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Examining Economic Crime Policy: Evidence from Indonesia

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Abstract

The development of global economic activity has given birth to various types of new crimes in the economic field. To tackle crime in the economic field, Indonesia has Emergency Law No. 7 of 1955. However, the existence of Emergency Law No. 7 of 1955 is considered to have been unable to tackle crime in the existing economic field. In addition, there are currently many laws, outside Emergency Law No. 7 of 1955, regulating crime prevention in the economic field. This study aims to review and examine the existing economic crime policies in Indonesia. This research is normative juridical research with the library research method. The library materials used consist of primary, secondary, and tertiary legal materials. The information was then analyzed qualitatively and descriptively. The regulation of economic crime in Indonesia has been regulated narrowly and broadly. In a narrow sense, economic crimes are all actions listed in the TPE Act.

A. INTRODUCTION

Global economic activities in this modern era have a tremendous impact on various fields of life (Dewi, 2019). These developments have an impact on both positive and negative economic development efforts. In terms of negative consequences, the growth of global economic activity has also resulted in the emergence of various types of new crimes, particularly in the economic field. (Rodliyah, Any & Lalu Husni, 2020). According to the Report of the United Nations (UN) VI Congress on the Prevention of Crime and Treatment of Offenders in Caracas in 1980, at least 11 types of economic abuse were identified, namely: tax evasion, credit and custom fraud, embezzlement of public funds, misappropriation of public funds, violations of currency regulation, speculation and swindling in land transaction, environmental offenses, overpricing or over invoicing, labor exploitation, export and import of substandard, and even dangerously unsafe products.

Furthermore, economic crime has become one of the forms and dimensions of crime development that is currently the focus of international attention.

According to one of the reports from the 7th United Nations Congress in Milan in September 1985 on the Guiding Principles for Crime Prevention and Criminal Justice in the Contexts of Development and a New International Economic Order, economic factors cause crime as a social problem. Even in the year 2000, the United Nations Congress met in Vienna to discuss International Cooperation in Combating Transnational Crime: New Challenges in the Twenty-First Century. The congress debated international criminal organizations' control over transnational crimes. (United Nations, 2000).

The development of crime in the economic field is also made more sophisticated with the advancement and widespread use of computers (Nasibu, 2009). These crimes are in the form of computer fraud to gain profit by doing 'the creation of computer viruses or rub-outs (computer sabotage) with the aim of 'terrorism or mischief' (Mueller, 1992). The advancement of information technology, as evidenced by the proliferation of internet applications in the business world, has accelerated the globalization of trade, which has an impact on the growth of transnational crime (Raodia, 2019). These crimes are as follows: 1) the international drug trade; 2) environmental criminality; 3) transnational economic criminality, including international organized criminality, money laundering, and computer criminality (transnational economic criminality, including international organized crime, money laundering, and computer crime); 4) maritime crime; 5) political aggression, suppression, and corruption; dan 6) terrorism (Mueller, 1992).

The impact of crime in the economic field is not only on the economic activities of the community, but also on the overall economic development of a nation (Abiyoga, Taffarel & Arjun, 2021). According to Barda Nawawi Arief, economic crime is a feature of global development, both in developed and developing societies (Arief, without year). Crime will have a greater impact on developing countries because economic crimes, such as investment, trade, and so on, are stifling national development programs (Naqvi, 1986).

Given the state of the development of crime in the economic field in this modern era, a policy that can mitigate the negative impact of economic activity development is urgently required. The role of the law, particularly the use of criminal law, is required in this policy (Supanto, 2009). In Indonesia, economic crime prevention policies are outlined in a special law known as Emergency Law No. 7 of 1955 Concerning the Investigation, Prosecution, and Judiciary of Economic Crimes (hereinafter referred to as the TPE Law). The TPE Law is a modification of the Dutch Economic Criminal Law, known as the *Wet op de Economische Delicten* (WED), which was enacted in 1950. (Abidinfarid & Hamzah, 2006).

Both in the Netherlands and in Indonesia, the purpose of the enactment of the Law on economic crimes is to overcome the crisis in the economy (Reksodiputro, 1989). The crisis was caused by the government's inability to

control economic activity following the end of World War II (in the Netherlands) and the end of the struggle for independence or physical revolution (in Indonesia). Thus, the TPE Law has been in effect for approximately 66 years, having been first promulgated in 1955. It also means that the TPE Law remains in effect, despite the fact that Indonesia has passed the emergency (crisis) condition referred to in the TPE Law.

This study investigates the review of Indonesian economic crime policies. There has been no research to date that examines economic crime policies that are concerned with the development of criminal law reform (Draft of the Criminal Code/In Indonesia: RKUHP). Previously, several studies discussed economic criminal law policies but did not address the development of the current Indonesian RKUHP. First, in 1995, Ida Fadri University of Indonesia issued a thesis titled "*Pembaharuan Hukum Pidana Ekonomi di Indonesia*" (Reforming Economic Criminal Law in Indonesia). Second, RB Budi Prastowo's 2014 dissertation, "*Membangun Sistem Hukum Pidana Ekonomi Indonesia* (Building the Indonesian Economic Criminal Law System)," from the Catholic University of Parahyangan Bandung. Although the two studies have the same topic, talking about economic crime, the focus of the studies differ from this study, which reviews economic crime policies by looking at the development of criminal law reform in Indonesia today. As a result, the title of this study is "Examining Indonesia's Economic Crime Policy".

B. RESEARCH METHOD

This study is a normative juridical research, which is a method for investigating theories, concepts, and legislation. It is legal research that treats the law as a set of norms and then determines the law's intent (Suggono, 2016). This normative juridical research uses library research methods (Sukanto & Mamudji, 2006). The library materials used in this study came from secondary data sources, which included primary, secondary, and tertiary legal materials. The data was then analyzed qualitatively, with the descriptive analysis method.

