal Code

a. *Criminal* law politics, which is the basis for formulating criminal law reform, refers to the policy of selecting or implementing criminalization or decriminalization of behavior. According to Prof. Soedarto, legal politics is a national policy implemented by state institutions that have the authority to determine desired regulations and are expected to play a role in revealing what exists in society to achieve desired goals.(Bunyamin et al., 2023) Implementing criminal law policy also means creating criminal legislation that is appropriate to current and future circumstances and situations. This is because the purpose

of regulation is for the benefit of society and must provide benefits in terms of realizing public order, protecting community rights, public welfare, and peace in national life. Furthermore, criminal law policy is part of crime prevention. The ultimate goal of legal policy is to protect society (*social difference*), or it can be said that criminal law policy aims to protect society in order to achieve social welfare.

The effort to eradicate corruption in Indonesia is a long and difficult journey. The facts show that efforts to eradicate criminal acts of corruption require strong political support and maximum effort to achieve effective results. As stated in the legal reform in Indonesia, which is inseparable from the national goals to be achieved as stated in the preamble to the 1945 Constitution, paragraph four, which states that there is a goal for public welfare and community protection, which must be reflected in the goals of national development. However, in fact, by replacing corruption regulations with lighter ones in the Corruption Law, Article 2 paragraph 1, Article 3, and Article 11, which were replaced by Articles 603, 604, and 606 paragraph 2 of the National Criminal Code, this goal cannot be achieved because reducing criminal sanctions and fines only benefits the perpetrators and the perpetrators cannot feel a sense of deterrence.

The lack of deterrent effect on perpetrators of corruption crimes can be proven by the existence of corruption cases committed by state officials twice, namely by the former regent of Kudus, Muhammad Tamzil. In addition, the arrest of regional heads by the Corruption Eradication Commission (KPK) has proven unable to provide a deterrent effect on perpetrators. *Indonesia Corruption Watch* (ICW) said that light sentences are the cause of this lack of deterrent effect. ICW also recorded, of 1,053 corruption cases involving 1,162 defendants throughout last year, 918 defendants or 79% received light sentences, ranging from 1 year to 4 years in prison. The legal verdict for corruption crimes averages 2 years and 5 months in prison. This represents an increase in sentences compared to the previous year, which had an average of 2 years and 2 months in prison, but this is still far from the public's expectations that perpetrators of corruption must be punished severely because they have caused many losses.(Sukamto, 2019)

This data was obtained when there were no sanctions for corruption perpetrators, which, when viewed from the figure of 79% who received light sentences, is quite high. If we reconsider the leniency contained in Articles 603, 604, and 606 paragraph 2 of the National Criminal Code, which will be implemented in society, it is possible that this percentage will increase. Therefore, it is necessary to review or amend these corruption regulations before they are implemented, considering that the level of corruption cases is still quite high and has not yet been able to provide a deterrent effect for perpetrators.

The imposition of sentences on those convicted of corruption is not only aimed at general prevention and special prevention, but also in efforts to restore state assets, state finances, and/or the state economy, as well as the state's authority.

b. Furthermore, general criminal law is also based on the idea of individualization of punishment, as punishment must also be based on the element of the "person" (the perpetrator of the crime). Therefore, what is meant by individualization of punishment is that the punishment imposed must not only be tailored to/oriented towards the individual aspect but also be adaptable/modifiable/adjustable at any time to the changes and development of the individual (the convict).

In formulating the objectives of punishment in the Draft Criminal Code, Sudarto stated that the first objective, which includes preventing criminal acts to protect society by enforcing legal norms, contains the meaning of social defense *and* is generally preventive. Then the second objective, which includes prisoners being required to receive guidance and guidance to become capable and useful individuals, is aimed at reintegration into society and resocialization of convicts (specific prevention). The third objective, which includes resolving conflicts caused by criminal acts, restoring social balance, and creating a sense of order and peace, is consistent with the view of customary law regarding customary responses to restore balance, because the balance is thought to have been disturbed by crime. The fourth objective, which states that it can provide a sense of remorse and free convicts from guilt, means spiritual and consistent nature in restoring balance in accordance with the first principle of Pancasila.

