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PRINCIPLES OF SPECIAL CRIMINAL LAW IN INDONESIA: DOCTRINE, DEVELOPMENT, AND CHALLENGES

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Abstract

Special criminal law (hukum pidana khusus) has emerged as an indispensable legal instrument in Indonesia to address forms of crime that are too complex, sophisticated, and socially destructive to be handled adequately by the general criminal code (KUHP). This study examines the foundational principles underpinning special criminal law namely the principles of legality, lex specialis derogat legi generali, subsidiarity (ultimum–primum remedium), culpability (geen straf zonder schuld), corporate criminal liability, extraordinary crime, and human rights protection as well as the challenges encountered in their implementation. Employing a normative juridical research approach through analysis of primary legal sources including the KUHP, Law No. 1 of 2023, and sector-specific statutes, alongside doctrinal literature from leading Indonesian and international criminal law scholars, this study finds that while each principle serves a distinct and essential function in limiting state power and ensuring justice, their concurrent application in practice generates significant tensions. Key challenges include regulatory overlap, asymmetric investigative capacity, hyper-regulation without adequate synchronization, and the risk of extraordinary measures infringing upon fundamental rights. The study recommends comprehensive regulatory harmonization, institutional capacity building, and the consistent application of human rights standards in all special criminal law enforcement.

Keywords: *special criminal law, lex specialis, legality principle, extraordinary crime, corporate criminal liability*

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A. Introduction

Criminal law in Indonesia is generally anchored in the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) as the codified material legal instrument. However, as society evolves and technology advances, the modus operandi of crime has grown increasingly sophisticated and complex often beyond the reach of general criminal law instruments. The limitations of the KUHP's principles and norms in confronting these new forms of crime have necessitated the formation of legislation outside the codification, of a special character. This phenomenon gave rise to the existence of special criminal law (bijzonder strafrecht) as a strategic instrument for combating specific criminal acts that carry extraordinary destructive consequences.[1]

Special criminal law possesses unique characteristics because it operates on the basis of the lex specialis derogat legi generali principle, whereby special rules override general rules. This specialness

[1] Hamzah A. Hukum Pidana Khusus [Special Criminal Law]. Jakarta: Sinar Grafika; 2020. p. 1–5.

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lies not only in its material substance as in the case of corruption, terrorism, narcotics, or money laundering but also frequently departs from the generally applicable criminal procedural law (formal law). These departures are deliberately created by legislators to grant law enforcement broader authority, impose heavier sanctions, or employ reversed burden of proof mechanisms, given that such crimes are often categorized as extraordinary crimes requiring equally extraordinary responses.[2]

Despite the critical importance of special criminal law, the proliferation of sector-specific statutes containing criminal provisions frequently generates uncertainty regarding their boundaries and jurisdiction. Intersections between administrative law, civil law, and criminal law create confusion in law enforcement particularly as to when a particular act falls within the domain of special criminal law as opposed to general criminal law. A comprehensive understanding of the scope of special criminal law, encompassing its legal subjects, categories of acts, and procedural dimensions, is therefore essential for ensuring legal certainty and justice.[3]

This study addresses the following research questions: (1) What are the foundational principles of special criminal law in Indonesia? (2) How do these principles apply in practice, particularly in the context of extraordinary crimes, corporate criminal liability, and the protection of human rights? (3) What are the principal challenges confronting the implementation of special criminal law? By examining these questions, this study aims to provide a systematic and comprehensive doctrinal analysis of special criminal law principles and their contemporary significance.

