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The Application of the Lex Favor Reo Principle in Indonesia's National Criminal Code Transition: Legal Construction and Legal Certainty

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ABSTRACT

The enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) on January 2, 2026 marks a transition in Indonesia's criminal law and raises issues concerning cases committed before its entry into force but examined or adjudicated thereafter. This study examines the legal construction of the lex favor reo principle under Article 3 paragraph (1) and Article 618 of the National Criminal Code and analyzes the implications of Law Number 1 of 2026 concerning Criminal Adjustment for legal certainty during the transition period. This study employs normative legal research using a statutory approach and a conceptual approach. The results show that although the National Criminal Code recognises *lex favor reo* as a mechanism for applying more favourable criminal-law provisions, Articles 3 and 618 do not provide clear parameters for determining the degree of favourability between competing legal regimes. The problem becomes more complex under the double-track sanctioning system, in which criminal sanctions and measures cannot be compared solely on the basis of imprisonment. Furthermore, the simultaneous implementation of the Criminal Adjustment Law introduces a further temporal layer that creates a moving norm condition and may generate uncertainty regarding the legal benchmark for applying *lex favor reo*. This situation contributes to divergent interpretations and unequal treatment in transitional cases. The study recommends that the Supreme Court establish technical guidelines providing a methodology for comparing criminal-law regimes and determining the law most favourable to the defendant during the transition period.

Keywords: Lex Favor Reo, Retroactivity, National Criminal Code, Transition Period, Legal Certainty.

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1. INTRODUCTION

Criminal law reform is not merely a process of replacing statutory provisions but also an attempt to reconstruct the relationship between the state's power to punish and the protection of individual rights. A criminal justice system must provide sufficient authority to respond to changing forms of criminality while simultaneously maintaining legality, foreseeability, and protection against arbitrary punishment. One of the most important consequences of criminal law reform therefore concerns the temporal application of criminal provisions, particularly when a new criminal law enters into force while cases involving acts committed under the previous legal regime remain under investigation, prosecution, or adjudication. In such circumstances, the transition between legal regimes cannot be treated solely as a legislative matter, because it directly affects the rights of defendants and the consistency of judicial decision-making.

The problem is closely connected with the principle of legality and its temporal dimension. The principle of legality generally requires criminal liability and punishment to be based on law that existed before the commission of the offence, thereby protecting individuals from retroactive criminalisation and unpredictable state intervention. At the same time, modern criminal justice systems in many jurisdictions recognise an important qualification to strict non-retroactivity through the principle of *lex mitior*, or the retroactive application of the more lenient criminal law. International criminal-law scholarship has continued to identify *lex mitior* as an important component of legality and the protection of individual rights. Iwański (2021), for example, situates

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lex mitior retro agit within the broader framework of *nullum crimen, nulla poena sine lege* and international legal guarantees. The principle therefore represents not simply an exception to non-retroactivity, but a mechanism for preventing an individual from being subjected to a harsher legal regime when the legislature has subsequently adopted a more lenient assessment of the same conduct.

Recent international developments demonstrate that the application of *lex mitior* may nevertheless generate difficult questions concerning legal certainty and the temporal boundaries of criminal law. In Case C-107/23 PPU (*Lin*), the Court of Justice of the European Union (CJEU) examined the relationship between the retroactive application of more lenient criminal law, the principle of legality, and the effectiveness of criminal enforcement. The Court reaffirmed that the retroactive application of a more lenient criminal law is recognised within Article 49(1) of the Charter of Fundamental Rights of the European Union, while simultaneously emphasising the importance of foreseeability and precision in criminal law (Court of Justice of the European Union, 2023). Subsequent academic analysis has shown that *Lin* raises a broader temporal question: *lex mitior* cannot automatically be extended to every legal change, particularly where procedural rules and the principle of *tempus regit actum* are involved (Peirone, 2024). The Romanian experience further demonstrates that rapid changes in criminal-law interpretation and limitation rules can create tension between individual protection, legal certainty, and the state's obligation to ensure effective criminal enforcement (Tănăsescu & Selejan-Guțan, 2024).