C. RESULTS AND DISCUSSION

Regulation of Economic Crimes in Indonesia

When it comes to economic crimes, there is currently no consensus on what they are (Setiadi, & Yulia, 2010). The terms "crime" and "economic" must be examined to understand what an economic crime is. The term "criminal offense" is derived from the Dutch phrase "*strafvaar feit*," which refers to illegal behavior that is punishable (Kartanegara, without year). According to Simon, *strafbaar feit* is a criminal threat for a behavior (hendeling) against the law (wrong) combined with the ability to personally take responsibility from the perpetrator (Moeljatno, 1985). Meanwhile, the term "economics" can be interpreted as a science that examines

human efforts and behaviors in realizing their welfare (Hamzah, 1991). Simply put, economic crime is defined as unlawful behavior committed in the pursuit of human welfare.

Economic crimes cannot be separated from the existence of economic prohibitions, so crimes committed in the economic field are frequently referred to as economic crimes (Pangaribuan, 2019). The term "economic crime" was not coined until the passage of the TPE Law. However, there is no single definition of economic crime in the law (Setiadi & Yulia, 2010). According to H.A.K. Moch. Anwar, economic crimes in the TPE Law are divided into two categories: broad economic crimes and narrow economic crimes. In a broad sense, economic crimes include all of the actions listed in the TPE Law. It is referred to as narrow when it only contains a small portion of the total number of criminal acts in economic activity, which is limited to the provisions of Article 1 sub 1e, 2e, and 3e.

TPE based on Article 1 sub 1e: a) violations in the field of foreign exchange; b) violations of import, export/smuggling procedures; c) violation of permit provisions; and d) violation of controlled goods provisions. TPE under Article 1 sub 2 e includes: a) Article 26, intentionally failing to meet the demands of the investigating officer based on a legal provision; b) Article 32, intentionally doing or failing to do something that is contrary to: (1) an additional punishment as stated in Article 7 sub s, b, and c an act of discipline as stated in Article 8; (2) a regulation referred to in Article 10; a temporary disciplinary action or the avoidance of the aforementioned additional penalties/temporary disciplinary measures; (3) Article 33, intentionally withdrawing parts of one's wealth, either alone or through another person's intermediary, to avoid: bills, execution of a sentence, or temporary disciplinary action imposed by law. TPE based on Article 1 sub 3e: violation of another law's provision and based on another law.

In contrast, economic crimes broadly speaking include all offenses covered by the TPE Law as well as those not. Therefore, all offenses in TPE, criminal, and administrative law with sanctions that pertain to economic fields are considered economic crimes in the broad sense. In Indonesia, laws outside of the TPE Law are also used to regulate economic crimes in addition to the TPE Law.

The regulation of economic crime in Indonesia cannot be separated from the history of the development of criminal law in economic activity. In its developments, economic activity is full of various violations (Yoserwan, 2011). As a result, the use of Criminal Law, both the criminalization process and the decriminalization process, cannot be ignored (Loqman, 1994). For this reason, Criminal Law in the economic realm is legal regulations issued by the government (state) to control the economic life process to achieve the country's national goals (Anwar, 1985).

Historically, the Indonesian government became involved in the welfare of the people after gaining independence in 1945, i.e. after World War II ended. The

outbreak of World War II resulted in social and economic difficulties almost everywhere in the world (Chotimah et al., 2017). Many extraordinary difficulties were felt during the war period in trying to meet the necessities of life, both in the United States and in Indonesia. However, economic difficulties in Indonesia were caused not only by World War II, but also by a long period of colonization by foreign nations and a wave of domestic rebellions.

Following Indonesia's independence and the formation of a new government, the government gradually began to organize economic conditions. The majority of the government's activities are centered on regulating, supervising, and managing the people's economic lives under *Pancasila* (Indonesian fundamentals) and the 1945 Constitution of the Republic of Indonesia. Since 1950, various types of regulations and policies have been formed to accelerate the State's goal, the creation of a just and prosperous society. The old regulations contrary to the national goals of the Indonesian are changed, and some new regulations are added, either partially or completely (Anwar, 1985). Efforts have also been made since 1950 to establish Criminal Law regulations in the economic field. This effort resulted in the creation of Law No. Drt. 7 of 1955, which includes criminal determination in various regulations.

TPE Law as a Special Economic Criminal Law

The TPE Law was first enacted on May 11, 1955. The purpose of enacting the Law is to create a legal entity in governing the investigation, prosecution, and trial of economic crimes (Sadino & Hidayati, 2017). The TPE Law is frequently regarded as an overarching framework for economic criminal law because it governs the formulation of both the material criminal law and the criminal procedural law separately. The TPE Law is an adaptation of the *Wet op de Economische Delicten* (WED) (Yoserwan, 2011). *Wet op de Economische Delicten* was promulgated on June 22, 1950, and accommodates almost all types of criminal acts in the economic field (Wettenbank, 2018). The essence of the establishment of the TPE Law in both the Netherlands and Indonesia is to overcome the economic crisis. The crisis situation here is the government's difficulty in controlling economic activities following the end of World War II (for the Netherlands) and the end of the struggle for independence or physical revolution (for Indonesia) (Reksodiputro, 1989).

Initially, the TPE Law only specifically regulated several provisions concerning "*Gecontroleerde Goederen*," "*Prijsbeheersing*," "Goods Hoarding," "*Rijsterdonnantie*," "Rice Mill Obligation," and "*Deviezen*." These six factors were considered critical in controlling the economy at the time. However, those six points are no longer valid (Pangaribuan, 2016). The TPE Law has been in effect for approximately 66 years, having been first enacted in 1955. This means that the TPE

Law continues to exist even though the emergency period referred to in the purpose of the Law's establishment has passed.