B. Research Methodology

This study employs a normative juridical research approach, focusing on the examination of legal norms, legislation, and doctrinal literature relevant to the principles and implementation of special criminal law in Indonesia.[4] Data were gathered through comprehensive library research encompassing three categories of legal materials. Primary legal materials include the 1945 Constitution; the Criminal Code (KUHP) and Law No. 1 of 2023 as the new KUHP; Law No. 20 of 2001 on the Eradication of Corruption; Law No. 5 of 2018 on Counter-Terrorism; Law No. 35 of 2009 on Narcotics; Law No. 8 of 2010 on Money Laundering; and Constitutional Court decisions on related matters. Secondary legal materials consist of legal monographs, scholarly journal articles, and academic commentaries authored by leading criminal law scholars. Tertiary materials include legal dictionaries and encyclopedias. The data were analyzed qualitatively through grammatical, systematic, historical, and teleological legal interpretation methods to draw conclusions regarding the doctrinal foundations and implementation challenges of special criminal law principles in Indonesia.

C. Discussion and Analysis

1. The Concept and Definition of Special Criminal Law Principles

The principles of special criminal law refer fundamentally to the foundational norms underpinning the application of criminal rules outside the general Criminal Code (KUHP). Special criminal law is created to regulate criminal acts with specific characteristics that have extensive social or economic impacts, or that require extraordinary treatment such as acts of corruption, terrorism, and narcotics trafficking. The most paramount principle, serving as the absolute pillar of special criminal

[2] Atmasasmita R. Hukum Pidana Kontemporer [Contemporary Criminal Law]. Bandung: Citra Aditya Bakti; 2018. p. 12–18.
[3] Nawawi Arief B. Kebijakan Hukum Pidana [Criminal Law Policy]. Bandung: PT Citra Aditya Bakti; 2017. p. 25–30.
[4] Marzuki PM. Penelitian Hukum [Legal Research]. Jakarta: Kencana Prenada Media Group; 2010. p. 35.

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law, is the principle of lex specialis derogat legi generali, meaning that special provisions override general provisions. This principle has a solid legal basis in Article 103 of the KUHP, which legitimizes special statutes to deviate from general provisions both materially and formally.[5]

According to Prof. Andi Hamzah, special criminal law consists essentially of legislative regulations outside the KUHP that carry criminal sanction threats and possess the authority to deviate from general provisions. Such deviations are considered both justified and necessary because the crimes being addressed possess a high degree of complexity that cannot be resolved through ordinary criminal law approaches or procedures.[6] Prof. J.M. Pompe classifies special criminal law by reference to the subject of the offender and the object of the act: it encompasses criminal law specially formed for certain categories of persons (such as military criminal law) or criminal law specifically designed to regulate particular criminal acts (such as economic or fiscal offences).[7]

Prof. Sudarto offers a sociological-legal perspective, viewing the emergence of special criminal law as an adaptive response to the rapid dynamics of societal development. He argues that the formation of special criminal statutes outside the KUHP codification is an unavoidable necessity, as general criminal law frequently lags behind and fails to reach new forms of crime that arise with the advancement of civilization. The principles of special criminal law thus confer the flexibility required for the state to continuously protect society from increasingly organized and sophisticated modern crime.[8]

2. The Principle of Legality

The principle of legality is the most fundamental norm in criminal law, serving to guarantee legal certainty and protect human rights against the arbitrariness of law enforcement authorities and state power. In its essence, this principle stipulates that no act may be criminally punished except on the basis of a criminal provision in legislation existing prior to the commission of the act. In Indonesia's legal system, this principle is classically enshrined in Article 1 paragraph (1) of the KUHP. The principle of legality generates several logical consequences: the prohibition on retroactive application of criminal law, the prohibition on the use of analogy to create new criminal acts, and the requirement that legal rules be formulated in writing and with sufficient clarity to be comprehensible to citizens.[9]

Historically and dogmatically, the formulation of the legality principle was initiated and popularized by the German criminal law scholar Paul Johann Anselm Ritter von Feuerbach, through the celebrated Latin maxim Nullum delictum, nulla poena sine praevia lege poenali meaning there is no crime and no punishment without prior penal legislation. Feuerbach grounded this principle in his theory of psychological compulsion (psychologische Zwang): the articulation of criminal threats in clear statutory language would exert sufficient psychological pressure to deter would-be offenders.[10]

Prof. Moeljatno emphasizes that the principle of legality aims at delimiting the boundaries of state power. The state may not deploy criminal law arbitrarily to punish its citizens; penal rules must be explicitly stated in written statute before an act occurs, providing citizens with a reliable guide as to

[5] Criminal Code of the Republic of Indonesia (KUHP), Article 103. Indonesia; 1946 (as amended by Law No. 1 of 2023).

