

The Principle of Lex Favor Reo in Moral Crimes: A Study of the Legal Implications of the Transitional Period of the National Criminal Code

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ABSTRACT

The transitional period following the implementation of the National Criminal Code (KUHP) has raised issues regarding the application of the Lex Favor Reo principle to changes in the provisions of moral offenses. This normative legal research aims to outline the criteria for determining the most favorable rules and analyze the legal effectiveness of applying this principle during the transitional period of the National Criminal Code. The research was conducted using a regulatory and contextual approach, utilizing primary and secondary legal materials analyzed qualitatively and prescriptively through systematic, contextual, and comparative interpretation. The results indicate that determining the most favorable rules cannot be based solely on quantitative calculations of criminal penalties but must be conducted in a hierarchical manner through three dimensions of analysis: criminalization, procedural, and punitive. The application of the Lex Favor Reo principle creates legal implications in the procedural aspect, affecting the use of the right to file a complaint and the withdrawal of a complaint, which determine the continuity of the legal process. In the penal aspect, it also raises the possibility of implementing alternative punishments that are more favorable to the perpetrator. Thus, the principle of lex favor reo during the transitional period of the National Criminal Code must be understood multidimensionally, taking into account the full legal consequences arising from the changes in the regulation of crimes against morality, thereby ensuring legal certainty, justice, and uniform application of the law in criminal practice.

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1. INTRODUCTION

Criminal law reform in Indonesia reached its culmination with the enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code). As a national codification product that replaced the Dutch colonial legacy of the *Wetboek van Strafrecht*, the National Criminal Code not only reformed the criminal justice system but also reconstructed various

criminal offenses, including offenses against morality. This reform was marked by changes in the formulation of offenses, the expansion and narrowing of the scope for criminalization, changes in the potential penalties, and the transformation of several offenses into complaint offenses. Such conditions give rise to legal consequences that are not simple, especially for crimes that occurred before the new law came into effect but the judicial process is still ongoing. (DM et al., 2025) These transitional problems are closely related to the application of the *Lex Favor Reo* Principle, namely the principle that requires the use of provisions that are most beneficial to the perpetrator if after the act is committed there is a change in criminal legislation. (Alfret & Frans, 2024, p. 77) This principle has long been known in Indonesian criminal law through Article 1 paragraph (2) of the old Criminal Code and is now reaffirmed in Article 3 paragraph (2) of Law Number 1 of 2023. Normatively, this principle looks simple, but its implementation becomes very complicated when faced with changes in the construction of moral crimes in the National Criminal Code.

The most essential legal problem in the application of the *Lex Favor Reo* principle during this transitional period lies in the absence of standard parameters when the new law introduces a qualitative criminal system. For example, in the crime of adultery, Article 284 of the Old Criminal Code threatens a maximum prison sentence of 9 (nine) months, while Article 411 of the National Criminal Code increases the threat to 1 (one) year. Mathematically (quantitatively), the Old Criminal Code appears more advantageous. However, the National Criminal Code adopts a modern paradigm that introduces community service and supervision as alternatives to imprisonment for crimes with a penalty of less than five years. Thus, although the maximum penalty in the National Criminal Code appears to be more severe, the defendant still has the opportunity to be sentenced to non-imprisonment penalties not recognized in the Old Criminal Code. This condition creates a serious dogmatic dilemma for judges: should the "most favorable rule" be interpreted as the threat of a shorter prison term (but the defendant will definitely be imprisoned), or the threat of a higher sentence (but the defendant has a golden opportunity to serve his sentence outside the walls of a correctional institution)?

The legal dilemma becomes even more complex when the principle of *Lex Favor Reo* is confronted with procedural aspects, particularly regarding the time limit for withdrawing a complaint. Considering that the crimes of adultery and cohabitation are classified as absolute *klachtdelict*, the subsistence right to stop the case rests entirely with the complainant in order to maintain the integrity of the household or family privacy. The Old Criminal Code, through Article 75, rigidly limits the time for withdrawing a complaint to a maximum of three months from the time the complaint is filed. In contrast, Article 26 paragraph (4) of the National Criminal Code provides a much broader space for restorative justice, where the complaint can be withdrawn at any time as long as the case has not been examined in court.

