



UNLAWFUL ACTS IN CRIMINAL ACTS (FORMAL AND MATERIAL APPROACH)

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Abstract

The development of contemporary criminal law reflects a growing tension between the formal legality principle and the material approach in defining crimes. Following the Constitutional Court Decision No. 003/PUU-IV/2006, the material approach gained constitutional legitimacy to accommodate substantive justice, which is often not fully captured within normative texts. This article aims to analyze the relevance and challenges of applying the material legality principle in the Indonesian criminal justice system, as well as to propose an integrative model that bridges the need for legal certainty (formal) with social justice (material). This study uses a normative juridical method with descriptive and comparative legal analysis based on legislation and jurisprudence. The findings indicate that the material approach has been selectively applied in narcotics cases, sexual violence, and cybercrime, although lacking systematic judicial guidelines. Therefore, an integrative model in legislation and judicial guidance is necessary to balance and control the responsible use of material legality. The conclusion emphasizes the urgency of harmonizing formal and material legality principles so that criminal law can be not only legally valid, but also socially just.

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I. INTRODUCTION

The principle of formal legality is the main pillar of criminal law in Indonesia, as stated in Article 1 paragraph (1) of the Criminal Code: “*There is no criminal act without prior law*” (KUHP, 2023). This principle requires clarity of written norms (*written law*) to ensure legal certainty and protect citizens from possible abuse of power at any time (Soerjono Soekanto, 2019). However, in the ever-evolving social dynamics, tensions arise between this formal legal mechanism and the public's drive to uphold moral values and substantive justice. Acts that are not explicitly prohibited by formal law, but are seen as seriously injuring social norms or public morals, give rise to the concept of unlawful acts in the material sense (*material unlawfulness*), which invites us to consider non-scriptural norms as part of living law.

History provides examples: *Arrest Cohen-Lindenbaum* (1919) in the Netherlands acknowledged that social and moral norms can influence criminal law assessments (van der Feltz, 2020). The legacy of this thinking is embedded in Indonesian legal practice. For example, judges often refer to customary and moral norms of society when charging perpetrators in cases of violence

or blasphemy (Saputra, 2021). However, formal recognition of the material approach faces limitations, especially since the Constitutional Court determined in Decision No. 003/PUU-IV/2006 that the material elements in Article 2 paragraph (1) of the Corruption Eradication Law are not binding and must be revoked to maintain the principle of formal legality (Constitutional Court, 2006).

After the verdict, judicial practice showed a “gap” between the legal text and the values of public justice. In corruption crimes, material elements are often stripped from formal trials, even when the perpetrator has returned state losses or expressed good faith, this logical ambiguity has become an academic debate (Yunus et al., 2021; Nadilla et al., 2023). Furthermore, in the context of narcotics crimes, Korompis (2018) found that judges still consider moral and social norms as reasons for forgiveness, even though this is not found in written regulations. This phenomenon shows that the material approach—regardless of its textual existence—is still used as a reference in legal practice.

In short, the main issue that arises is: Do we only rely on the principle of formal legality and – if so – how to deal with acts that are proven to be very detrimental to moral values and social norms? Or, should we re-acknowledge the relevance of the material approach and formulate a reconciliation between the two?

The Principle of Formal Legality is a pillar of modern criminal law. Its existence as a form of protection for civil rights is stated in Article 1 sentence (1) Criminal Code (Komariah, 2004). Formal legality guarantees that citizens can only be punished if their actions are explicitly prohibited by law. This fulfills the principle of certainty (*Rechtssicherheit*) and protects individuals from subjective interpretations by judges. Meanwhile, the principle of material legality is different, material legality refers to the recognition of social and moral norms that live in society. This concept emphasizes that criminal law must reflect a sense of substantive justice, not just written language (Arief, 2018; van der Feltz, 2020). The existence of this “living law” is often used as a basis for imposing sanctions outside of formal texts, especially in customary law or public moral jurisdictions.

Several academic theories (Pitarma, 2015; Wijayanto, 2017) suggest the “*dual-track*”: Formal law is manifested in the formulation of criminal offenses, while material norms are accommodated through the consideration of judges and limitations on punishment—without damaging the principle of legality. This model allows for sanctions that are proportional and responsive to changes in social values. However, its operation requires a clear normative plan and implementation guidelines.