[6] Hamzah A. Op. cit. p. 8–10.

[7] Pompe WP. Handboek van het Nederlandse Strafrecht. Zwolle: Tjeenk Willink; 1959. p. 20–22.

[8] Sudarto. Hukum dan Hukum Pidana [Law and Criminal Law]. Bandung: Alumni; 1983. p. 30–35.

[9] Moeljatno. Asas-Asas Hukum Pidana [Principles of Criminal Law]. Jakarta: Rineka Cipta; 2015. p. 23–28.

[10] Von Feuerbach PAJ. Lehrbuch des gemeinen in Deutschland gültigen peinlichen Rechts. Giessen: Georg Friedrich Heyer; 1801. p. 45.

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which conduct is prohibited and threatened with criminal sanction.[11] Roeslan Saleh argues that the principle should not be interpreted rigidly as confined to statutory certainty but must also engage with the sense of justice. This view is particularly significant in light of the new KUHP (Law No. 1 of 2023), which progressively extends the meaning of legality by officially recognizing living law (hukum adat) as a basis for criminalization, provided it aligns with Pancasila values and human rights.[12]

3. The Principle of Lex Specialis Derogat Legi Generali

The principle of lex specialis derogat legi generali refers to the mechanism for resolving conflicts between legal norms: a special statute overrides a general statute. This principle is applied when two legislative provisions regulate the same subject matter or object, but one provision does so in a more specific or detailed manner. In practice, analysis of this principle is indispensable for law enforcement officers when determining which provision must be applied so as to avoid regulatory overlap. A crucial qualification is that both conflicting rules must occupy the same hierarchical level of legislation for instance, statute against statute and not statute against regional regulation.[13]

Prof. Bagir Manan stresses that application of this principle cannot be undertaken indiscriminately and must satisfy certain conditions. General provisions remain applicable except insofar as specific matters are explicitly regulated by the special provision (lex consumens derogat legi consumtae). The special statute must concern subject matter that intersects with or is kindred to the general statute, while incorporating elements of exception or specificity.[14] Prof. Sudikno Mertokusumo emphasizes this principle as one of the pillars of preference in judicial law-finding (rechtsvinding): lex specialis is fundamentally an instrument for protecting special interests that the general statute cannot adequately accommodate it constitutes a legal refinement aimed at delivering more precise justice commensurate with the distinctive characteristics of a given case.[15]

In the criminal law context, as expounded by Prof. Andi Hamzah, analysis of this principle forms the foundation for the existence of special criminal law. He connects it with Article 63 paragraph (2) of the KUHP: where an act falls within both a general criminal provision and a special criminal provision, only the special provision is applied. The principle thus legitimizes sector-specific statutes such as the Corruption Eradication Law and the Narcotics Law, which are deliberately constructed to deviate from the KUHP because the crimes addressed demand extraordinary and specific legal treatment.[16]

4. The Principle of Subsidiarity (Ultimum–Primum Remedium)

The principle of subsidiarity in criminal law proceeds from the foundational premise that criminal law is ultimum remedium the last resort or ultimate weapon. This principle prescribes that criminal sanctions which are inherently punitive and may deprive persons of their liberty may only be invoked when sanctions from other legal branches, such as administrative or civil sanctions, have proven insufficient or ineffective to resolve a matter. At the philosophical level, the application of ultimum remedium aims to prevent criminal instruments from being deployed indiscriminately, thereby avoiding excessive criminalization.[17]

[11] Moeljatno. Op. cit. p. 30–33.

[12] Law No. 1 of 2023 on the Criminal Code (new KUHP), Article 2. Indonesia; 2023

[13] Mertokusumo S. Mengenal Hukum [Understanding Law]. Yogyakarta: Liberty; 2008. p. 80–84.