This situation triggers structural confusion when a moral offense occurs during the period of the Old Criminal Code, but the complainant only decides to withdraw the report after the three-month deadline has passed under the National Criminal Code. If the judge insists on using the Old Criminal Code because the threat of sanctions is lighter, then procedurally the legal process must continue and the defendant is imprisoned, which actually harms the essence of recovery for the victim's family. (Malau, 2023, p. 840) The clash between the increase in criminal sanctions and the relaxation of formal requirements in one breath of legislation proves that the parameters of the *Lex Favor Reo* Principle can no longer be reduced to the calculation of the number of convictions alone. (Zulkipli, 2023)

The absence of clear parameters regarding whether the *Lex Favor Reo* Principle should be measured quantitatively (based on the severity of sanctions) or qualitatively (based on prosecution requirements, peace space, and alternative sentencing) has the potential to give rise to disparities in decisions that harm legal certainty. In criminal law literature, the application of the *Lex Favor Reo* Principle is more often understood quantitatively, namely through a comparison of the severity of criminal threats regulated in old and new regulations. (Zulkipli, 2023) This understanding reaches a dead end when faced with the dynamics of transitory law in the National Criminal Code, particularly regarding the presence of alternative non-prison sentences and the expansion of restorative justice space in the cluster of moral offenses with complaint status (such as adultery and cohabitation). The

doctrine that has developed so far has not been able to fully explain the procedural aspects and this shift in the paradigm of punishment leaves a significant legal vacuum at the practical level.

Filling this doctrinal gap, this study offers novelty by constructing the parameters of the Lex Favor Reo Principle that are no longer rigidly based on a quantitative approach, but rather integrate a comprehensive qualitative approach. The scientific excellence of this paper also lies in its analysis in mapping the legal implications of the shifting nature of moral offenses, thus providing an argumentative basis for law enforcement officials.

Therefore, the identification of problems regarding the parameters for determining the most favorable rules is very urgent to be studied to prevent judicial reasoning errors in deciding morality cases in the transitional era of the National Criminal Code. Departing from this urgency, this study aims to formulate criteria for determining the most favorable rules based on the Lex Favor Reo Principle for morality crimes, as well as to analyze in depth the legal implications of the application of this principle to changes in the regulation of morality crimes during the transitional era of the National Criminal Code.

2. METHODS

This research is a normative legal study aimed at analyzing the application of the Lex Favor Reo Principle to changes in the provisions of crimes against morality during the transitional period of the National Criminal Code. The research was conducted using a statute approach and a conceptual approach. The statute approach was used to examine the provisions of transitory criminal law, specifically Article 1 paragraph (2) of the Old Criminal Code, Article 3 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code, as well as various provisions regarding crimes against morality in the Old Criminal Code and the National Criminal Code. Meanwhile, the conceptual approach was used to analyze the doctrines, theories, and legal principles related to the Lex Favor Reo Principle, complaint offenses, criminal policy, and the objectives of criminal punishment. The legal materials used consisted of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature, scientific journals, research results, and the opinions of criminal law experts relevant to the research object. The collection of legal materials was carried out through library research, then analyzed qualitatively-prescriptively using systematic, conceptual, and comparative interpretation methods to formulate criteria for determining the most beneficial rules based on the Lex Favor Reo Principle and to identify the legal implications of its application to changes in the regulation of moral offenses during the transition period of the National Criminal Code.

3. FINDINGS AND DISCUSSION

3.1 *Criteria for Determining the Most Favorable Rule Based on the Principle of Lex Favor Reo for Moral Offenses During the Transitional Period of the National Criminal Code*

The application of the principle of lex favor reo during the transitional period of the National Criminal Code raises fundamental questions regarding how to determine the "most favorable rule" for the perpetrator of the crime. Article 1 paragraph (2) of the Old Criminal Code and Article 3 paragraph (2) of the National Criminal Code both mandate that the most favorable provision be used if a change in criminal law occurs after the act is committed.

In classical criminal law doctrine, the principle of lex favor reo is generally understood through a quantitative approach that places the severity of the criminal penalty as the primary indicator in determining the most favorable rule. (Flora et al., 2023, p. 6) In this approach, the existence of a more favorable rule is determined by comparing the criminal penalties stipulated in competing legal regimes for the same act. This means that judges are limited to comparing the severity of the criminal sanctions (strafmaat) between the old and new laws. This conventional approach becomes dysfunctional when applied to the crime of morality cluster, which has undergone a qualitative overhaul of the criminal justice architecture. (Nugraha et al., 2025)

To prevent disparities in decisions, this study constructs that the criteria for the principle of *lex favor reo* in crimes of morality can be measured through three hierarchical analytical dimensions:

3.1.1 Dimension of Criminalization (Delict Status)

The first step a judge must examine is whether the new law changes the nature of the act from a criminal to a non-criminal offense, or vice versa. In the case of adultery or cohabitation where both perpetrators are unmarried (single), the act is not a crime under the Old Criminal Code, but is criminalized under the National Criminal Code. In such circumstances, the application of the National Criminal Code is hampered by the principles of legality and non-retroactivity, so the Old Criminal Code remains in effect. Therefore, the dimension of delict status serves as a preliminary prerequisite before assessing the provisions that criminalize the act under the principle of *lex favor reo*.