These international developments are relevant to Indonesia because the country is currently experiencing one of the most significant transformations of its criminal-law system since independence. Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP) (Indonesia, 2023) entered into force on January 2, 2026, replacing the previous criminal-law framework derived from the colonial *Wetboek van Strafrecht*. The three-year period between promulgation and entry into force was specifically intended to provide time for institutional and legal adjustment. The reform also introduced significant changes in the structure of criminal sanctions, including the recognition of a double-track system involving both criminal sanctions and measures. The simultaneous implementation of Law Number 20 of 2025 concerning the Criminal Procedure Code (Indonesia, 2025) further means that Indonesia is not merely replacing substantive criminal law, but is undergoing a broader restructuring of its criminal justice framework.

The temporal application of the new KUHP consequently becomes particularly important for criminal acts committed before January 2, 2026 but investigated, prosecuted, or adjudicated after that date. Law Number 1 of 2023 (Indonesia, 2023) establishes the principle of legality while also recognising the application of a subsequent provision where it is more favourable to the perpetrator. Articles 3 and 618 are therefore particularly significant in constructing the transitional application of *lex favor reo*. The fundamental question is not merely whether the new law may be applied, but how the competent authorities should determine which legal regime is more favourable when the old and new regimes differ in the classification of offences, types of sanctions, sentencing structure, and other legal consequences. This question becomes increasingly important where the new KUHP employs a broader sentencing architecture than the previous KUHP.

The Indonesian transition also presents an additional complication because Law Number 1 of 2026 concerning Criminal Adjustment (Indonesia, 2026a) entered into force on the same date as the new KUHP. The statute was enacted to harmonise criminal provisions contained in legislation outside the KUHP with the new criminal-law framework and also amended provisions within Law Number 1 of 2023 (Indonesia, 2023) itself. The official legislative database identifies Law Number 1 of 2026 (Indonesia, 2026a) as having been enacted and becoming effective on January 2, 2026, with its stated purpose including the prevention of disparities in enforcement, duplication of criminal provisions, and adverse effects on legal certainty and justice. This simultaneous commencement creates a distinctive temporal problem for the application of *lex favor reo*: when several criminal-law regimes have existed within a relatively short period, determining which version should serve as the benchmark for assessing whether a provision is more favourable becomes more complicated.

The problem is not purely theoretical. Recent Indonesian studies have begun to examine *lex favor reo* and *lex mitior* in the context of the new KUHP. For example, Oktaviani et al. (2026) identify the absence of sufficiently clear parameters for determining the "most favourable" provision and highlight the need for operational guidance during the transition. Other recent studies have examined the relationship between legality, *lex temporis delicti*, and *lex mitior* within the new Indonesian criminal-law framework. These studies demonstrate that the issue has become an emerging field of research following the entry into force of the new KUHP. However, an important

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analytical space remains concerning the interaction between the transitional provisions of the KUHP and the subsequent Criminal Adjustment Law, particularly regarding the problem of legal certainty when the normative benchmark itself changes during the transition period.

This issue is also consistent with the broader international debate. The European experience shows that the application of *lex mitior* requires courts to determine not only whether a later rule is more favourable, but also the material scope of the principle, its relationship with procedural rules, and its compatibility with legal certainty. Peirone (2024) demonstrates that the *Lin* judgment limits the temporal scope of *lex mitior* by distinguishing substantive criminal law from procedural rules and by placing the principle within a broader framework of foreseeability and the rule of law. Similarly, Ola (2024) highlights the potential tension between the principle of legality and changes in the application of the more lenient criminal law, particularly when judicial decisions alter the temporal operation of criminal rules. These comparative developments indicate that the central challenge is not the recognition of *lex mitior* itself, but the establishment of a sufficiently predictable methodology for determining when and how the more favourable legal regime must be applied.