The TPE Law, as a separate law, regulates the formulation of both the material criminal law and the criminal procedure law. The TPE Law arose as a result of the inability of general criminal provisions to combat economic crimes due to the nature and special character attached to them. Observing this, legislators at the time established the TPE Law as a special criminal law distinct from the Criminal Code and Criminal Procedure Code. The following are the specifics (variations) of the TPE Law in material criminal law:

First, the criminal law subject setting. In general, the Criminal Code only recognizes a natural person as the legal subject. This can be seen in the Criminal Code, which frequently uses phrases like "whoever", "mother" (Article 342), "commander of the army" (Article 413), "public servant" (Article 414, 415, 418, and 419), "judge" (Article 420), and so on. Legal entities or corporations are recognized as legal subjects under the TPE Law. According to Article 15 paragraph (1) of the TPE Law: "If a TPE is carried out by or on behalf of a legal entity, a company, a non-profit organization, or a foundation, criminal charges are filed, as well as criminal penalties and disciplinary actions are imposed. whether against legal entities, corporations, associations, or foundations, whether against those who gave orders to carry out the TPE or who acted as leaders in such acts or omissions, or both".

Criminal sanctions can be imposed on individuals, legal entities, or corporations under the provisions of Article 15 of the TPE Law. As a result, a legal entity or corporation can be held accountable as a legal subject if the legal entity is deemed to have committed an economic crime, even if the economic crime was committed by those bound by work relations or certain other relationships with these legal entities. Legal entities or corporations were previously regulated in Law No. 17 of 1952 concerning the Hoarding of Goods, but the Law has since been repealed. The TPE Law then regulates corporate offenses more firmly, completely, and effectively.

Today, there are many laws that regulate legal entities or corporations as criminal law subjects that are included in the scope of criminal acts in the economic field. However, not all of these regulations govern corporations' criminal liability. Considering this situation, the Supreme Court took the initiative to issue Supreme Court Regulation No. 13 of 2016 on Procedures for Corporations Handling Criminal Cases (Supreme Court Regulation (*Perma*) No. 13 Tahun 2016). In essence, the *Perma* governs how to determine whether an event or a criminal act is a corporate act, or whether the corporate act, together with the board of directors or staff, must be seen as regulated by each of the relevant provisions and laws.

The TPE Law has undergone several additions or changes as it has evolved. The first change was the implementation of Emergency Law No. 8 of 1958 concerning the addition of the TPE Law. The second amendment came with the

creation of *Perppu* (Government Regulation) No. 21 of 1959, which dealt with Increasing the Threat of Punishment for Economic Crimes. The third amendment is through *Perppu* No. 1 of 1960 concerning the addition of the TPE Law. Furthermore, the last amendment with *Perppu* No. 36 of 1960 concerning Amendments and Supplements to the TPE Law. These changes exist because the TPE Law is considered to have shortcomings still, so it is feared that it will not be able to overcome economic problems and crimes.

Second, the distinction between economic offenses in the form of crimes and violations. The TPE Law, like the Criminal Code, regulates criminal offenses and violations, but on a different basis. Crimes and violations are distinguished qualitatively and quantitatively in the Criminal Code. In terms of quality, crimes are classified as legal offenses (*rechtsdelict*), while violations are classified as constitutional offenses (*wetsdelict*). A legal offense is one that is not formulated in the constitution, does not have a judge's verdict, and is recognized by the public as a crime. Meanwhile, *wetsdelict* is a criminal offense that is punishable by the constitution. Quantitatively, criminal offenses are threatened with a more severe punishment than a violation. Crimes are punishable by imprisonment, while violations can be subject to fines or imprisonment. Apart from being generally applicable, all of these differences also apply to economic offenses. The provisions in Articles 54 and 60 of the Criminal Code deviate from the provisions that attempt and assist in committing violations are not punished. This is because the experiment requires the presence of an intentional element, which is not the case with violations.

There is a distinction between crime and violation in the TPE Law, but the criteria used differ from general crimes since they only use criteria intentionally or unintentionally, whereas in the Criminal Code it is known as the crime of culpa. Article 2 states that: (1) the TPE referred to in Article 1 sub 1c is a crime or a violation, according to the relevant law provisions. The other TPE mentioned in Article 1 sub 1e is a crime if the act is done intentionally. If the act was not done intentionally, then the act is a violation. (2) The TPE in Article 1 sub 2e is a crime. (3) The economic crime referred to in Article 1 sub 3e is a crime, if the act contains intentional elements; if the act does not contain intentional elements, the crime is a violation; one another, if the law does not provide otherwise.

The distinction between crimes and violations can be adjusted based on three types of offenses under these provisions. Category I is based on Article 2 sub 1e, which states that all TPE in Article 1 sub 1e is a crime or violation if specified by the relevant law. If no classification is specified, the classification is used. If the action is done on purpose, it is considered a crime. Meanwhile, if the action is performed unintentionally, it is considered a violation. All TPEs specified in Articles 26, 32, and 33 of the TPE Law are considered a crime in Category II. All

TPE in Category III is considered a crime if done intentionally, and a violation if done with culpa. This provision is based on TPE Law Article 2 sub 3e.

Third, the expansion of economic crime enactment. Article 2 of the Criminal Code states that Indonesian criminal provisions can be imposed on perpetrators who act on Indonesian state territory (territorial principle). Meanwhile, the application of this provision has been expanded in the TPE Law. According to Article 3 of the TPE Law, "anyone who participates in committing a TPE that is carried out in the jurisdiction of the Republic of Indonesia, as well as if the act of participating in committing a TPE is carried out abroad, can be punished with a criminal sentence." As a result, the provision departs from the territorial principle by extending its application beyond the Republic of Indonesia's territory. Furthermore, the term "committing" in the TPE can be used to broaden the definition of a criminal act. As a result, the act of "committing" is equivalent to the act of committing TPE and is punished similarly. In other words, the act of "committing" is treated as a separate or perfect offense.