Several studies have highlighted the tension between formal and material approaches in criminal justice practice, such as:

- a. Nadilla et al. (2023), *Unes Law Review*, emphasized that the elimination of material elements in the Corruption Law after MK-003/2006 ignored substantive justice for society. According to them, the Constitutional Court's decision failed to formulate a mechanism for adapting social values (Nadilla et al., 2023).

- b. Korompis (2018), *Criminal Law*, found material integration in drug decisions—a practice that illustrates the dissonance between formal absence and the use of substantive justice responses by judges (Korompis, 2018).
- c. Yunus et al. (2021), *Media Law*, showing that when state losses are returned, the effect of negative material elements also fades—indicating inconsistencies in the formation of decisions (Yunus et al., 2021).
- d. Sudharmawatiningsih (2016), *ILHDM Journal*, reflects the shifting norms: Punishment is often determined not only on the basis of the legal norm violated, but also propriety and public perception—which ultimately creates ambiguity in the formal system (Sudharmawatiningsih, 2016).
- e. Alldridge (2016), *Journal of Criminal Law (UK)*, expanding the international discourse by discussing protected humanity values—emphasizing the urgency of the presence of substantive justice where societal norms are used as the main parameter in sentencing (Alldridge, 2016).
- f. Liu & Zhang (2020), *Asian Journal of Criminology*, found that Asian countries such as China and South Korea have established judicial systems that reflect social values—seen in the training of judges and flexible and contextual sentencing regulations (Liu & Zhang, 2020).

The research gap that emerged from the study lies in the lack of theoretical and practical elaboration in integrating formal and material approaches into the Indonesian criminal law system holistically. Existing studies tend to focus on corruption and narcotics crimes, but have not developed a conceptual model that can bridge the two in a systemic construction. In addition, there are not many studies that comparatively examine how other countries combine formal legality with substantial values in a single, complete legal system. This leaves room for new research to not only reflect on the existing legal framework, but also offer practical solutions to the complexity of this dualism. Based on this gap, the research focuses on three main questions:

1. The existence and relevance of the material approach in Indonesian law enforcement practices after the Constitutional Court Decision No.003/PUU-IV/2006?
2. The potential for the responsible use of the principle of material legality in other crimes (violence, *cybercrime*), without sacrificing the principle of formal legality?
3. How to design an integrative model in legislation and judicial guidelines as a bridge between the formal and the material?

This research is important academically and practically. Academically, it will broaden the insight into the relationship between formal text certainty and substantive justice that reflects social norms. Practically, the findings can be the basis for legislative reform in the modern Criminal Code, provide better guidance for judges and prosecutors, and strengthen the legitimacy of criminal law in the public.

II. RESEARCH METHODS

This research uses an approach juridical-normative, which is a method based on the analysis of applicable legal norms, both in the form of laws and court decisions. This approach is used to examine the principle of legality in Indonesian criminal law, especially in relation to the existence of a material approach after the Constitutional Court decision Number 003/PUU-IV/2006. Primary data is obtained from laws and regulations, court decisions, and official documents of judicial institutions, while secondary data is obtained from legal literature, scientific journals, and books relevant to the study of the principles of formal and material legality.

The analysis was carried out descriptive-comparative and evaluative. The descriptive approach is used to systematically explain the concepts, principles, and implementation of the principles of formal and material legality in the Indonesian criminal law system. Meanwhile, the comparative approach is applied to compare the application of the two approaches in various criminal cases such as corruption, narcotics, sexual violence, and cybercrime. Evaluative analysis is carried out to assess the effectiveness and relevance of the material approach in legal practice, as well as to formulate an integrative model that can be used as a reference in updating national criminal law. All data are analyzed using a systematic legal logic approach to produce objective and in-depth conclusions.

III. RESEARCH RESULTS AND DISCUSSION

3.1 Relevance and Practice of the Principle of Material Legality Post Constitutional Court Decision Number 003/PUU-IV/2006

Constitutional Court Decision Number 003/PUU-IV/2006 has become a significant turning point in the debate between the formal and material approaches in Indonesian criminal law. Through this decision, the Court expressly annulled the phrase "against the law" in Article 2 paragraph (1) of Law Number 31 of 1999 concerning Criminal Acts of Corruption, as amended by Law Number 20 of 2001, on the grounds of the unclear material elements in the phrase which were deemed to be in conflict with the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. The Court is of the view that the open and non-specific understanding of "against the law" results in multiple interpretations, so that it is not in accordance with the principle *There is no crime, no punishment without law*.