Against this background, the Indonesian situation presents a specific research problem. The transition to the National Criminal Code involves criminal acts committed under the old regime, proceedings conducted under a new institutional and procedural framework, and subsequent statutory adjustments introduced through Law Number 1 of 2026 (Indonesia, 2026a). The coexistence of these temporal layers potentially creates uncertainty concerning the legal benchmark that should be used when applying *lex favor reo*. A defendant may, for example, face different legal consequences depending on whether the comparison is made between the old KUHP and the original version of Law Number 1 of 2023 (Indonesia, 2023), or between the old KUHP and the amended framework following Law Number 1 of 2026 (Indonesia, 2026a). The problem becomes even more complex where the relevant sanctions cannot be compared solely by reference to the length of imprisonment because the new KUHP provides a broader range of sanctions and measures.

The research gap of this study therefore does not lie simply in identifying the existence of *lex favor reo* within the new KUHP. Rather, it lies in examining how the principle should be legally constructed and operationalised when transitional cases are affected by successive changes in criminal legislation, particularly the simultaneous commencement and subsequent operation of Law Number 1 of 2026 (Indonesia, 2026a). The international literature demonstrates that *lex mitior* must be balanced with legality, foreseeability, and legal certainty, while recent Indonesian scholarship confirms that the implementation of the principle during the KUHP transition still presents unresolved interpretive problems (Iwański, 2021; Peirone, 2024; Oktaviani et al., 2026). This study consequently positions the Indonesian transition as a specific case of a broader problem in contemporary criminal law: how to preserve the defendant-oriented function of *lex mitior* without sacrificing consistency and predictability in the administration of criminal justice.

Based on this background, this study addresses two main questions. First, how should the legal construction of the principle of *lex favor reo* be formulated for criminal acts committed before January 2, 2026 but examined, prosecuted, and/or adjudicated after the National Criminal Code entered into force? Second, what are the implications of Law Number 1 of 2026 concerning Criminal Adjustment (Indonesia, 2026a) for legal certainty in determining the more favourable criminal-law regime during the transition period? This study aims to analyse the normative construction of *lex favor reo* and examine the legal-certainty implications arising from successive changes in the criminal-law framework. The study is expected to contribute to the doctrinal development of transitional criminal law in Indonesia and, more practically, to provide a normative basis for judges, prosecutors, and other law-enforcement authorities in applying the principle consistently to transitional cases.

2. RESEARCH METHODS

This study employs normative legal research to examine the legal norms, principles, and doctrines governing the application of the *lex favor reo* principle during the transition to the National Criminal Code. Normative legal research is appropriate because the central issues examined in this study concern the interpretation, consistency, and application of statutory provisions rather than empirical behaviour or quantitative data. In contemporary Indonesian legal scholarship, normative legal research primarily places legislation, legal principles, and legal doctrines as the basis for constructing juridical arguments and formulating prescriptive solutions to legal problems (Setia Negara, 2022; Budiana et al., 2026).

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The study applies two approaches, namely the statutory approach and the conceptual approach. The statutory approach is used to examine and systematically interpret the provisions relevant to the temporal application of criminal law, particularly Law Number 1 of 2023 concerning the Criminal Code (Indonesia, 2023), Law Number 20 of 2025 concerning the Criminal Procedure Code (Indonesia, 2025), and Law Number 1 of 2026 concerning Criminal Adjustment (Indonesia, 2026a). This approach is directed not merely at identifying the applicable provisions, but also at examining their relationship, hierarchy, temporal validity, and consistency in regulating transitional criminal cases. The conceptual approach is used to examine the legal concepts and doctrines underlying the principle of legality, non-retroactivity, *lex favor reo*, *lex mitior*, legal certainty, and the temporal application of criminal law. The combination of statutory and conceptual approaches enables the study to connect the wording of transitional provisions with the underlying principles and doctrines necessary for their interpretation. Recent methodological literature similarly identifies the statutory approach as an instrument for examining the scope and coherence of legislation and the conceptual approach as a means of constructing analytical standards from legal principles and doctrines (Kristianto & Chariansyah, 2026).