3.1.2 Procedural Dimension (Prosecution Requirements)

If the act remains classified as a crime under both regulations, the next criterion is to assess the formal requirements for prosecution. The expansion of the status of absolute complaint offenses (absolute klachtdelict) gives the victim/family the power to determine the course of the legal process, which is directly related to guarantees of privacy and a space for reconciliation. This means that judges must not only compare the potential penalties but also consider the offense's status as an ordinary offense or a complaint offense, the parties entitled to file a complaint, and the time limit and legal consequences of withdrawing a complaint on the continuation of the criminal process (Basri et al., 2022, p. 21; Flora et al., 2023). However, the procedural dimension cannot be applied uniformly to all moral offenses.

In absolute complaint offenses, such as adultery, there is a relaxation of the prosecution requirements, namely the change in the criminal process to be easier to stop or cannot be continued, such as the regulation regarding the withdrawal of complaints, in the Old Criminal Code it can be done within 3 months from the time the complaint is filed, while in the National Criminal Code, the relaxation of the prosecution requirements can be seen as a more advantageous provision because it opens up space for the termination of the case and the restoration of family relations. This means that the National Criminal Code provides a wider opportunity for the complainant to withdraw his complaint and can be seen as a more advantageous provision because it opens up space for the termination of the case and the restoration of family relations. Next, regarding the party entitled to file a complaint, there is also an expansion, namely for single perpetrators: The Old Criminal Code does not give the right to complain to anyone, while the National Criminal Code provides an opportunity for parents/children to make complaints. Then, for perpetrators who are already married: The parties entitled to report in both regulations are the same, namely only husband/wife.

3.1.3 Consequence Dimension (Penal System)

If a case cannot be resolved through withdrawal of the complaint and the defendant is proven guilty at trial, determining the most favorable sentence does not stop at comparing prison terms. (Zulkipli, 2023) Judges are required to include alternative sentencing instruments, such as community service or supervision (Article 65 of the National Criminal Code) as variables that qualitatively lessen the defendant's suffering compared to deprivation of liberty.

To facilitate understanding of the application of these three dimensions, Table 1 below presents a comparison of changes in the regulations for the crime of adultery.

Table 1. Comparison of the Legal Characteristics of the Crime of Adultery (Article 284 of the Indonesian Criminal Code with Article 411 of the Indonesian National Criminal Code)

No	Analysis Parameters	Old Criminal Code (Article 284)	National Criminal Code (Article 411)
1	Status of the Act	Criminal (only if one party is married)	Criminal (applies to all, including unmarried individuals)
2	Nature of the Offense	Absolute Complaint	Absolute Complaint
3	Complainant Subject	Limited to legal husband/wife	Extended to parents/children (for those who are unmarried)
4	Complaint Withdrawal Deadline	Maximum 3 months from the date of the complaint	As long as they have not been examined in court
5	Imprisonment Threat	Maximum 9 months	Maximum 1 year
6	Alternative Sanctions	Not available (Definite Imprisonment)	Available (Community Work/Supervision)

3.2 Legal Implications of the Implementation of the Lex Favor Reo Principle for Changes to the Regulations on Moral Offenses during the Transitional Period of the National Criminal Code

The construction of the Lex Favor Reo Principle criteria, which integrates the dimensions of criminalization, procedure, and consequences (as discussed previously), has fundamental legal implications for law enforcement procedures during the transitional period.

Theoretically, this implication aligns with the Progressive Legal Theory proposed by Satjipto Rahardjo, where law truly exists for humans, not the other way around (Siregar, 2024, p. 6). This theory rejects blind adherence to regulatory texts (positivism) and urges law enforcers to prioritize conscience and substantive justice for the well-being of society. Therefore, when laws undergo transition, law enforcement officers (from the investigation and prosecution stages to court hearings) are required to conduct a "spiritual reading" to discover which rules best humanize perpetrators and restore victims, rather than simply being trapped by the text of criminal threats.