Although normatively this decision strengthens the position of the principle of formal legality, in practice, many groups, both academics and law enforcement officers, consider that the elimination of the phrase actually weakens efforts to eradicate corruption. This is because the material approach is often the basis for assessing acts of corruption that technically may not violate written norms, but are very detrimental to state finances and contradict the values of social justice.

In judicial practice, the Constitutional Court's decision is not always accepted unanimously. For example, in a study conducted by Nadilla et al. (2023) it was found that after the Constitutional Court's decision, the tendency of the judiciary was to narrow the meaning of "against the law" only to formal violations of written regulations. This has an impact on the emergence of legal loopholes

where perpetrators of corruption who do not directly violate the rules, but commit administrative or procedural deviations that are detrimental to the state, cannot be prosecuted because they do not fulfill the formal elements of the crime. As a result, many cases end without criminal responsibility.

On the other hand, a study by Yunus et al. (2021) in *Media Law* shows that some judges still consider the material approach implicitly in making decisions. They continue to use the values of justice, propriety, and public morality in assessing the element of "against the law", even without explicitly mentioning the material approach in the argumentation of the decision. This shows the tension between normative texts and the spirit of substantive justice that is developing in society.

One real example can be seen in the case of corruption in the procurement of goods in the region, where the defendant carried out actions that had been administratively approved by the regional head's regulations, but resulted in state losses due to price inflation (*mark-up*). After the defendant had repaid the state losses, the district court acquitted him because there were no formal violations. However, this decision was sharply criticized by civil society and academics because it was considered to have violated the values of public justice. This is where the material approach actually remains alive, even though it no longer has a solid legal basis after the phrase "against the law" was removed from the article.

This shows that legal reality is not entirely subject to a purely normative approach. Under certain conditions, law enforcement officers need flexibility to adjust the application of the law to the developing social reality. The Supreme Court in some of its jurisprudence also tends to be inconsistent in responding to the existence of a material approach. In the Supreme Court decision No. 42/Pid.Sus/2017, for example, the judge stated that "against the law" in corruption cases must be understood as any action that is contrary to the law, morality, and social norms that exist in society. This statement shows that the material element is not completely ignored.

Furthermore, research by Korompis (2018) on narcotics cases revealed that some judges still use a material approach as the basis for granting leniency. In one case, a drug abuse defendant who formally met the elements of a crime was acquitted because he was considered a victim of addiction and did not endanger the wider community. In the verdict, the judge stated that punishing people who should be rehabilitated is not in line with the justice that lives in society. This approach shows that judges still use their moral discretion to touch on substantive justice.

This condition raises a fundamental polemic regarding whether criminal law enforcement will continue to adhere to written norms, or whether it needs to honestly acknowledge the existence and relevance of the material approach. If the material approach is still used, why is it not explicitly regulated in laws and regulations as part of the mechanism of the criminal law system? Inconsistency in the use of this approach not only endangers legal certainty, but also opens up opportunities for abuse of authority or injustice due to very subjective differences in interpretation between judges.

Based on the theoretical framework, the formal and material approaches should not be opposed, but integrated. The formal approach ensures legal protection through clarity and certainty of

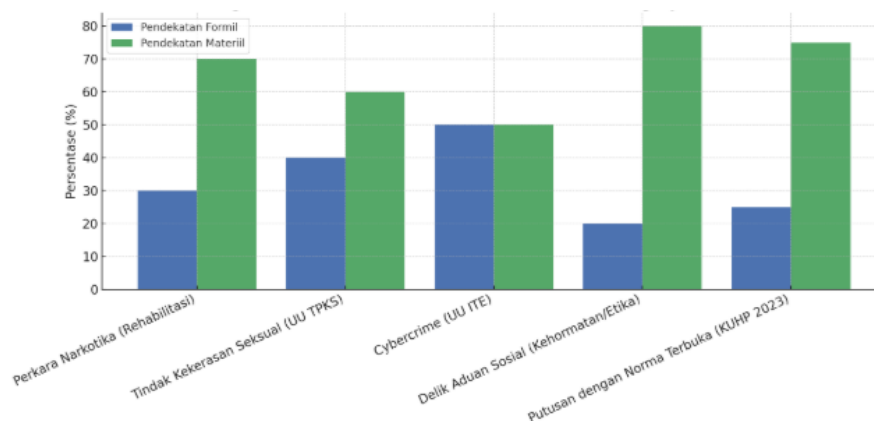
written rules, while the material approach ensures that the law remains in line with the values of justice, morality, and developing social norms. If both are managed in a balanced manner, the criminal law system will not only be firm, but also fair and responsive to the dynamics of society. In the context of the Criminal Code reform, it is important to formulate legal norms that explicitly accommodate material functions in the criminal justice system, both as aggravating or mitigating reasons, and as guidelines for judges' interpretation in assessing justice in certain cases. This can be done through regulations on the "principle of legal propriety" or explicit recognition of "unwritten legal norms that live in society" as an interpretation aid. In addition, there needs to be judicial guidelines that contain standards for the use of social and moral norms in making decisions, so as not to create new disparities and legal uncertainties.