The legal materials consist of primary and secondary legal materials. Primary legal materials comprise the 1945 Constitution of the Republic of Indonesia (Indonesia, 1945), Law Number 1 of 2023 concerning the Criminal Code (Indonesia, 2023), Law Number 20 of 2025 concerning the Criminal Procedure Code (Indonesia, 2025), Law Number 1 of 2026 concerning Criminal Adjustment (Indonesia, 2026a), and other statutory provisions directly relevant to the temporal application of criminal law. Secondary legal materials comprise books on criminal law and legal theory, national and international peer-reviewed journal articles, scholarly writings concerning *lex favor reo* and *lex mitior*, and authoritative legal publications relevant to the transition of Indonesian criminal law. Recent international literature concerning *lex mitior*, legality, temporal application, and legal certainty is also used to strengthen the doctrinal analysis and to situate the Indonesian problem within the broader development of contemporary criminal law. The use of primary and secondary legal materials is consistent with the established framework of normative legal research, in which legislation provides the principal normative basis while scholarly literature supports conceptual and doctrinal interpretation (Setia Negara, 2022; Wulandari, 2026).

The collection of legal materials is conducted through library research, involving the systematic identification, selection, and examination of legislation, legal doctrines, scholarly journal articles, books, and authoritative legal publications relevant to the research questions. Particular attention is given to legal materials published within the last five years in order to capture recent developments concerning the application of *lex mitior*, legal certainty, and the temporal operation of criminal law, while older authoritative works are retained where they constitute foundational sources for the principles of legality and criminal law doctrine.

The legal materials are analysed using a qualitative juridical-analytical method. The analysis proceeds by identifying the relevant transitional provisions, interpreting their normative content, examining their relationship with the principles of legality, non-retroactivity, and *lex favor reo*, and assessing the consistency of those provisions with the requirements of legal certainty. The analysis is subsequently developed into a prescriptive legal argument to determine how the principle of *lex favor reo* should be applied to criminal cases involving acts committed before January 2, 2026 but examined, prosecuted, or adjudicated after the National Criminal Code entered into force. Particular attention is given to the potential consequences of successive legislative changes, including Law Number 1 of 2026 concerning Criminal Adjustment (Indonesia, 2026a), for the determination of the more favourable criminal-law regime. Accordingly, the method is directed not only toward describing the existing legal framework but also toward formulating a legally coherent interpretation and recommendation for the consistent application of *lex favor reo* during the transition period.

3. RESULTS AND DISCUSSION

3.1. Legal Construction of the Application of the Lex Favor Reo Principle to Transitional Cases

a. Transitional Operation of Article 3 and Article 618 of the National Criminal Code

The entry into force of Law Number 1 of 2023 concerning the Criminal Code (Indonesia, 2023) establishes a new normative framework for determining the temporal application of Indonesian criminal law. For cases involving criminal acts committed before January 2, 2026, but examined, prosecuted, or adjudicated after that date, the principal legal issue is not simply whether the new Criminal Code applies, but which criminal-law regime

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provides the more favourable legal consequences for the perpetrator. This issue is regulated primarily through Article 3 paragraph (1) and Article 618 of Law Number 1 of 2023 (Indonesia, 2023).

Article 3 paragraph (1) establishes the principle that, where there is a change in legislation after the commission of a criminal act, the provision that is most favourable to the perpetrator may be applied. Article 618 subsequently provides the transitional mechanism necessary to ensure that cases originating under the previous criminal-law regime can be accommodated within the new Criminal Code. These provisions demonstrate that the Indonesian legislator does not adopt an absolute model of non-retroactivity. Instead, the principle of legality is accompanied by a limited retroactive application of a more favourable criminal provision, reflecting the defendant-oriented function of *lex favor reo*.