[14] Manan B. Dasar-Dasar Perundang-Undangan Indonesia [Fundamentals of Indonesian Legislation]. Jakarta: Ind-Hill Co; 1992. p. 55–58.

[15] Mertokusumo S. Penemuan Hukum [Legal Discovery]. Yogyakarta: Liberty; 2009. p. 62–65.

[16] Hamzah A. Op. cit. p. 22–25

[17] Nawawi Arief B. Op. cit. p. 40–45.

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However, as modern crime has grown more complex, a paradigmatic shift has occurred in which criminal law is relied upon as primum remedium the primary weapon. This shift is most pronounced in special criminal offences or crimes of massive impact, such as corruption, terrorism, or serious environmental destruction. In such contexts, the state concludes that awaiting the operation of administrative or civil sanctions would produce far greater and irrecoverable harm.[18] Prof. Barda Nawawi Arief offers a critical perspective: the use of criminal law whether as ultimum or primum remedium must be premised on highly rational calculation, because criminal law is a double-edged sword. Prioritizing criminal law as primum remedium without a comprehensive understanding of crime may itself become a boomerang injuring societal justice.[19]

Prof. Romli Atmasasmita observes the shift from ultimum to primum remedium through the lens of contemporary criminal law, particularly in economic and corporate crime. He argues that a rigid subsidiarity principle is frequently exploited by white-collar offenders to shelter behind mild administrative sanctions. The application of criminal law as primum remedium therefore represents a revolutionary and doctrinally justifiable legal breakthrough provided its purpose is to produce an immediate deterrent effect and to effectively restore losses to the state or the wider community.[20]

5. The Principle of Culpability (Geen Straf Zonder Schuld)

The principle of culpability encapsulated in the Dutch maxim Geen Straf Zonder Schuld (no punishment without fault) is one of the most fundamental philosophical pillars of criminal law. It serves as the counterbalance to the principle of legality: whereas legality focuses on the objective act (actus reus), the culpability principle focuses on the subjective condition of the perpetrator (mens rea). Under this principle, a person who has committed an act prohibited by criminal law may not automatically be subjected to criminal sanction. Criminalization may only occur where the perpetrator exhibits a form of 'fault' whether in the form of intentionality (dolus) or negligence (culpa) and possesses the capacity to bear criminal responsibility.[21]

Prof. Moeljatno, adopting a dualistic approach, rigorously separates 'criminal act' from 'criminal liability'. A criminal act refers solely to the unlawful character of the conduct; to subject its perpetrator to punishment, criminal liability must exist, and criminal liability flows from the culpability principle. He holds that this principle, though unwritten in the old KUHP, lives firmly in unwritten law and in the community's sense of justice: a person is properly punished only if they are deserving of moral blame for their conduct.[22]

Prof. Roeslan Saleh explains that 'fault' encompasses the psychological state of the perpetrator and the mental nexus between the perpetrator and the act not merely knowledge or desire of the act, but the objective censure of society (through the judge) against the perpetrator, premised on the finding that the perpetrator was capable of choosing not to perform the unlawful conduct but chose to do so anyway.[23] Prof. Satochid Kartanegara identifies three constituent prerequisites of culpability: a normal mental state (capacity for responsibility), a mental nexus between perpetrator and act (intent or

[18] Atmasasmita R. Op. cit. p. 50–55.
[19] Nawawi Arief B. Bunga Rampai Kebijakan Hukum Pidana [Collected Essays on Criminal Law Policy]. Bandung: Citra Aditya Bakti; 2011. p. 75–80.
[20] Atmasasmita R. Perbandingan Hukum Pidana [Comparative Criminal Law]. Bandung: Mandar Maju; 2000. p. 90–95.
[21] Saleh R. Perbuatan Pidana dan Pertanggungjawaban Pidana [Criminal Acts and Criminal Liability]. Jakarta: Aksara Baru; 1983. p. 15–20.
[22] Moeljatno. Op. cit. p. 50–55.
[23] Saleh R. Op. cit. p. 25–30.