Fourth, attempting and assisting. In criminal law, attempting is an act that desires something but does not get done, or the act is performed but not completed due to something that is not desired. (Soesilo, 1980). While assisting is an act that aids or assists someone in committing a crime. The attempt to commit an offense is not punishable under Article 54 of the Criminal Code. Thus, the trial is limited to criminal offenses, with a few exceptions, such as the attempt to commit persecution (Article 351 paragraph (5)), the trial of light persecution (Article 352 paragraph (2)), the attempt to fight one on one (Article 184 paragraph (5)), etc. As with Article 60 of the Criminal Code, assisting in the commission of violations is not punishable. In the Criminal Code, perpetrators who try or help commit a crime will be subject to a criminal threat reduced by 1/3 of the prescribed legal threats, except for the crime of treason.

The TPE Law deviates from Criminal Code Articles 54 and 60. According to Article 4 of the TPE Law, "if in this emergency law it is called TPE in general or a TPE in particular, it includes providing assistance to or attempting to commit the crime, just a provision that does not dictate otherwise." According to the explanation of Article 4 of the TPE Law, attempting and assisting in the commission of a violation is considered a form of violation, so it is critical to regulate it internally. If you attempt or assist in doing so, the maximum penalty is one-third of the primary criminal sentence. As a result, attempted trespass and assisting in the commission of economic crimes are punishable offenses.

Fifth, extra punishment. In addition to those stipulated in Article 10 of the Criminal Code, which regulates the main types of criminal sanctions, namely imprisonment, confinement, fines, and confinement in place of fines, various additional criminal sanctions are regulated in the TPE Law. The additional penalties are stipulated in Article 7, paragraph (1) of the TPE Law as follows: a. The

revocation of rights as regulated in Article 35 of the Criminal Code for at least 6 months and a maximum of 6 years longer than the confinement penalty, or in the case of a fine for a minimum of 6 months and a maximum of 6 years; b. The closure of all or part of the convicted company within a maximum period of one year in which the TPE is carried out; c. The confiscation of non-permanent goods, both tangible and intangible, related to TPE carried out or wholly or partly obtained from TPE, regardless of the price or whether the goods are the convict's property or not. This provision differs from the provisions in Article 39 of the Criminal Code, which limit what can be confiscated to goods belonging to the convict obtained from a crime or intentionally committed to committing a crime; d. confiscation of non-permanent goods, both tangible and intangible, including the convict's company where the TPE is carried out, regardless of ownership or price of the goods; e. revocation of all or part of certain rights or abolition of all or part of certain benefits, which have been or can be given by the Government to the convict related to his company, for a maximum of two years; and f. announcement of the judge's decision.

Additional penalties may be imposed for crimes or violations. Concerning the additional punishment of confiscation, the TPE Law contains detailed regulations governing the confiscation of goods, which were previously governed by separate regulations. The TPE Law expands on the provisions of Article 39 of the Criminal Code, specifically with the following provisions: 1) Can be done against crimes or violations; 2) Can be done on fixed or non-fixed goods, both tangible and intangible; 3) Can be done on confiscated goods without regard to who owns the goods, with the limitation that the confiscation penalty is not imposed on goods that do not belong to the convict, if it disturbs the rights of third partie with good faiths; 4) Non-permanent, tangible and intangible goods can also be confiscated if one of the following conditions is met: a) With these items, an economic crime has been committed, or the goods are tools to commit economic criminal acts; b) TPE is carried out in connection with the presence of the goods; c) The goods are obtained entirely or partially through TPE; d) The opposite price of the goods in letters a, b, and c that replace the goods, whether or not the goods or the opposite price belong to the defendant; what matters is that the goods are of the same type and the crime is related to the goods that can be seized under letters a, b, and c; and e) the goods belong to the legal company where the TPE is performed.

However, Article 7 paragraph (1) of the TPE Law places limitations on the authority of the confiscation carried out, namely the confiscation of goods that do not belong to the suspect, and the rights of the third party must be considered in good faith so as not to be disturbed. Deprivation can also occur after the convict dies. Meanwhile, if a defendant dies before a verdict is rendered, the confiscated goods can still be confiscated if the judge decides so based on the prosecutor's demands.

Sixth, disciplinary action. The TPE Law also provides for a type of punishment that is not covered by the Criminal Code, namely additional penalties in the form of disciplinary actions and temporary disciplinary actions. Disciplinary measures may be imposed in addition to other laws. Article 8 of the TPE Law specifies four types of disciplinary actions: a) placing under the custody of a convicted company for a maximum of three years for TPE that is a crime and a maximum of two years for TPE that is a violation; b) If the action is a crime, the perpetrator must pay a maximum security deposit of Rp. 100,000.00 for a maximum period of three years; c) Require a security deposit of Rp. 50,000.00 for an indefinite period of time; d) If the judge does not rule otherwise, the perpetrator must do what he violated and eliminate all actions that have no rights at all, as well as perform services to repair the consequences of his actions.

Actually, regulating disciplinary action is one step toward recouping profits and improving the impact of TPE, particularly those carried out with security deposits. This concept is actually very good in terms of punishing TPE violators, especially in terms of avoiding unpaid fines, but the nominal formulated in Article 8 of the TPE Law is certainly no longer in accordance with current conditions. However, action sanctions are only used as a supplement to other sanctions when dealing with TPE.

In addition to disciplinary actions, the TPE Law recognizes temporary disciplinary actions, specifically temporary measures in the context of the Prosecutor's investigation of TPE. In material terms, however, the temporary disciplinary action is a preliminary sanction that is considered a sanction. Prosecutors may order a suspect to: 1) Shut down part or all of the suspect's company suspected of being the location of the act; 2) Place the suspect company under custody; 3) Revoke the rights or benefits that have been or will be obtained from the company to the suspect, either partially or completely; 4) The suspect is prohibited from taking certain actions; and 5) The suspect must assist the officer in obtaining the goods requested for confiscation based on the seizing order.