This construction is consistent with the broader doctrine of *lex mitior*, which recognises that a person should benefit from a subsequent criminal-law assessment that is more favourable than the law applicable at the time the offence was committed. International jurisprudence has also treated the retroactive application of a more lenient criminal law as an important component of the principle of legality. In Case C-107/23 PPU, *Lin*, the Court of Justice of the European Union (CJEU) recognised the principle of retroactive application of the more lenient criminal law within Article 49(1) of the Charter of Fundamental Rights of the European Union, while simultaneously emphasising the importance of legality and foreseeability in criminal law (Court of Justice of the European Union, 2023). This demonstrates that *lex favor reo* should be understood not merely as an exception to non-retroactivity, but as part of the broader protection afforded to individuals against excessive or unpredictable criminal punishment.

Accordingly, in a hypothetical case in which an offence was committed in November 2025 under the previous Criminal Code, while the investigation, prosecution, or adjudication takes place after January 2, 2026, the competent authority cannot automatically apply either the old or the new Criminal Code. The authority must first determine the legal consequences under the relevant criminal-law regimes and establish which regime is more favourable to the perpetrator. The phrase "more favourable" therefore becomes the central interpretive element in the application of Article 3 paragraph (1) and Article 618.

b. Determining the More Favourable Criminal Law

The principal difficulty in implementing *lex favor reo* lies in the absence of an explicit statutory methodology for determining the degree of favourability between competing criminal-law regimes. The expression "more favourable to the perpetrator" cannot always be reduced to a comparison of the maximum or minimum imprisonment prescribed by two provisions. A proper comparison must consider the overall legal consequences that may arise from the application of each regime.

This is important because a subsequent criminal statute may alter several elements simultaneously, including the classification of the offence, the range and type of sanctions, additional penalties, measures, conditions for imposing punishment, and the legal consequences associated with conviction. Consequently, a provision that appears lighter when assessed from the perspective of imprisonment may not necessarily be more favourable when the entire sanctioning structure is considered.

The problem corresponds with the broader international discussion concerning the scope of *lex mitior*. The CJEU's reasoning in *Lin* illustrates that the temporal application of more favourable criminal law cannot be detached from the principle of legal certainty and the specific nature of the legal provision being changed (Court of Justice of the European Union, 2023). Peirone (2024) further demonstrates that the temporal scope of *lex mitior* requires careful differentiation between substantive criminal rules and procedural provisions. Thus, the determination of favourability requires an assessment of the substantive legal consequences of the competing regimes rather than a mechanical application of the later statute.

In the Indonesian context, this suggests that the comparison should be conducted through a structured assessment of at least three elements: (1) the existence and classification of criminal liability, (2) the type and severity of sanctions or measures, and (3) the overall legal consequences for the defendant. Such a framework is particularly important where the new Criminal Code introduces sanctions and measures that do not have a direct equivalent under the previous regime.

The comparison should therefore be performed on the basis of the concrete legal consequences for the individual defendant rather than merely on the chronology of legislation. The fact that a provision is contained

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in a newer statute does not automatically make it applicable, nor does the principle of *lex posterior derogat legi priori* by itself resolve a *lex favor reo* problem. The relevant question is whether the subsequent legal regime actually produces a more favourable result for the person concerned.

c. Double-Track Sanctions and the Problem of Comparability

The difficulty becomes more pronounced because the National Criminal Code adopts a broader sanctioning structure that includes both criminal sanctions (*straf*) and measures (*maatregel*). The existence of this double-track system makes a simple numerical comparison of imprisonment periods insufficient. A measure such as rehabilitation, treatment, or another corrective intervention may have a substantially different legal character and purpose from imprisonment, even when both produce significant restrictions on the defendant.

Consequently, the phrase "more favourable" should not be interpreted solely through the duration of imprisonment. A comparison based exclusively on imprisonment could produce an inaccurate result where the new Criminal Code replaces or supplements imprisonment with a measure that has different objectives and legal consequences. The assessment must instead consider the nature, duration, intensity, and consequences of the sanction or measure imposed.

This problem is consistent with the international understanding that the application of *lex mitior* requires attention to the substantive consequences of the criminal-law change. The principle is intended to prevent an individual from receiving a harsher criminal consequence than that recognised by a subsequent legislative assessment. However, the comparison becomes difficult where the legislature changes not only the severity of punishment but also the structure and objectives of sanctions. Peirone (2024) demonstrates that determining the temporal scope of *lex mitior* requires courts to examine the legal nature and operation of the relevant provisions rather than treating every legislative change as automatically falling within the same temporal rule.