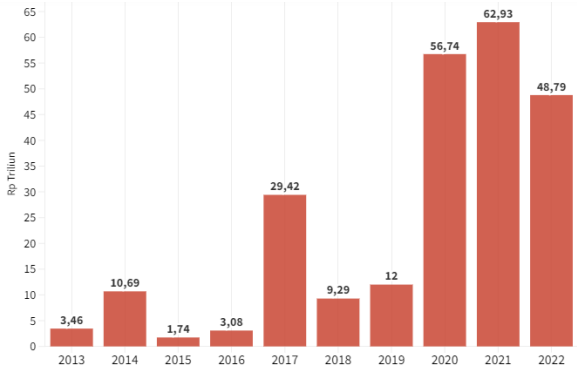
In the mitigation of sentences for corruption convicts in Article 2 paragraph 1 of the Corruption Law which was replaced by Article 603 of the National Criminal Code, Article 3 of the Corruption Law which was replaced by Article 604 of the National Criminal Code, and Article 11 of the Corruption Law which was replaced by Article 606 paragraph 2 of the National Criminal Code, it will actually have a greater negative impact, considering that the negative impact caused by these corruptors is very detrimental in all aspects of life, as previously explained that this corruption has an impact on various sectors, namely in the economic sector which can reduce state income and cause an increase in state debt, then in the government sector which can cause government bureaucracy to not run efficiently, in the legal sector which can result in inefficient legislation because the law is considered sharp downwards and blunt upwards, in the political sector which causes corrupt leaders such as in the e-KTP corruption case of Setya Novanto who once served as chairman of the Indonesian House of Representatives, in the defense and security sector which causes the risk of smuggling of illegal goods, and in the environmental sector which can cause a decline in the quality of natural resources in Indonesia.

Therefore, the discussion in this study, which discusses reducing criminal sanctions and fines for corruption, is not an appropriate policy, considering that corruption remains rampant not only in the government sector but also in the private sector. This can be seen, as previously explained in the graph, showing an annual increase in the number of corruption cases from 2018 to 2022. Therefore, if punishment no longer provides a deterrent, it is possible that corruption cases in Indonesia will increase again.

c. Prisons are a means of ensuring the safety of inmates and providing opportunities for rehabilitation. Furthermore, criminal sanctions are considered an effective solution to address the increasing crime rate. Criminal sanctions represent the state's responsibility to maintain security and order and provide legal protection for its citizens. However, this leads to the dehumanization of criminals, and ultimately, inmates who have spent too much time in an institution are unable to continue living productively in society.(Naskah_akademik_tentang_kuhp_dengan_lampiran, n.d.)

In this discussion regarding the reduction of sentences for perpetrators of corruption crimes in Article 2 paragraph 1 of the Corruption Law which was replaced by Article 603 of the National Criminal Code, Article 3 of the Corruption Law which was replaced by Article 604 of the National Criminal Code, and Article 11 of the Corruption Law which was replaced by Article 606 paragraph 2 of the National Criminal Code, it is seen that before the reduction of the sentence, perpetrators of corruption crimes had caused losses to the state and society such as harming state finances and could hinder community activities such as facilities and infrastructure that were not made optimally to be used as public services. This state loss is proven by data based on *Indonesia Corruption Watch (ICW)* which explains that there has been a loss of IDR 230 trillion in the last 10 years since 2013-2022, where each year has the following losses:

Figure 2. Graph of State Losses Due to Corruption Cases in 2013-2022



According to data from *Indonesia Corruption Watch* (ICW), state losses due to corruption cases reached Rp 238.14 trillion from 2013 to 2022. This figure was obtained from monitoring corruption decisions issued by courts of

first instance and cassation throughout the year. State losses reached a record high in 2021, reaching Rp 62.93 trillion. State losses due to corruption were also significant in 2020, reaching Rp 56.74 trillion. The most recent state losses due to corruption reached Rp 48.7 trillion in 2022.(Pratiwi, 2023)

Apart from that, corruption can also hinder community activities, such as in the case of the construction of a bridge in the Rengit Strait , Meranti Islands Regency, Riau, which caused the state a loss of IDR 42 billion.

CONCLUSION

Based on the results of research conducted by researchers, it can be concluded that the reason why this corruption is included in the National Criminal Code is that the old Criminal Code is considered incomplete because it still adopts the Dutch legal system so that its rules are no longer in accordance with the conditions that exist in Indonesian society, in this special law contains a minimum criminal threat that is not accompanied by its application, and is expected to be able to create a complete national criminal law. In addition, the reduction of sentences for those convicted of corruption is based on criminal law politics, criminal individualization and punishment.

Suggestion

The results of the research conducted indicate that reducing sentences for perpetrators of corruption needs to be reviewed, considering the various facts previously presented, indicating that corruption levels remain high in Indonesia and that numerous losses have occurred in various sectors, both to the state and society. Therefore, the author recommends that sentence reductions for perpetrators of corruption not be implemented, so that this can further advance Indonesia.

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