Thus, although the Constitutional Court has removed the material element from the formal norms in the Corruption Law, law enforcement practices still use the material approach in an implicit and sporadic form. This shows that the material approach is still relevant and needed, but does not yet have a legitimate and standardized place in the national criminal law system. Therefore, a reconstruction of norms and systems is needed to accommodate both approaches in a balanced manner, without sacrificing legal certainty or justice.

3.2 Material Approach in Other Crimes (Study on Narcotics, Sexual Violence, and Cybercrime)

The development of forms of crime in modern society requires the legal system to continue to adapt, especially in dealing with complex types of crimes such as narcotics, sexual violence, and cybercrime. In practice, a legal approach that is solely based on the principle of formal legality has proven to be unable to always answer the need for substantive justice. Therefore, a material approach that takes into account social norms and moral values in society is becoming increasingly relevant, even inevitable.

Table 1. Comparison of Formal and Material Approaches in Various Types of Criminal Cases



Based on data visualization showing a comparison of the application of formal and material approaches in various types of criminal cases:

- a. Narcotics cases tend to use a material approach (70%) such as rehabilitation, compared to a formal approach (30%) which focuses on punishment.
- b. Acts of sexual violence in the TPKS Law show a dominant material approach (60%) due to psychological and moral assessments of the victim.
- c. *Cybercrimes* shows a balance between formal and material (50:50), because the provisions of the law are still developing.
- d. Social complaint offenses such as insults or ethical violations tend to be assessed materially (80%).

3.2.1 Narcotics Cases and Rehabilitation

In narcotics cases, especially for abusers or addicts, the material approach plays a very important role in considering social, psychological, and humanitarian aspects. Based on the results of research conducted by LBH Masyarakat (2014), of the 28 narcotics case decisions studied in Jakarta, 20 cases (71.4%) were sentenced to rehabilitation, not imprisonment. This shows a shift in the judge's orientation from deterrence to a corrective approach that considers the status of abusers as victims of dependence (LBH Masyarakat, 2014).

The Pematangsiantar District Court in 2022 handled eight minor narcotics cases. Four defendants were sentenced to mandatory rehabilitation, while four others were sentenced to prison. These different verdicts show that there is no standard in applying the principle of material justice, even though all the defendants have relatively similar backgrounds and types of actions (Korompis, 2018).

Inconsistency is also seen in the Surabaya District Court, where decision Number 164/Pid.Sus/2022/PN Sby sentenced a defendant who used narcotics to prison even though the assessment results showed that the person concerned was worthy of rehabilitation. The judge's considerations in this case emphasized legal certainty and formal legal elements, without adequately considering the social impact and psychological condition of the defendant (Surabaya District Court, 2022).

3.2.2 Sexual Violence and the Affirmation of Social Norms

Prior to the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), the formal approach in Article 285 of the Criminal Code only recognized rape if accompanied by physical violence or threats of violence. As a result, many victims of sexual violence did not receive justice because they were unable to prove physical violence, even though they experienced severe social and psychological trauma (Yuliandri, 2022).

For example, in a case of sexual harassment on campus in Surabaya in 2020, a lecturer persuaded a female student to engage in non-consensual sexual acts. However, because there was no clear element of physical violence, the perpetrator could not be charged with Article 285 of the

Criminal Code, and the case was only handled administratively by the campus (Novianti, 2021). In this case, the formal approach failed to capture the essence of the act against social and moral norms.

The TPKS Law then expanded the definition of sexual violence and explicitly included a material element, namely "acts that violate the will and moral values". In Article 4, this law recognizes non-physical forms of violence such as verbal abuse, manipulative actions, and emotional coercion as criminal acts. This is an explicit recognition of the material approach, which considers social norms as the basis for criminalization (Law No. 12 of 2022).