Therefore, in transitional cases under the National Criminal Code, judges should compare sanctions through a concrete and individualised assessment, while maintaining a consistent normative framework. The comparison should examine whether the application of the new regime reduces, maintains, or increases the overall burden imposed on the defendant. Such an approach would prevent the application of *lex favor reo* from becoming dependent solely on the subjective assessment of individual judges.

d. Normative Gaps and Judicial Discretion

A second difficulty arises from normative gaps during the early implementation of the National Criminal Code. Transitional criminal law requires a sufficiently clear relationship between the old and new legal regimes. Where an offence previously regulated under a particular statute does not have a sufficiently clear equivalent after the reform, the application of *lex favor reo* becomes considerably more difficult.

The problem is particularly relevant to criminal provisions outside the Criminal Code that have been affected by the transition to the new criminal-law framework. The discussion concerning narcotics provisions illustrates this difficulty. Where provisions that previously served as the legal basis for prosecution are changed, repealed, or repositioned without an immediately identifiable equivalent, law enforcement authorities must determine which provision constitutes the appropriate normative benchmark. In such circumstances, the issue is not simply whether the new provision is more favourable, but whether a valid and sufficiently clear legal basis exists against which the comparison can be made.

This condition potentially increases judicial discretion. Judicial discretion is unavoidable in the interpretation of transitional criminal law, but excessive interpretive variation may produce different outcomes in cases with substantially similar factual and legal circumstances. The problem therefore has a direct relationship with legal certainty. As the CJEU has emphasised in its case law concerning legality, criminal provisions must be sufficiently foreseeable so that individuals can reasonably understand the consequences of their conduct (Court of Justice of the European Union, 2023).

Accordingly, the application of Article 3 paragraph (1) and Article 618 should not depend exclusively on individual judicial interpretation. The Supreme Court has an important role in developing interpretive guidance concerning the comparison of criminal-law regimes. Such guidance would not replace judicial independence, but would provide a common methodological framework for determining when a subsequent provision is genuinely more favourable to the defendant.

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The normative construction of Article 3 paragraph (1) and Article 618 can therefore be regarded as adequate at the level of principle because it expressly accommodates the defendant-oriented application of *lex favor reo*. However, it remains incomplete at the level of implementation because the legislation does not establish sufficiently detailed criteria for comparing different types of sanctions, measures, and legal consequences. The principal weakness is therefore not the absence of the principle itself, but the absence of an operational methodology for applying it consistently.

3.2. Implications of the 2026 Criminal Adjustment Law on the Legal Certainty of the Implementation of Lex Favor Reo

a. The Moving Norm Problem

The transition to the National Criminal Code became more complex with the enactment of Law Number 1 of 2026 concerning Criminal Adjustment (Indonesia, 2026a). The law entered into force on January 2, 2026, simultaneously with the National Criminal Code, and adjusted a number of criminal provisions in order to harmonise the new criminal-law framework. The simultaneous operation of these legislative instruments creates a distinctive temporal condition because the legal regime that entered into force in 2026 was not entirely identical to the regime originally enacted through Law Number 1 of 2023 (Indonesia, 2023).

This condition can be conceptualised in this study as a "moving norm": a situation in which the normative benchmark governing criminal liability changes within a relatively short period, creating uncertainty concerning which version of the law should be used for comparison in transitional cases. The concept is particularly relevant to *lex favor reo* because the principle requires a comparison between legal regimes to determine which is more favourable. When the legal regime itself undergoes successive modifications, the object of comparison is no longer stable.