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negligence), and the absence of a ground of excuse (alasan penghapus pidana). Where any element is absent for example, where the perpetrator suffers from severe mental disorder or acts under absolute compulsion (overmacht) the geen straf zonder schuld principle exempts the person from criminal punishment.[24]

6. The Principle of Corporate Criminal Liability

The principle of corporate criminal liability refers to the legal norm establishing that a corporation as a legal subject in the form of a business entity or legal person (such as a limited liability company, foundation, or cooperative) may be prosecuted and subjected to criminal sanctions for criminal acts committed for and in the name of the corporation. This concept constitutes a major breakthrough that challenges the classical criminal law maxim societas delinquere non potest (a legal entity cannot commit a criminal act), which originally recognized only natural persons (natuurlijk persoon) as criminal subjects.[25]

Recognition of corporations as criminal law subjects arose from the need to prosecute crimes of an economic, environmental, and corruption dimension, where the financial benefits of the crime are frequently enjoyed by the corporation rather than merely by its individual officials. In Indonesia, this principle was initially dispersed across various special criminal statutes such as the Corruption Eradication Law and the Environmental Protection and Management Law and has now been fully adopted in the new KUHP. Prof. Sutan Remy Sjahdeini emphasizes the Identification Theory, under which the acts and criminal intent (mens rea) of the individual acting as the 'mind' or controller of the corporation (such as the board of directors or senior management) are identified with the acts and criminal intent of the corporation itself. Corporate punishment is warranted where the act is performed within the scope of its business activities and is intended to benefit or enrich the corporation.[26]

Prof. Romli Atmasasmita argues that corporate criminal liability is an absolute necessity so that criminal law does not merely 'punish the instrument' (the individual employee who was directed) but also reaches the true 'intellectual actor' the corporation that absorbs the proceeds of crime. Without corporate criminalization, the goal of restoring state financial losses or repairing environmental damage can never be effectively achieved, since individual imprisonment is often incommensurate with the massive harm produced by corporate machinery.[27] Prof. Muladi identifies three evolutionary models of corporate criminal liability: (1) corporate officers commit the crime and officers bear the liability; (2) the corporation commits the crime but officers bear the liability; and (3) the corporation itself commits the crime and bears direct criminal liability—typically in the form of severe fines, revocation of business licenses, or corporate dissolution. This third model compels corporations to build rigorous compliance systems to avoid criminal exposure.[28]

7. The Principle of Extraordinary Crime

The principle of extraordinary crime refers to the classification of criminal acts that produce massively destructive, systematic, and widespread consequences directly threatening the foundations of national life, statehood, or human rights. Because of the nature, scale, and impact of such crimes,

[24] Kartanegara S. Hukum Pidana [Criminal Law]. Bandung: Alumni; 1990. p. 40–45.

[25] Sjahdeini SR. Pertanggungjawaban Pidana Korporasi [Corporate Criminal Liability]. Jakarta: Grafiti Press; 2006. p. 10–20.

[26] Sjahdeini SR. Op. cit. p. 30–40.

[27] Atmasasmita R. Hukum Pidana Kontemporer. Op. cit. p. 110–115.

[28] Muladi. Pertanggungjawaban Korporasi dalam Hukum Pidana [Corporate Liability in Criminal Law]. Semarang: Badan Penerbit Universitas Diponegoro; 1991. p. 20–30.