To concretely analyze how these legal implications operate in judicial practice, a hypothetical case relevant to the transition period can be illustrated:

Case Illustration: Defendant A (a husband) was reported by his wife (B) for alleged adultery in November 2025. This act met the elements of Article 284 of the Old Criminal Code. The investigation and transfer of files were slow, so the case was only scheduled for trial in May 2026, when Law Number 1 of 2023 concerning the National Criminal Code came into effect. In April 2026 (five months after the report), the wife (B) changed her mind and went to court to withdraw her complaint, citing the future of her children and the integrity of her household.

Based on the transitory case illustration above, the application of the qualitative criteria of the Lex Favor Reo Principle will give rise to two legal implications in the criminal justice system: procedural aspects (case resolution) and sentencing aspects (sanction consequences).

3.2.1 Procedural Implications: Restoration of Justice and the Right to Withdraw a Complaint

The first and most significant implication concerns procedural law. In criminal law, the crime of adultery is classified as an absolute klachtdelict (absolute complaint offense). According to Andi Hamzah, the logical rationale (ratio legis) of an absolute complaint offense in crimes against morality is to protect privacy and domestic peace, which are more valuable than the state's interest in punishing the perpetrator. (Fatihah & Mursyid, 2026) Although adultery remains classified as a complaint offense in both the Old and National Criminal Codes, the differences in regulations regarding the withdrawal

of a complaint result in different legal consequences for the overall criminal case handling process. Therefore, the relevant aspect in the application of the Lex Favor Reo Principle is not the status of the offense, but rather the extent to which the provision provides greater leeway for the complainant to terminate the legal process through a valid withdrawal. These differences can ultimately influence the actions and decisions of law enforcement officials at every stage of the criminal justice process, whether at the investigation, prosecution, or court examination levels in assessing the existence of the state's right to continue legal proceedings against the perpetrator.

Referring to the case illustration above, Article 75 of the Old Criminal Code stipulates that a complaint can only be withdrawn within a maximum period of 3 (three) months. If the judge rigidly considers the Old Criminal Code "more advantageous" simply because it carries a prison sentence of 9 (nine) months, compared to 1 (one) year under the National Criminal Code, then the legal implication is that Wife (B)'s request to withdraw the complaint in the 5th month must be rejected. Consequently, the criminal process continues despite the complainant's desire to end the case and restore family relations, thus limiting the scope for a more restorative resolution.

Conversely, Article 26 paragraph (4) of the National Criminal Code provides flexibility in that the complaint can be withdrawn as long as the case has not yet been heard in court. Consequently, the application of the Lex Favor Reo principle is no longer a procedural monopoly of judges in the courtroom, but rather binds all Law Enforcement Officials (APH) from the pre-adjudication stage. If the withdrawal of the complaint occurs at the investigation or prosecution level, then the police investigator or public prosecutor has the legal legitimacy to immediately stop the case through the instrument of the Investigation Termination Order (SP3) or the Prosecution Termination Order (SKP2) by referring to the new, more advantageous regulations.

The judge's intervention is when the case file has been submitted to the court, but the trial (reading of the indictment) has not yet formally begun. In a crucial transitional situation like this, if the complainant (Wife (B)) withdraws her complaint, the panel of judges is authorized to apply Article 26 paragraph (4) of the National Criminal Code through the Lex Favor Reo Principle, which implies the loss of grounds for prosecution due to the withdrawal of a valid complaint, so that the case cannot proceed to the main examination stage in court. (Alfret & Frans, 2024, p. 83) This emphasizes that during the transition period, legal certainty must not harm restorative justice. The Lex Favor Reo principle no longer focuses on "how to sentence the defendant more leniently," but rather "how to legally terminate this case" for the sake of restoring the situation.

The expansion of the scope for withdrawing complaints in the National Criminal Code indicates greater recognition of the autonomy of parties who are legally given the right to determine the continuation of the criminal process. The policy reflects the view that the state does not always have to maintain criminal intervention if the interested party chooses not to pursue legal proceedings.

3.2.2 Implications for Criminal Justice: Consequences of Sanctions and Paradigm Shift

In addition to affecting procedural aspects, the implementation of the Lex Favor Reo Principle also has significant implications for the criminal justice system. This issue arises because the National Criminal Code not only changes the severity of criminal penalties for a number of moral offenses but also introduces a new, more diverse sentencing paradigm compared to the criminal justice system under the Old Criminal Code.