The specifics (deviations) of the TPE Law in the formal criminal law are: First, conduct an investigation. According to the TPE Law, the authority of investigators has been expanded, even the authority for investigators and public prosecutors is enlarged in the settlement of TPE cases. Investigators and economic prosecutors have the authority to take repressive and preventive actions, as well as administrative actions. These are the following powers: 1) confiscation; 2) searching; 3) complementary authority. In the case of confiscation, investigators are given the authority to confiscate all goods without regard to the nature of the goods to obtain information and to be confiscated or destroyed by a judge's decision according to the applicable law (Article 8 paragraph (1)). Furthermore, investigators are given the authority to confiscate items for which additional penalties may be imposed in the form of confiscation, with the prosecutor's

approval: a) Non-permanent objects, both tangible and intangible, including the company where the crime was committed, and b) Replacement prices for these objects. Whether or not the items used in TPE belong to the suspect, what matters is that they are of the same type and are related to a criminal act (Article 8 paragraph (2)). Guidelines for confiscating and eliminating non-permanent intangible goods are outlined in Article 8 paragraphs (3, 4, and 5).

In the case of a search, Article 20 of the TPE Law states that the investigator: 1) can determine the place to enter if it is necessary according to the investigator; 2) can search at any time of day or night; 3) can enter any place that they believe is necessary in order to facilitate the execution of their duties; and 4) can use the assistance of legal powers (coercive tools such as the Police). Furthermore, investigators have additional powers as a complement to the primary power according to Articles 19, 21, 22, and 23 of the TPE Law.

Second, the prosecution. Economic prosecutors carry out prosecutions under the TPE Law. Only economic prosecutors are authorized to prosecute under the specialist principle, according to Article 35 of the TPE Law. Economic prosecutors are clearly distinct from general prosecutors. Economic prosecutors can be appointed instead of ordinary prosecutors because they have expertise in economics and devote all of their thoughts and energy to economic matters. As long as the trial has not started, the economic prosecutor can take steps to prevent and/or stop economic disturbances that arise due to a violation of the law. The prosecutor can take limited temporary measures by not ordering specific actions against the suspect (regulated in Article 17 paragraph (1)). In addition to economic investigators and prosecutors, the TPE Law mandates the existence of agencies or employees who are considered economic experts as liaison bodies or employees who are required to assist judges, and investigation and prosecution officers, both inside and outside the court.

The third stage is the trial in absentia. The TPE Law allows for trial in absentia or trial without attendance for two people. First, people who have died can be sentenced under Article 16 paragraph (1). A criminal trial cannot take place if the defendant is not present. If a defendant dies, the criminal charges against that person are dropped, according to Article 77 of the Criminal Code. However, according to Article 16 paragraph (1) of the TPE Law, a defendant who dies can be tried and sentenced even if the type of punishment is limited. The limited punishment is the confiscation of previously confiscated items or the imposition of disciplinary action.

Second, in Article 16, paragraph (6) of the TPE Law, an unknown person has the same position as someone who died. As a result, even without their presence, an unknown person can be tried. This occurs when there is evidence of a TPE in the form of goods, but the suspect is unknown. This kind of thing usually happens

in smuggling offenses where the perpetrators run away and leave the evidence in ships or boats with or without contents.

Notification of court decisions to those persons in the two interpretations above is carried out by attaching the notification to the place of the announcement in the relevant District Court or placing it in one or more newspapers to be appointed by the judge. In addition, Article 8 states that paragraphs 3, 4, and 5 of Article 16 can also be applied to cases regulated in paragraphs 6 and 7 of Article 16. Furthermore, at the end of paragraph 9, it is stated that no one may represent the people mentioned in paragraphs 6 and 7.

Fourth, file an appeal. All decisions of economic courts, like offenses, can be appealed to the high economic court, except when the final verdict is against a violation and the decision: 1) No criminal penalties or disciplinary actions are imposed; 2) Criminal penalties or disciplinary actions are imposed in the form of a) fines; b) confiscation of objects; c) security deposit to be paid; d) payment of an amount of money based on Article 8 sub c of the TPE Law, up to Rp. 1,000.00; e) return of the convicted person to his/her mother/father without imposing a criminal sentence.

Prosecutors may also appeal unless a final judgment is issued regarding the violation and: a) no punishment or discipline has been imposed; b) no criminal penalties or other disciplinary actions are required other than those referred to in paragraph 1 sub b. So this is the same as the exception to the appeal by the convict. The exception, however, is an appeal by the convict because he has not been sentenced, and so on. In contrast, the exception by the Prosecutor is the prosecution of criminal penalties and so on.

Fifth, cassation. The provisions regarding the cassation of economic cases are the same as in ordinary cases. The exceptions are also the same: negligence found in the court of the first instance or an appeal regarding the methods that must be followed during the trial cannot be used to cancel the decision if it does not harm the Prosecutor's claim or the suspect's defense. The negligence here is committed at the first level, that negligence did not raise any objection from each party (Prosecutor and suspect).

Sixth, Economic Court. Under the TPE Law, the economic court was the first special court established in Indonesia in 1955. An economic court was established to try criminal cases in the economic field, whose position was included in the definition of the general court at the time. Each district court establishes an economic court as a special court for this purpose, comprised of economic judges whom clerks assist with expertise in economic criminal cases and economic prosecutors who act as public prosecutors and can also prosecute economic crimes. Article 39 of the TPE Law stipulates that if in several TPEs, more than 1 person is committed, either jointly or individually, and the TPEs are related to one another, then the competent economic court can also try the suspect and those who

participated in conducting TPE in the case. Suppose the suspect is a legal entity, a limited liability company, an association of persons, or a foundation. In that case, the competent economic court is where the legal entity is located and has an office. An appeal to the decision of the economic court can be submitted to the high economic court established in each high court. The high economic court has at least 1 chairperson, 1 high judge (as well as a member, 2 member judges, 1 clerk, and several substitute clerks).

