

## COMPARATIVE STUDY OF TERRITORIAL AND NATIONAL ACTIVE PRINCIPLES IN THE CONTEXT OF THE APPLICATION OF CRIMINAL LAW IN INDONESIA

Kusmiyati<sup>1\*</sup>, Syamsuddin<sup>2</sup>, Ilham<sup>3</sup>

<sup>1,2,3</sup>Fakultas Hukum dan Ekonomi, Hukum, Universitas Muhammadiyah Bima, Kota Bima, Indonesia

kus48410@gmail.com<sup>1\*</sup>, aanainun47@gmail.com<sup>2</sup>, ilham@gmail.com<sup>3</sup>

Received 20 Sep 2025 • Revised 25 Oct 2025 • Published 23 Nov 2025

### Abstrak

This study examines the comparison between the territorial principle and the active national principle in the context of criminal law enforcement in Indonesia. Indonesia, as a vast archipelagic country, faces challenges in the application of cross-border criminal law, especially in cases involving Indonesian citizens who commit crimes abroad and foreign citizens who commit crimes in their territory. The territorial principle focuses on the location of the crime, while the active national principle allows the prosecution of Indonesian citizens for crimes committed abroad. This study analyzes the legal framework stipulated in the 1946 Criminal Code (KUHP) and the revised version in 2023, highlighting the differences and implications of the two principles. Through normative legal research, this research aims to identify the effectiveness of these principles in dealing with transnational crime and emerging legal dilemmas. The findings of the study show that while both principles serve to uphold national sovereignty and protect the rights of citizens, their application can give rise to jurisdictional conflicts, which require international cooperation and legal harmonization.

**Keywords:** Territorial principle, active national principle, and the Criminal Code

## INTRODUCTION

Indonesia is a country with thousands of islands and a large area of water. Indonesia's territorial boundaries include Indonesia's land boundary and Indonesia's maritime boundary. There are several neighboring countries that border Indonesia. The territorial boundary of Indonesia with other countries can also be divided into two, namely the Indonesian land boundary and the Indonesian maritime boundary. Indonesia, as a country with a large geographical area and strategic position in the Southeast Asian region, often faces challenges in the application of cross-border criminal law (Santoso, 2020). For example, cases involving Indonesian citizens as perpetrators of crimes abroad or foreign nationals who commit criminal acts in Indonesian territory. In this context, the application of territorial principles and active national principles must be carefully considered to safeguard the legal sovereignty of the state while protecting the rights of citizens. Indonesia is a state of law in accordance with what is stated in the Constitution (Constitution) article 1 paragraph (3) Indonesia is a State of Law. (Konstitusi 1945, 1945). The limits of the validity of the Criminal Code are contained in the principles of criminal law that have been clearly regulated in the first book of the Criminal Code, including the principle of legality, the territorial principle, the principle of personal, (active national), the principle of protection (passive national) and the universal principle.

In criminal law, the Territorial and national principles are active which are the basis for the application of jurisdiction. The territorial principle is one that is based on the sovereignty or power of the state over its territory (Syahril, 2022). The territorial principle focuses on the place where a criminal act occurs, namely a crime that occurs in the territory of a country as contained in article 2 of the Criminal Code No. 1 of 1946 "Criminal provisions in Indonesian law apply to anyone who commits a crime in Indonesia" Then it is also expanded in article 3 of the Criminal Code "criminal provisions in Indonesian law apply to anyone who commits a criminal act in an Indonesian water vehicle or aircraft. Meanwhile, in the Criminal Code No. 1 of 2023, the territorial principle is regulated in article 4 "Indonesian criminal law applies to all persons who commit acts on Indonesian territory" and in article 5 of the Criminal Code "Indonesian criminal law also applies to all people who commit criminal acts on Indonesian ships or aircraft. On the other hand, the personal principle (Active National) gives the authority to the state to prosecute its citizens who commit crimes abroad, stated in article 5 of the Criminal Code No. 1 of 1946 "Indonesian criminal law applies to Indonesian citizens who commit crimes outside the territory of Indonesia" this active personal principle is expanded with article 7 which in addition to containing the active national principle (personality principle) as well as the passive national principle (protection principle) determines that the law Criminal penalties of a country (also Indonesia) apply to acts committed abroad, if therefore certain interests, especially state interests, are violated outside the territory of that jurisdiction. The principle of protection (passive national) is listed in article 4 paragraphs (1), (2) and (4) of the Criminal Code. Then this principle was expanded by Law No. 4 of 1976 concerning aviation crimes as well as by article 3 of Law No. 7 of 1955 concerning economic crimes. Meanwhile, the active national principle regulated in the Criminal Code No. 1 of 2023 article 8 "Indonesian criminal law applies to Indonesian citizens who commit criminal acts outside the territory of Indonesia, if the act is also a criminal act in the country where the crime was committed" These two principles have fundamental differences in their concept and application, which can give rise to legal dilemmas, especially in cases that are cross-border (Martiman, 2019).