The problem is therefore qualitatively different from an ordinary legislative amendment. In an ordinary amendment, the legal system generally operates with a relatively clear distinction between the previous and subsequent provisions. In the present transition, however, the old Criminal Code, Law Number 1 of 2023 (Indonesia, 2023), and the amendments introduced through Law Number 1 of 2026 (Indonesia, 2026a) may become relevant to different aspects of the same transitional case. This creates the possibility of multiple temporal benchmarks.

b. Determining the Temporal Benchmark for Lex Favor Reo

The central legal question is which version of the criminal-law framework should constitute the benchmark for determining the more favourable law. One possible approach is to compare only the law applicable when the offence was committed with the law currently in force. However, such an approach may overlook an intermediate legal regime that was legally applicable during the transition. Another approach is to compare all materially relevant regimes and select the one that produces the most favourable legal consequences for the defendant.

The second approach is more consistent with the protective function of *lex favor reo*, provided that it remains within the boundaries of legality and statutory authority. The essence of *lex favor reo* is not to privilege the newest statute simply because it is newer, but to prevent the defendant from being subjected to a harsher legal consequence when a subsequent legislative regime provides a more favourable treatment.

This point distinguishes *lex favor reo* from *lex posterior derogat legi priori*. The latter principle primarily addresses conflicts between successive legal provisions by giving priority to the later rule, whereas *lex favor reo* addresses the consequences of successive criminal-law changes from the perspective of the defendant. Therefore, chronology alone cannot resolve a *lex favor reo* dispute. The decisive question is the substantive effect of each relevant criminal-law regime on the defendant.

International jurisprudence reinforces this distinction. In *Lin*, the CJEU considered the temporal application of a more favourable criminal rule in the context of the principle of legality and rejected an approach that would automatically treat every subsequent legal development as falling within the scope of *lex mitior* (Court of Justice of the European Union, 2023). Peirone (2024) similarly demonstrates that temporal conflicts involving *lex mitior* require careful identification of the substantive rule being changed and its actual legal effect. This comparative perspective is relevant to Indonesia because the transitional application of the National Criminal Code similarly requires a clear distinction between changes that affect substantive criminal liability and changes

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that concern procedural or institutional matters.

Accordingly, the benchmark for *lex favor reo* in Indonesian transitional cases should be established through a material comparison of the relevant criminal-law regimes, rather than merely by reference to the date on which a provision was enacted. The comparison should identify all legally relevant regimes, determine their respective consequences for the defendant, and then establish which regime is substantively more favourable without disregarding the principle of legality.

c. Legal Certainty and Equality of Treatment

The existence of moving norms has direct implications for legal certainty. Legal certainty requires not only that criminal provisions exist in written form, but also that their application can be reasonably predicted and consistently implemented. If two defendants who committed substantially similar offences before January 2, 2026 receive different legal treatment merely because their cases were processed at different stages of the transition, the consistency of the criminal justice system may be undermined.

The risk is particularly significant where investigators, prosecutors, and judges adopt different methodologies for identifying the applicable legal regime. One authority may compare only the old Criminal Code with the new Criminal Code, while another may include the amendments introduced by Law Number 1 of 2026 (Indonesia, 2026a). Without a common methodological framework, the same transitional circumstances may produce different interpretations of what constitutes the "more favourable" law.

This issue connects *lex favor reo* with the principle of equality before the law. The defendant-oriented character of *lex favor reo* is intended to strengthen fairness, but inconsistent implementation may paradoxically produce inequality. A principle designed to protect defendants can therefore generate unequal treatment if its application is left entirely to case-by-case interpretation without sufficiently clear criteria.

The problem is also relevant to the broader international understanding of legality. The principle of legality does not merely prohibit retroactive criminalisation; it also requires sufficient clarity and foreseeability in the operation of criminal law. The CJEU's jurisprudence concerning Article 49 of the Charter demonstrates that legality, foreseeability, and temporal application must be considered together when evaluating the legitimacy of criminal sanctions (Court of Justice of the European Union, 2023). Therefore, legal certainty during Indonesia's criminal-law transition cannot be separated from the methodology used to apply *lex favor reo*.

d. Balancing Justice and Legal Certainty

The tension identified above can be understood through the relationship between justice and legal certainty. The application of *lex favor reo* represents an effort to achieve substantive justice by ensuring that defendants benefit from a subsequent criminal-law assessment that is more favourable to them. However, the pursuit of substantive justice must operate within a framework that preserves legal certainty, because an unpredictable application of the principle may undermine equality and consistency in criminal adjudication.