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they cannot be handled using ordinary material criminal law or standard criminal procedure. Their prosecution demands equally extraordinary legal instruments, such as special wiretapping authority, reversed burden of proof, and specialized judicial institutions. In Indonesia, crimes generally categorized as extraordinary include corruption, terrorism, serious human rights violations, and organized narcotics trafficking.[29]

Prof. Romli Atmasasmita characterizes a crime as extraordinary when the act is neatly organized (organized), has a cross-border network (transnational), and employs a highly sophisticated modus operandi. Conventional criminal law is frequently powerless against such crimes; the label extraordinary crime therefore provides legal legitimacy for the state to deviate from general criminal principles in order to safeguard the greater interest of economic order and national security.[30] Prof. Artidjo Alkostar, addressing corruption as the most concrete manifestation of extraordinary crime in Indonesia, argues that corruption is not merely an ordinary financial harm but an egregious violation of the social and economic rights of the wider community a systematic impoverishment of the people and destruction of the foundations of justice.[31]

Prof. Muladi addresses the concept from the perspective of serious human rights violations genocide and crimes against humanity characterizing extraordinary crime as acts that 'shock the conscience of mankind'. Because of their extraordinary gravity, the prosecution of such crimes entails specific features: the non-applicability of statutes of limitations and the permissibility of limited retroactive application in order to ensure universal justice is upheld.[32] Extraordinary crime classification is not a license for arbitrariness but a measured emergency instrument enabling the state to respond to modern crime whose destructive power against human civilization is incalculable.

8. The Principle of Human Rights Protection

The principle of human rights (HAM) protection in law centers on the premise that every legal product and every law enforcement process must respect, guarantee, and protect the fundamental rights inherent in every individual. These rights are universal and may not be arbitrarily revoked, as they attach to persons by virtue of their humanity. This principle functions as a limiting bulwark against state power, guarding against authoritarianism in the maintenance of public order. In the criminal justice system, this principle demands that the state through its enforcement apparatus continue to treat suspects, defendants, and convicts with dignity, including through adherence to the presumption of innocence, the prohibition of torture, and the guarantee of the right to legal assistance.[33]

Prof. Oemar Seno Adji views this principle as the foundational norm that transformed the paradigm of criminal procedure from an inquisitorial model in which suspects are treated as objects of examination to an accusatorial model, in which suspects are treated as subjects possessing rights. He historically characterized the Code of Criminal Procedure (KUHAP) as a 'human rights document' (dokumen Hak Asasi Manusia), because its substance was specifically designed to limit the repressive

[29] Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption. Indonesia; 2001.

[30] Atmasasmita R. Sistem Peradilan Pidana Kontemporer [Contemporary Criminal Justice System]. Jakarta: Kencana; 2010. p. 55–60.

[31] Alkostar A. Korupsi, Kolusi, dan Nepotisme [Corruption, Collusion, and Nepotism]. Yogyakarta: FH UII Press; 2008. p. 22–28.

[32] Muladi. Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana [Human Rights, Politics and the Criminal Justice System]. Semarang: Badan Penerbit Universitas Diponegoro; 1997. p. 40–48.

[33] Seno Adji OS. KUHAP Sekarang [The Current KUHAP]. Jakarta: Erlangga; 1984. p. 15–22.

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authority of law enforcement and to guarantee the civil liberties of individuals against unlawful deprivation outside the proper channels of due process of law.[34]

Prof. Muladi examines human rights protection from the perspective of balance in the integrated criminal justice system: law must simultaneously protect the wider community from criminal threats (social defence) while absolutely protecting individuals against potential state arbitrariness. The principle of HAM protection demands strict proportionality; the absence of HAM protection in judicial processes injures justice for both victims and perpetrators and destroys the moral legitimacy of law itself.[35] Prof. Satjipto Rahardjo, from the perspective of progressive law, provides the philosophical framework that 'law exists for humanity, not humanity for law'—insisting that law enforcement must not be operated as a machine blind to human reality, but must engage the conscience and seek justice, so that law enforcement ultimately serves to protect human dignity, well-being, and safety.