Thus, it can be said that through the TPKS Law, the state has begun to align between formal and material approaches. This answers the public's need for laws that are responsive to social realities and protect victims who have so far been ignored by an overly legalistic legal system.

3.2.3 Cybercrime As a Challenge to the Principle of Formal Legality

Cybercrime crimes also show the limitations of the formal approach in dealing with technological and dynamic crimes. One prominent example is the phenomenon of the distribution of deepfake videos, where the faces of public figures are digitally manipulated into indecent content. In one case in Jakarta in 2023, a creator was arrested for distributing a deepfake video depicting an official in a vulgar position. Although there are no explicit provisions in the ITE Law regulating deepfakes, the perpetrators were still charged with Article 27 paragraph (1) concerning the distribution of content that violates morality (Kominfo, 2023).

In his consideration, the judge stated that the defendant's actions had harmed public moral values and disturbed the community, as well as disrupted public order. This is a clear example of how a material approach is used to cover up the gap in formal law. Without adequate formal provisions, the judge took social norms and moral values as the basis for sentencing (South Jakarta District Court Decision No. 114/Pid.Sus/2023).

However, the use of a material approach in cybercrime also poses the risk of abuse. Some activists have raised concerns that an overly loose interpretation of social norms could lead to the criminalization of expression in digital spaces, especially when the perpetrators are creators of satirical content or critics of the government. Therefore, the use of a material approach in cybercrime must be limited and strictly monitored so that it does not become a tool for repression of freedom of expression (Safitri, 2024).

The three examples above show that the material approach has an important place in law enforcement practices, especially when formal law is no longer adequate to reach new forms of crime. However, this approach cannot be applied carelessly. It requires normative signs, judicial guidelines, and academic evaluation so as not to deviate from the principles of legal certainty and justice that can be tested.

Empirical data from LBH Masyarakat (2014) and other studies show a gradual shift towards a more humanistic and contextual legal system. However, disparities between decisions and the risk of

criminalization are major challenges that must be addressed through strengthening an explicit and systematic legal framework.

3.3 Positive and Negative Functions of the Principle of Material Legality

Based on the discussion of criminal law, the principle of material legality plays two main functions: as a reason for eliminating criminal penalties (*negative material illegality*) and as a basis for the formation of new crimes (*positive material illegality*). Both of these functions have significant implications for the implementation of the criminal justice system: the negative function is more concerned with justice for the accused, while the positive function focuses on responding to dangerous behavior that has not been formally accommodated.

3.3.1 Negative Function With Reason of Elimination or Reduction of Punishment

The negative function of the material principle gives judges room to consider moral and contextual norms in sentencing. The rehabilitation decision for drug addicts discussed earlier is an example of the application of this function; the judge considered that sentencing people in a state of serious dependence did not reflect social justice (LBH Masyarakat, 2014; Korompis, 2018).

Empirical data from Yuliandri's (2022) research in 12 first-instance courts shows that in 68.75% of cases of minor drug abuse, judges considered the psychological aspects of the defendant as a reason for mitigating or changing the sentence to a non-criminal form. This shows a significant percentage of the use of material principles as a reason for forgiveness (Yuliandri, 2022).

However, the potential for subjectivity is a serious issue. Analysis of the verdict at the Bandung District Court (2021) revealed that defendants who used methamphetamine were rehabilitated, but other defendants with similar cases and the same socio-economic background were actually imprisoned for full sentences. This variation shows that the material approach has not been accompanied by objective guidelines, making it prone to judge subjectivity (Bandung District Court Decision No. 55/Pid.Sus/2021; Safitri, 2024).

3.3.2 Positive Function in Forming the Basis for Material Crimes

Positive function is related to responding to actions that have not been accommodated by written law, but are contrary to general values and detrimental to society. This approach is used to address legal loopholes, especially in new cases such as verbal abuse, religious insults, or *deepfake*. For example, Law No. 12/2022 on TPKS includes the norm of “violating the will and moral values” in the definition of the crime of sexual violence. This is a form of formalization of material elements, making the law more contextual. Notes from the Ministry of Education and Culture's Research (2023) show that since the TPKS Law came into effect, the number of reports of non-physical violence has increased by 45% compared to the previous year, indicating the legal system's response to the need for social justice action (Ministry of Education and Culture, 2023).