This tension can be understood through Radbruch's well-known conception of the fundamental values of law, particularly justice and legal certainty. In the context of criminal-law transition, *lex favor reo* primarily expresses the value of justice by preventing the imposition of a harsher legal consequence where the legislature has subsequently adopted a more lenient approach. At the same time, legal certainty requires that the criteria for identifying the favourable regime be sufficiently clear to enable consistent judicial application.

The challenge for Indonesian criminal-law reform is therefore not to choose between justice and legal certainty, but to construct an interpretation of *lex favor reo* that accommodates both. A defendant should receive the benefit of a more favourable criminal provision, but the determination of favourability must follow a transparent and reproducible legal methodology. Such methodology should identify the relevant temporal regimes, distinguish substantive criminal provisions from procedural provisions, compare the actual legal consequences for the defendant, and provide reasons for selecting one regime over another.

On this basis, Law Number 1 of 2026 (Indonesia, 2026a) should not be viewed merely as a technical amendment to the National Criminal Code. Its existence changes the temporal landscape within which transitional cases must be assessed. The principal legal implication is therefore the emergence of an additional interpretive layer in determining the applicable criminal law. Without an authoritative framework, this condition may increase the possibility of inconsistent application of *lex favor reo*.

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The most appropriate institutional response is the development of judicial guidance that provides a structured method for handling transitional cases. Such guidance should at least regulate: (1) identification of all potentially applicable criminal-law regimes; (2) determination of whether the change concerns substantive criminal law or merely procedural law; (3) comparison of the type and severity of sanctions and measures; (4) assessment of the overall legal consequences for the defendant; and (5) formulation of reasons demonstrating why a particular regime is considered more favourable. This approach would preserve the defendant-protective function of *lex favor reo* while simultaneously strengthening consistency and legal certainty.

Thus, the implications of Law Number 1 of 2026 (Indonesia, 2026a) are not limited to the technical adjustment of criminal provisions. The amendment creates a temporal and interpretive challenge for the application of *lex favor reo* because the legal benchmark itself may change during the transition. The resulting legal uncertainty can be reduced only through a coherent methodology that treats *lex favor reo* as a substantive guarantee of fairness while ensuring that its application remains foreseeable, consistent, and compatible with the principle of legality.

4. CONCLUSION

This study concludes that Article 3 paragraph (1) and Article 618 of Law Number 1 of 2023 concerning the Criminal Code have normatively incorporated the principle of lex favor reofor transitional cases involving criminal acts committed before January 2, 2026. However, the provisions do not provide sufficiently clear parameters for determining which criminal-law regime is more favourable to the defendant. This problem becomes more complex under the double-track sanctioning system, where criminal sanctions and measures cannot always be compared solely on the basis of imprisonment. Therefore, the application of *lex favor reo* requires a substantive and structured comparison of the type, severity, duration, and overall legal consequences of the competing legal regimes.

The simultaneous implementation of Law Number 1 of 2026 concerning Criminal Adjustment and the National Criminal Code creates an additional temporal layer and a moving norm condition that may generate uncertainty regarding the appropriate benchmark for applying lex favor reo. This condition may result in divergent interpretations and unequal treatment of substantially similar transitional cases. Therefore, the Supreme Court should establish technical guidance providing a consistent methodology for identifying relevant legal regimes, distinguishing substantive from procedural changes, comparing sanctions and measures, and determining the overall legal consequences for the defendant. Future criminal legislation should likewise contain clearer transitional provisions to ensure that criminal-law reform strengthens both substantive justice and legal certainty.

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Availability of Data and Legal Materials
All legal materials, statutory provisions, or supporting data analyzed in this research are fully referenced and discussed in this manuscript.

Statement on AI Usage
The authors declare that no Generative AI technology or AI assistance tools were used during the preparation, drafting, or analysis of this manuscript.

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