It is acknowledged that the history of mentioning special courts is inextricably linked to the economic court. Because it is initially only known as general justice, anything else must be referred to as special courts. After the idea of establishing a state administrative court was realized, the term new judiciary was reintroduced, it is called the state administrative court. For this reason, initially, based on the Elucidation of Article 7 paragraph (1) of Law No. 19 of 1964 concerning the Basic Provisions of Judicial Power (hereinafter referred to as Law No. 19 of 1964), there are 3 types of courts, namely general courts, special courts, and state administrative courts. In Law No. 19 of 1964, religious courts are considered as a separate judicial environment in addition to general courts, military courts, and state administration (Asshiddiqie, 2013).

The economic courts and the Land-reform Court in 1964 were included in the scope of the general judiciary, while the religious and military courts were included as special courts. Meanwhile, the state administrative court, based on MPRS (Indonesia Provisional People's Consultative Assembly) Decree No. II/MPRS/1960 was included as an administrative court. The religious courts, military courts, and state administrative courts were then enacted as their judicial environment equivalent to the general courts after the provisions regarding the four courts were included in Law No. 14 of 1970. As a result, the definition of a special court no longer exists and is replaced by the notion of a judicial environment. So currently, the existence of economical and high economic courts is also abolished, and the authority to try TPE becomes the authority of district and high courts as general courts, which leads to the Supreme Court.

Despite the fact that Law No. Drt. 7 of 1955 is classified as a Special Law because it specifically regulates both material criminal provisions and formal criminal provisions, the Law is rarely invoked, especially now that there are numerous laws that specifically regulate other criminal acts. As a result, the TPE Law appears to be suspended. Thus, many legal scholars and practitioners have proposed that the TPE Law be declared null and void (Ramdania, 2021).

Indonesian Criminal Law Policy Direction

Criminal law policy (penal policy) is the first attempt to use criminal law to prevent crime. The term "policy" comes from the words "policy" (English) and "*politiek*" (Dutch) (Arief, 2005). Both terms can be interpreted as general principles

that serve to direct the government (including law enforcement) in managing, regulating, or resolving public affairs, community problems, or fields of drafting laws and regulations and allocating laws and regulations in a goal (general) that leads to efforts to realize the community's welfare and prosperity (citizens) (Mulyadi, 2009).

The direction of Indonesia's criminal law policy can be seen in efforts to reform criminal law, which are still ongoing to this day (Rahadian & Jaya, 2014). The goal of the criminal law reform was to create a codification of domestic criminal law to replace the *Wetboek van Strafrecht voor Nederlands Indie* 1915, which was a codification of criminal law inherited from the Netherlands. Additionally, changes have to be made due to the expansion of criminal law outside of the Criminal Code (both special criminal law and administrative criminal law). The Criminal Code now recognizes the existence of the criminal justice system. Due to this circumstance, there are now multiple criminal justice systems operating within the national criminal justice system (Pohan, 2017).

This condition began in the 1950s when the government began making special laws outside the Criminal Code to accommodate various new offenses or specific offenses (Agustina, 2014). Special criminal law in Indonesia has rapidly evolved as a result of criminal law policy. The numerous laws with criminal penalties outside of the Criminal Code, including those with criminal provisions in the economics field, serve as evidence of this.

The presence of special criminal law in the repertoire of Indonesian positive criminal law shows the actual provisions of criminal law. This condition can be seen after the TPE Law eradicating economic crime. Indonesia then enacted several regulations to eradicate corruption, namely the State of danger Law No. PRT/PM/06/1957 on the Eradication of Corruption Crimes. The enactment of this regulation ended and replaced with The Central War Authority Regulation Number PRT/Peperpu/013/1958, dated April 16, 1958, concerning the Regulation for the Eradication of Corruption. This Central War Authority Regulation was accommodated by the Government more broadly by enacting *Perppu* (Indonesia Government Regulation in Place of Law) No. 24 of 1960, which was then changed based on Law No. 1 of 1961 to Law No. 24//Prp/1960 concerning Investigation, Prosecution, and Examination of Criminal Acts of Corruption.

In addition to issuing various regulations and laws to eradicate corruption, the government also began to regulate other criminal acts adapted to the particular situation and conditions of the Republic of Indonesia at that time. At the time, Indonesia's political situation was regarded as a threat to the survival and sustainability of the government and state of Indonesia. This required the President to issue a Presidential Decree (In Indonesia: *Penpres*) which later became Law No. 11 PNPS of 1963, concerning the Eradication of the Crime of Subversion. In the economic field, the dangerous situation is also indicated by the issuance of Law No.

17 of 1964 concerning the Prohibition of Withdrawing Blank Checks. This law aims to protect economic actors from various fraudulent acts by using checks that are not supported by sufficient funds to pay the checks.

Meanwhile, eradicating corruption with Law No. 24 of 1960 was considered insufficient to reduce the rapid development of corruption in society at that time. For this reason, Law No. 3 of 1971 replaced Law No. 24 of 1960. The regulation on corruption was then strengthened by enacting Law No. 11 of 1980 concerning the Crime of Bribery. In the era of the 1970s to 1980s, the provisions of special criminal law imposed by the Government of Indonesia were dominated by administrative law provisions with criminal sanctions. These various regulations exist because of economic, social, and societal issues developing in the international world. These laws include Law No. 1 of 1970 concerning Occupational Safety, Law No. 7 of 1974 concerning Gambling Control, Law No. 6 of 1982 concerning Copyright, Law No. 9 of 1976 concerning Narcotics, Law No. 5 of 1983 concerning the Exclusive Economic Zone, Law No. 7 of 1987 concerning the Environment, and others.