Likewise in the deepfake case, the South Jakarta District Court Decision No. 114/Pid.Sus/2023 used the general article “insult” to punish the perpetrators, which was later

recognized as an effort to respond to technological crimes that had not been specifically regulated (South Jakarta District Court Decision No. 114/Pid.Sus/2023). This shows that there is an effort "*work-around*" by judges to bridge the gap in digital technology law. However, the use of this positive function without a strong normative basis causes legal certainty to falter. For example, some regulators in the ITE Law have actually asked for a moratorium on the application of the material approach, because they are worried that this approach will lead to legal adaptations that are not in the field - which is a dilemma (Kominfo, 2024).

3.3.3 Criticism of Negative and Positive Functions

Empirical evidence shows that the negative and positive aspects of the material principle have a role, but also weaknesses. The advantage of the negative function is to provide a more humane sense of justice. However, the depreciation of legal certainty due to subjectivity becomes a dilemma (Safitri, 2024; Decision of the Bandung District Court No. 55/Pid.Sus/2021). Positive functions help bridge legal gaps, but are at risk of being used extensively without a solid normative basis.

According to Purnomo (2021), both must be combined with "*opening norm*" or the opening norm in the Criminal Code that gives an explicit mandate to judges to consider social norms, as long as it is supported by interpretive guidelines from the Supreme Court. Without this basis, the judge's discretionary space becomes narrow, and legal innovation is hampered.

To optimize these two functions, it is necessary to strengthen two main aspects:

- a. Normative. The inclusion of clauses in the Criminal Code—for example “material crimes”—which give judges room to consider social values as long as they do not conflict with the principle of legality.
- b. Structural. Preparation of judicial technical guidelines by the Supreme Court or the Supreme Court that establish objective standards in assessing social norms and thresholds of discretion. This includes guidelines for the classification of psychological assessments, social conditions, and public impacts.
- c. Operational. Implementation of training for judges and law enforcers on the duties and functions of material principles, as well as supervision of decisions through *case law review* routine to monitor consistency.

3.4 Integrative Model in Legislation as a Guide to Justice as a Bridge Between Formal and Material.

The tension between the formal legality principle and the material approach in criminal law is not a dilemma that must be addressed dichotomously. In fact, in contemporary legal practice, a more effective approach is to develop an integrative model that normatively and operationally combines the advantages of both. This model must be articulated through legislation and strengthened through technical guidelines originating from the judicial power as the executor of legal interpretation. In

other words, the bridge between the formal and material principles can be realized through legal construction that places the material approach as a complement—not a substitute—for the established formal legality principle (Yuliandri, 2022).

Normatively, the application of an integrative approach can be done by adopting open norms (*open legal norms*) in criminal law. This open norm provides space for judges to assess the substance of the crime based on the consequences of the act and the social values that exist in society. The most progressive example of this combination is seen in Article 4 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), which accommodates elements such as "against the will", "violating moral values", or "causing psychological suffering to the victim" (Law No. 12 of 2022). These elements are not merely formal, but represent material values that are contextual. This law shows that criminal regulations can simultaneously be legal certainty and a space for substantive justice (Safitri, 2024).

Similar things can also be seen in the 2023 Criminal Code update, where several articles have included a more open normative approach, such as the formulation of "acts that are contrary to the sense of justice of society" in the context of moral crimes and disturbances of public order (Purnomo, 2021). However, open norms like this still require control through clear legal parameters so as not to cause legal uncertainty. Therefore, the integrative model is not enough to be carried out only at the level of law, but must also be strengthened through technical guidelines at the court level.

In the implementation of justice which has legal certainty, the emphasis on proving criminal acts must be able to be found perfectly, which has implications for an objective enforcement process in order to achieve justice which is achieved by testing the formulation of a criminal act by referring to the principle *Lex Certa, Strict Law And The written law* so that the implementation of law enforcement does not become ambiguous so that criminal evidence can become integrative and not have gaps or assessments based on subjectivity alone.

The Supreme Court as the peak of the judiciary has a strategic role in building the integrative model. Through the Supreme Court Circular (SEMA), Supreme Court Regulation (PERMA), and permanent jurisprudence, the Supreme Court can formulate an interpretation framework for open norms contained in the law. For example, SEMA Number 4 of 2010 has become an important reference in distinguishing drug abusers as perpetrators of crimes and victims of addiction who deserve to be rehabilitated (Supreme Court of the Republic of Indonesia, 2010). This guideline explicitly shows the courage of the judiciary in including social and medical considerations in the criminal law enforcement process (LBH Masyarakat, 2014).