In the context of the application of criminal law in Indonesia, the comparison between territorial and national principles is a very important issue, especially in cases involving foreign nationals (WNA) who commit crimes in the territorial territory of Indonesia or Indonesian citizens (WNI) who commit crimes abroad. Two relevant cases to be studied in this case are the cases of Guido Torres Morales and Reynhard Sinaga.

The case of violation of territorial principles committed by a foreign national, namely Guido Torres Morales who committed the crime of trafficking cocaine in Indonesia, then in Trial using Indonesian jurisdiction and namely Law No. 35 of 2009 concerning Narcotics article 113. Then he was sentenced to 17 years and a fine of 2 billion at the Denpasar State Court, Bali, Monday (2/12/2019). Then the violation of active national principles committed by Reynhard Sinaga an Indonesian citizen who committed the crime of rape in the United Kingdom, then in the Court of Appeal used the jurisdiction of the British state and was sentenced to life imprisonment. In addition, the Indonesian state also tried to provide legal assistance to Reynhard Sinaga in the form of bilateral negotiations between Indonesia and the United Kingdom, but has not received a response from the United Kingdom. Although the territorial principle and the active national principle have been regulated in the Indonesian Criminal Code, their implementation still faces various challenges, especially in adjusting to the development of

international law, the complexity of the extradition process and legal cooperation between countries. (Setiawan, 2021). On the one hand, the territorial principle can be considered to limit the scope of state jurisdiction, while the active national principle raises questions about the applicability of national law to actions carried out by Indonesian citizens (WNI) abroad. Therefore, a comparative study between these two principles is important to understand their advantages, shortcomings, and relevance in the context of Indonesian criminal law.

Through a comparative study, this study aims to analyze how the application of the principle of territorial and national activity in Indonesian criminal law and the extent of its effectiveness in handling transnational crime cases by comparing these two principles. Based on the above background description, the researcher formulated the formulation of the problem as follows: How are the provisions of the Territorial Principles and National Principles active in the Criminal Code No. 1 of 1946 (old) and Criminal Code No. 1 of 2023 (new)? How is the comparison of Territorial Principles and National Principles active in the context of the application of criminal law in Indonesia?

## RESEARCH METHODS

The researcher used a Normative type of research. This normative legal research method places law as a norm system building. This type of research aims to find the truth based on the conformity between law and legal norms, and legal norms with legal principles (Dr. jonaedin Efendi, S.H.I., M.H dan Prof. Dr. Johnny Ibrahim, S.H., S.E., M.M., 2020).

## RESULTS AND DISCUSSION

### 1. The regulation of Territorial Principles and National Principles is active in the Criminal Code No. 1 of 1946 (old) and the Criminal Code No.1 of 2023 (new)

#### a. Asas Teritorial

The territorial principle is found in book 1 of the Dutch Wetboek van Strafwet (WvS) concerning General Provisions (general provisions), especially in title 1 (Chapter 1) which regulates dealing with the operation of starlaw (Scope of the enactment of the Criminal Law). The principle is regulated in article 1 with the formulation "The law of staring at the Netherlands applies to anyone who is guilty of any criminal act in the Netherlands" (Dutch criminal law applies to anyone who commits a crime in the Netherlands guilty of any criminal act) (Rommelink, 2003).

*The Dutch wetboek van strafwet in 1881 was then copied into WvS for Dutch indie in 1915 which took place in 1918 in the Dutch East Indies. In the Dutch East Indies WvS, the territorial principle is contained in article 2 also with a slightly amended formulation, namely: De Nederlandsch-Indische wetteli jk strafbepalingen zijn toepasselijk op ieder, die zich binnen Nederlandsch-Indie aan eenig strafbaar feit schuldig maak" (Dutch East Indies law criminal provisions apply to anyone who is "guilty of any criminal offence in the Dutch East Indies") (Rommelink, 2003).*

The WvS which was then continued to be used after Indonesian independence became a book of the Criminal Code (KUHP) with Law No. 1 of 1946 which was applicable especially in Java and Madura, the words Nederlands-indische or Nederlandsch-Indie were changed to "Indonesich". The formulation of the principle of territoriality is also regulated in article 2 of the Criminal Code which reads "The criminal rules in the Indonesian Republic Law apply to every person who commits an act that is punishable" Then with Law No. 73 of 1958, the Criminal Code was declared valid throughout Indonesia.