According to Shinta Agustina, the rapid growth of criminal law for both types of special criminal legislation occurred in the 1990s, especially since the reforms. At that time, the government issued Law No. 31 of 1999 to replace Law No. 3 of 1971, which 2 years later was amended again by Law No. 20 of 2001. In addition, Law Number 26 of 2000 concerning the Human Rights Court was also enacted to try criminal acts of serious human rights violations. Then also issued Law No. 15 of 2002 concerning the Crime of Money Laundering as amended by Law No. 25 of 2003, which was later also replaced by Law No. 8 of 2010 (Agustina, 2014).

The Indonesian government also issued Government Regulation in place of Law No. 1 of 2002 due to the 2002 Bali Bombs Accident. The regulation was later changed to Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, a year after the Bali Bombings. Then in 2004, Law No. 23 of 2004 concerning the Elimination of Domestic Violence was enacted, followed by Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

At least 140 laws have been discovered in Indonesia that formulate criminal sanctions, with more than half of them relating to economic activity (Prastowo, 2014). However, it turns out that the desire to reorganize criminal law into a codification (of a national nature) has never been extinguished. This is evident from the explanation of the *RKUHP* (Draft Criminal Code Draft) version of July 4, 2022, which states that the purpose of drafting the *RKUHP* in the form of codification and unification is to create and enforce consistency, justice, truth, order, expediency, and legal certainty in Indonesia by paying attention to the balance between national interests, community interests, and individual interests based on Pancasila and the 1945 Constitution.

From this point of view, it can be seen that Indonesia's future criminal law policy is to regulate all offenses into a national criminal code book. The question is,

then, what about special criminal law regulations, including those relating to economic offenses regulated explicitly in the TPE Law and several economic offenses scattered in various non-criminal laws with criminal sanctions?

According to Barda Nawawi Arief, criminal law reform through the *RKUHP* is conceptualized as codifying generic crimes only and allowing special criminal acts of an administrative nature to be outside the Criminal Code (ICJR, 2015). Even Barda Nawawi Arief illustrated how the National Criminal Code will look like a big house that covers tiny houses (special criminal law outside the Criminal Code) because what is included in the RKUHP is only the criminal system, which will overshadow all administrative laws that criminal sanctions that are outside the Criminal Code.

Meanwhile, Muladi stated that in selecting the offenses contained in the special law, the concept of codification was based on the criteria of generic crime/independent crime, which is reached from: 1) It is an independent crime (such as not referring to or depending on the prior violation of the administrative law provisions in the relevant laws and regulations); 2) The validity is relatively sustainable, meaning that it is not associated with the enactment of administrative procedures or processes; 3) The punishment is more than 1 year of deprivation of liberty (jail/imprisonment); 4) Allowing the regulation in administrative law of what is called a criminal act that is administrative dependence of environmental criminal law, whether it is a formal offense or a material offense; and 5) Include in the codification of criminal law (Agustina, 2015).

According to the two criminal law officers mentioned above, the *RKUHP* will only regulate criminal acts that are independent in nature, in the sense that the evil or forbidden nature of the act does not depend on any other regulations, either formal or material criteria, as well as the dangerous nature of the act against the interests of individuals, society, and the state.

As a result, it is understandable that the criminal law system's regulation in a legal codification, namely the *RKUHP* as *lex generalis*, recognizes the existence of criminal law regulations outside of codification as *lex specialis* or special criminal law. The conditions used to determine a codified offense are as stated by Barda Nawawi Arif and Muladi above.

TPE Law Existence in Criminal Law Reform

According to Barda Nawawi Arief and Muladi, the Indonesian criminal law system in the future will be a codification system that regulates all criminal acts into a law book. Nonetheless, the codification system acknowledges the existence of administrative law with criminal penalties (administrative penal law). In other words, the concept of special criminal law in Indonesia will be administrative criminal law in the future.

At the beginning of the history of special criminal law, the concept of special criminal regulation was the same as the concept of criminal law regulation. Administrative criminal law has historically been the concept of special criminal law regulation in both Indonesia and the Netherlands. However, special criminal law in Indonesia has developed differently than in the Netherlands, or in other words, the development of Indonesian special criminal law deviates from the initial concept.

It appears that the parameters presented by Barda Nawawi Arief and Muladi were previously used in the formulation of the RKUHP but not strictly. This can be seen from all the special crimes regulated in different laws (which are purely criminal law) included in the current *RKUHP* (version 4 July 2022) but still, leave other particular crimes outside codification. Criminal acts which have been regulated in special criminal law in the *RKUHP* are regulated separately in Book II Chapter XXXV concerning Special Crimes. The special crimes are "serious crimes against human rights, crimes of terrorism, crimes of corruption, crimes of money laundering, and narcotics crimes." In the *RKUHP*, it is also emphasized that when the *RKUHP* comes into force, the "Chapter on Special Crimes" in the *RKUHP* is carried out by law enforcement agencies based on the duties and authorities stipulated in the respective laws. As a result, even though the special laws are regulated in the *RKUHP*, the existence of each of these special laws is still maintained, particularly in the implementation of law enforcement.

The reason why the makers of the *RKUHP* only categorize the five types of criminal acts as special crimes is that these crimes meet the following criteria: a) The impact of victimization is enormous; b) Often transnationally organized; c) The arrangement of the criminal procedure is special; d) Often deviates from the general principles of material criminal law; e) The existence of particular law enforcement supporting institutions with special powers; f) Supported by international conventions; g) It is a very evil and despicable act and is highly condemned by society; h) Still dynamic, unstable, and changing (following the development or dynamics of law/society); and i) Relating to corporate liability in criminal law.