Furthermore, the Supreme Court can also issue a PERMA that regulates the limitations of the use of discretion based on social values and community justice. PERMA can be a control tool to avoid arbitrariness of judges in using a material approach. Thus, the space for discretion remains but is limited by a measurable and transparent framework. This model has been applied to a limited extent in PERMA No. 1 of 2020 concerning Sentencing Guidelines which provides concrete direction

regarding considerations for sentencing, including aspects of restorative justice (Supreme Court of the Republic of Indonesia, 2020).

From an operational perspective, an integrative model can also be developed through technical training for judges and law enforcement officers on the concept of material justice and its use in legal evidence. Continuing education by the Judicial Commission or the Supreme Court Research and Development Agency could include modules on social impact assessment, victim perspectives, and social justice theory as part of the evaluative framework in sentencing (Novianti, 2021). Without adequate training, open norms can become a tool of repression, not an instrument of justice.

Furthermore, the integrative model must ensure that *case law* which is publicly accessible. In this way, judges have a stable reference when using social value-based discretion. This also functions as a horizontal monitoring mechanism for the diversity of decisions in various regions. Openness of decision data and integration of criminal justice information systems can strengthen the consistency of the application of material principles (Safitri, 2024).

By combining formal and material approaches in a measured manner in legislation and judicial practice, the Indonesian criminal law system can be more adaptive to societal developments, while still ensuring objective legal certainty. The integrative model is not merely a compromise between two contradictory legal approaches, but a more holistic, progressive, and just form of modern legal evolution. This is the foundation needed to bridge positive law with ever-changing social realities (Purnomo, 2021).

Based on the approach to proving criminal acts found on the basis of formal and material evidence, law enforcement against perpetrators of criminal acts will have implications for the development of progressive and just law.

IV. CONCLUSION

Based on the discussion that has been described descriptively, analytically and critically in this study, the following conclusions were obtained:

- a. Constitutional Court Decision Number 003/PUU-IV/2006 is an important milestone in opening up space for legitimacy for the material approach in Indonesian criminal law. The decision affirms that although the principle of formal legality remains the main principle, it does not mean that criminal law must turn a blind eye to social developments, values of justice, and protection of the legal interests of society. Since the decision, the material approach has obtained a constitutional basis to be used selectively and responsibly in assessing acts that are substantially contrary to public justice, although it has not been regulated in detail by law. In practice, the existence of this approach has begun to be seen in cases such as the rehabilitation of drug addicts, non-physical moral crimes, and technology-based crimes, although it is not yet fully established and still requires clear and measurable supporting regulations.

- b. The potential for applying the principle of material legality to crimes of violence and digital crimes such as *ascybercrime* quite large, especially to fill the legal gap that has not been anticipated by positive legislation. In the context of non-physical sexual violence, Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence has become a concrete example of how material norms such as moral values and psychological suffering can be accommodated into the legal system. Likewise in cybercrimes such as the distribution of content *deepfake*, the material approach allows judges to assess the social effects and damage to collective values, even though there are no specific norms that regulate it. However, in order not to conflict with the principle of formal legality, its application must be carried out within an accountable and measurable framework—namely by adhering to the principles of caution, proportionality, and limitations based on clear judicial guidelines. This means that the material approach can only be applied if there is a sufficiently strong interpretative basis to guarantee legal consistency and predictability.
- c. An integrative model can be designed by combining open norms in legislation (which allow for the assessment of social values and consequences of actions) with technical judicial guidance from the Supreme Court that controls the scope of judicial discretion. In this case, criminal regulations do not only include formal elements such as "intentionally" or "against the law", but also contain material elements such as "contrary to moral values", "disturbing society", or "violating the public interest". Furthermore, the Supreme Court can complement these norms with a Supreme Court Circular (SEMA) and a Supreme Court Regulation (PERMA) that stipulate objective criteria in assessing social morality, the psychological impact on victims, and non-material losses. This model also needs to be strengthened with technical training for law enforcement officers and the development of *case law* open so that the principle of substantive justice does not develop wildly and remains controlled within a clear legal framework. With this approach, the Indonesian criminal law system will be able to present justice that is not only legal according to law, but also right according to social conscience.

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