9. Challenges in the Implementation of Special Criminal Law

The challenges of implementing special criminal law encompass diverse operational and juridical obstacles faced by law enforcement authorities in applying extra-KUHP statutes. These challenges arise naturally from the characteristics of special criminal offences themselves: extraordinary in nature, employing highly sophisticated modus operandi, systematically organized, and frequently crossing national jurisdictional boundaries (transnational). Beyond the nature of the crimes, enforcement challenges often stem from institutional issues particularly the overlapping authority between conventional law enforcement agencies (the Police and Attorney General's Office) and specialized commissions (such as the Corruption Eradication Commission/KPK and the National Narcotics Board/BNN), which can trigger inter-institutional rivalry and impede the efficiency of crime eradication.[36]

Prof. Romli Atmasasmita identifies the greatest challenge as the asymmetry of capacity between law enforcement and white-collar criminals: offenders typically possess vast financial resources and are supported by skilled professional accountants, tax consultants, IT specialists to conceal the traces of their crimes. This demands that enforcement officials evolve beyond purely criminal law expertise to master multidimensional disciplines including forensic auditing, banking, and digital technology.[37] Prof. Barda Nawawi Arief identifies hyper-regulation as another critical challenge: the proliferation of overlapping special criminal regulations without adequate synchronization with the general criminal system creates systemic disorder. The tendency of sectoral legislators to inscribe heavy criminal sanctions often without regard to proportionality generates confusion for sentencing courts, producing sentencing disparity that injures the principle of legal certainty.[38]

Prof. Indriyanto Seno Adji highlights the challenge from the perspective of procedural criminal law and human rights. Since special criminal statutes deliberately confer extraordinary measures upon enforcement authorities including warrantless wiretapping powers, extended detention periods, and reversed burden of proof (omkering van het bewijslast) the potential for abuse of power is substantial. The most profound philosophical challenge for the state, therefore, is maintaining the delicate equilibrium between the aggressiveness required to eradicate extraordinary crime in the public interest

[34] Seno Adji OS. Op. cit. p. 30–38.
[35] Muladi. Op. cit. p. 60–68.
[36] Nawawi Arief B. Op. cit. p. 100–108.
[37] Atmasasmita R. Hukum Pidana Kontemporer. Op. cit. p. 130–135.
[38] Nawawi Arief B. Bunga Rampai Kebijakan Hukum Pidana. Op. cit. p. 115–120.

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and the constitutional obligation to respect the human rights and dignity of suspects throughout every stage of judicial proceedings.[39]

D. Conclusion

Special criminal law has emerged as an essential and adaptive legal instrument for responding to modern crime possessing a high degree of complexity and massive social impact, where the general criminal code (KUHP) is no longer adequate. Its existence is buttressed by the cornerstone principle of lex specialis derogat legi generali, which enables it to override general rules. Notwithstanding its special character, its application must remain subject to the fundamental principles of justice: the legality principle, which guarantees legal certainty and protection against arbitrariness, and the culpability principle (geen straf zonder schuld), which ensures that criminal punishment is only properly imposed where criminal intent (mens rea) and capacity for responsibility are proven.

In its development, the handling of crime under special criminal law demands a significant paradigmatic shift and doctrinal innovation. This is evidenced by the recognition of corporations as criminal law subjects capable of punishment enabling the prosecution of intellectual actors behind organized economic crime and by the shift in sanction orientation from ultimum remedium (last resort) to primum remedium (primary weapon). The categorization of certain acts corruption, terrorism, and serious human rights violations as extraordinary crimes provides the state with legitimacy to employ extraordinary procedural measures to dismantle neatly organized transnational crime.

Despite the strong authority conferred upon it, the implementation of special criminal law in practice faces multi-layered challenges: asymmetry of expertise between enforcement personnel and white-collar criminals, overlapping institutional jurisdiction, and hyper-regulation without adequate synchronization. Amid the aggressiveness of crime eradication, the principle of human rights protection must always be present as a limiting bulwark. The ultimate philosophical and practical challenge for the state is to maintain precise equilibrium: firmly prosecuting extraordinary crime to forestall massive public harm, without falling into abuses of power that injure human dignity and due process of law.

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[39] Seno Adji I. Hukum Pidana Pengembangan [Developing Criminal Law]. Jakarta: Diadit Media; 2011. p. 75–82.

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