Furthermore, what about the existence of the TPE Law, which criminal law experts widely considered a special law in the economic field? In the contents of the *RKUHP*, there is no explicit regulation in a separate chapter on TPE. However, from the criteria that have been discussed related to TPE (such as the presence of economic elements), both in a narrow sense and in a broad sense, it can be said that there are several chapters related to TPE that can be found, among others in the chapters: Counterfeiting stamps, state stamps, and official seal; the crime of embezzlement; the criminal act of screwing up; the crime against trust in running a business; criminal acts of vandalism and destruction of goods and buildings;

shipping crimes; aviation crimes and crimes against aviation facilities and infrastructure; and special crimes.

In addition, Nobody mentions the phrase "revoked and declared invalid" in several articles or the TPE Law in its entirety in Article 630 Chapter XXXVII of the RKUHP's Closing Provisions, both in paragraphs and figures. This means that the political direction of Indonesia's criminal law in the future will still maintain the existence of the TPE Law. Meanwhile, offenses in the Administrative Law with criminal sanctions, such as forestry offenses, banking offenses, customs offenses, etc., are not regulated in the *RKUHP*. This situation raises an important question: what is the rationale used by the *RKUHP* Drafting Team in determining which specific criminal acts are regulated in the codification and which remain regulated outside the codification? In other words, it is necessary to determine the considerations or requirements used to select certain (special) offenses to be regulated in the codification and other criminal acts outside the codification.

This matter relates to the nature of the actions prohibited in the administrative law, which are generally violations of specific rules or obligations or procedures. The requirements/obligations or rules that must be followed in administrative law are generally related to state or government policies in certain fields. These government policies will often change according to the situation and conditions or circumstances of the country or society—for example, the prohibition of Narcotics and Psychotropic Laws. The prohibited acts will also change when there is a change in the types and forms of narcotics and psychotropics. This is because the rules regarding the types and forms of prohibited narcotics or psychotropics have changed. This condition will result in the need for changes to the codification because narcotics and psychotropic crimes are regulated in the *RKUHP*.

Indeed, there is no prohibition against changing the codification of criminal law, particularly to align it with societal development. Certainly, it is not the changes that are frequently made that are meant by the RKUHP's creators when compiling the codification. This is contrary to the intent of codifying regulated criminal law, especially what is expected to become a long-term regulation.

In order to guarantee legal certainty in the regulation of TPE in Indonesia, there is sufficient reason to no longer maintain the TPE Law. First, the TPE Law is temporary and only applicable in certain situations (emergencies). This emergency condition no longer occurs for now. In addition, its validity, which has exceeded 3 orders of power, is no longer relevant to the conditions of crime development in this millennial era.

Second, the substances regulated in Article 1 of the TPE Law have generally been revoked and can no longer accommodate various economic crimes, so they cannot be used to deal with TPE now. Although there are still cases where the TPE Law has been used to settle cases, this is rare. The types of criminal acts that still

use the TPE Law should be accommodated in the *RKUHP*. To accommodate new types of offenses that will continue to occur due to the globalization process, the *RKUHP* even opens the opportunity to amend the *RKUHP* and regulate it in a separate law because of its specificity based on Article 189 of the First Book of the *RKUHP*.

Third, when it is immediately ratified, the *RKUHP* has accommodated and regulated more comprehensively regarding the types of TPE by maintaining administrative laws with criminal sanctions outside the *RKUHP* to accommodate the rapid development and legal needs of the community, especially in social and economic activities. It is also regulated in the *RKUHP* that the subject of criminal law is no longer only limited to humans by nature but includes corporations. With the regulation of the corporation as a subject of criminal law, the corporation's position, both as a legal entity and not as a legal entity, is considered capable of committing criminal acts and can be accounted for in criminal law. In fact, in the *RKUHP*, it is still possible for the corporation to bear criminal responsibility with its management. So criminal liability, which initially only applies to certain crimes outside the Criminal Code, applies to other crimes, both those regulated within and outside the *RKUHP*.

Fourth, the *RKUHP* has also regulated in such a way regarding the sanctions that can be applied. The main types of criminal offenses consist of: imprisonment, criminal closure, criminal supervision, fines, and social work crimes (the order of the types of principal crimes determines the severity of the crime), and places the death penalty as a special criminal law that is separate from the primary crime. As for the criminal fine, the *RKUHP* has been formulated using a category system. This system is used with the intention that in formulating offenses, it is optional to mention a certain amount of fines. However, it is sufficient to point out the categories of fines determined in the First Book. This is based on the idea that fines are a type of crime whose value changes relatively frequently due to changes in currency values caused by the economic situation. With the category system, it is hoped that it will be easier if changes or adjustments are made at any time.

D. CONCLUSION

The regulation of economic crime in Indonesia has been regulated narrowly and broadly. In a narrow sense, economic crimes are all actions listed in the TPE Act, which are only limited to the provisions of Article 1 sub 1e, 2e, and 3e. Whereas in a broad sense, economic crimes include all offenses whose regulation is not only limited to the TPE Act but also laws outside the TPE (criminal law and administrative law with criminal sanctions) covering economical matters. The existence of TPE Law has been around for a long time and is very rarely used, mainly if it is used to tackle crime in the economic field, which is currently experiencing development. On the other hand, the policy direction for reforming

Indonesian criminal law is to adhere to codification and unification, where criminal law reform aims to regulate all offenses into one book of the National Criminal Code (*RKUHP*). The existing *RKUHP* (version 4 July 2022) has comprehensively accommodated all types of criminal acts, including special crimes such as various types of criminal acts in the economy. Indonesia's criminal law policy also maintains the existence of administrative laws with criminal sanctions outside of the *RKUHP* to accommodate society's rapid development and legal needs, particularly in social and economic activities. The *RKUHP* also states that when the *RKUHP* goes into effect, law enforcement agencies will carry out the procedural law outlined in the Chapter on Special Crimes based on the duties and authorities outlined in the respective laws. For this reason, there is no longer any reason to defend the TPE Law in Indonesia. What needs to be done now is to press for the immediate ratification of the Indonesian National *RKUHP*.

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