Referring to the case illustration above, if Wife (B) does not withdraw her complaint and the defendant is found guilty, the legal implications shift to the level of sanctions (criminalization). Systematically, the Old Criminal Code, with its 9-month prison sentence, appears more favorable. However, the implications of imposing a sentence of deprivation of liberty, regardless of the duration, will have a destructive impact in the form of stigmatization and a negative process of assimilation into prison culture (prisonization).

According to Barda Nawawi Arief, who consistently criticized the use of short-term prison sentences because they have the potential to cause stigmatization, prisonization, and various other negative impacts that are not always in line with the goals of correctional institutions (Erdianti et al.,

2025), in line with this idea, the National Criminal Code adopts a more modern sentencing paradigm by diversifying the types of principal penalties, including the recognition of community service and supervision as alternatives to deprivation of liberty. In crimes that are threatened with relatively light prison sentences, such as adultery, the existence of alternative sentencing provides more room for judges to impose non-prison sentences in accordance with the purpose of the sentencing and the concrete circumstances of the perpetrator.

The existence of community service and supervision sentences demonstrates that the "most favorable rule" cannot be determined solely by the length of the prison sentence. Although the National Criminal Code carries higher penalties for some moral offenses than the Old Criminal Code, a more diverse sentencing system can produce qualitatively more favorable consequences for perpetrators by opening up the possibility of alternative punishments.

The legal implications of this availability of alternative sentencing options are significant. In certain circumstances, judges can apply provisions of the National Criminal Code that nominally carry higher penalties than the Old Criminal Code, but the sentence imposed does not always consist of imprisonment served in a correctional facility. Through community service or supervision sentences, perpetrators are still held criminally accountable without having to experience full deprivation of liberty. This condition shows that the measure of the "most favorable provisions" in the *Lex Favor Reo* Principle cannot be determined solely based on the length of the criminal threat, but must consider the overall legal consequences that the perpetrator may receive. (Alfret & Frans, 2024, p. 79) Thus, the existence of alternative punishment in the National Criminal Code reflects a shift in the orientation of punishment from a model centered on imprisonment to a more diverse, proportional, and social reintegration-oriented punishment system, so that in certain circumstances it can be seen as more favorable than the Old Criminal Code. Therefore, the application of the *Lex Favor Reo* Principle during the transition period of the National Criminal Code not only results in consequences for the individual fate of the defendant, but also contributes to the development of Indonesian criminal law doctrine that is more adaptive to the goals of modern punishment.

4. CONCLUSION

Based on the research findings, the criteria for determining the most favorable rules based on the principle of *lex favor reo* for crimes against morality during the transitional period of the National Criminal Code cannot be measured solely by comparing the severity of the criminal penalties. This determination must be made in stages through three dimensions of analysis: the criminalization dimension, the procedural dimension, and the sentencing dimension. In the criminalization dimension, the most favorable rules are those that do not qualify an act as a crime. In the procedural dimension, legal benefits can include lighter prosecution requirements, including provisions regarding the right and time limit for withdrawing a complaint, which provide a greater opportunity for the legal process to end. In the sentencing dimension, the measure of benefit is determined not only by the length of the criminal penalty but also by the existence of alternative punishments that are qualitatively lighter than deprivation of liberty. Thus, the principle of *lex favor reo* during the transitional period of the National Criminal Code must be understood multidimensionally and no longer limited to a quantitative approach that focuses solely on the magnitude of the sanctions.

The application of the *Lex Favor Reo* Principle to the changes in the provisions of the offense of morality during the transitional period of the National Criminal Code has legal implications in the procedural and criminal aspects. In the procedural aspect, the application of this principle can influence the continuity of the legal process by recognizing provisions that provide broader space for the use of the right to complain and the withdrawal of legitimate complaints. Meanwhile, in the criminal aspect, the *Lex Favor Reo* Principle encourages a shift in orientation from a mathematical comparison of criminal threats to a more substantive assessment of the overall legal consequences received by the perpetrator, including the possibility of the application of community service or supervision. Therefore, to ensure legal certainty and prevent disparities in the application of transitory law, clearer

interpretative guidelines are needed from legislators and judicial institutions regarding the parameters of the application of the Lex Favor Reo Principle, so that law enforcement officers have uniform standards in determining the most favorable rules during the transitional period of the National Criminal Code.

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