#### 1. Territorial principles in the Criminal Code No. 1 of 1946

As explained above, in article 2 of the Criminal Code No. 1 of 1946 "Criminal provisions in Indonesian laws apply to anyone who commits a crime in Indonesia" then expanded in article 3 of the Criminal Code "Criminal Provisions in the Legislation apply to anyone who commits a criminal act in Indonesia both on Indonesian Aircraft and Indonesian Navy" the two articles contain the principle of territoriality that establishes the enactment of criminal law Indonesia is dependent on the area where the crime was committed. If the criminal act is committed in Indonesian territory, then it does not matter about the nationality of the perpetrator, the important thing is that the criminal act is committed in Indonesian territory. According to this principle, the emphasis is placed on the occurrence of acts within the territory of the state. Who commits it, Indonesian citizens or foreign citizens, acts as a question. According to this principle, the basis is in the place where the criminal act is committed within the territory of the state. The priority is "territorial" Indonesia, everyone

who commits a criminal act in this region can be prosecuted based on the regulations that are violated. The identity or nationality of the person is ignored (Kartanegara, 1965).

Then it was expanded in paragraph 3 of the Criminal Code No. 1 to expand the validity of the principle of territoriality by using Indonesian water vehicles as a space where Indonesian criminal law enacted (not expanding Indonesian territory) in other words, article 3 of the Criminal Code expands the work of article 2 of the Criminal Code No. 1/1946. The expansion of the principle of territoriality in article 2 of the Criminal Code No. 1/1946 can be seen from the assertion that the Criminal Code can also be applied to those who commit a crime on board the Indonesian Revolution. More specifically, in article 3 of the Criminal Code, it states that "The criminal rules in the Indonesian Criminal Code apply to any person who commits an act that is permissible by law outside the territory of the Indonesian Constitution.

The Law on the territory of the State of Indonesia is needed to provide clarity and legal certainty to all Indonesian people about the territory of their country, Law Number 43 of 2008 concerning the territory of the country containing islands and territorial seas along with the seabed, and the land under which the sea, to the airspace above it, including what is also important is the source of wealth contained in it. Law Number 43 of 2008 concerning State Territories also regulates the boundaries of state territory. The boundaries of the State's territory are on land, waters, seabed and land below and the airspace thereon are determined on the basis of bilateral and/or trilateral agreements on land boundaries, sea boundaries, and air boundaries and based on laws and regulations and international law. State Territory, is one of the elements of the state which is a unit of land areas, inland waters, archipelago waters and territorial seas along with the seabed and land underneath, as well as the airspace above it.

Law No. 43 of 2008 if it is related to the territorial principle regulated in Article 2 of the Criminal Code No. 1 of 1946 and Article 4 of the Criminal Code No. 1 of 2023, if the crime is committed in the ocean that is included in the territory of the state or jurisdiction? Based on the provisions in Law No. 43 of 2008 above, it is clear that what is meant by the principle of territoriality in Article 2 of the Criminal Code 1/1946 AND Article 4 of the Criminal Code 1/2023 in the context of criminal acts at sea, it more precisely refers to the sea that enters the territory of the state or territorial sea only (i.e. 12 nautical miles from the coastline), and not the Juridical area (an area outside the territory of the State consisting of an Exclusive Economic Zone (EEZ) of 200 ml sea, Continental Shelf, and the 24-mile Auxiliary Zone). Associated with the provisions of the International Convention on the Law of the Sea or UNCLOS, laws and regulations on customs, immigration and health apply in that jurisdiction. For the EEZ Area, fishing crimes also apply.

## 2. Territorial principles in the Criminal Code No. 1 of 2023

Likewise, it is regulated in the Criminal Code no. 1 of 2023 concerning the renewal of territorial principles which includes several important aspects that are not only acts committed in Indonesian territory, but also acts outside Indonesian territory if the acts have consequences felt in Indonesia. In article 4 of the Criminal Code No. 1 of 2023 which states "the criminal provisions in the Law apply to every person who commits the following:

- a. Criminal acts in the territory of the unitary state of the Indonesian republic
- b. Criminal acts on Indonesian ships or Indonesian aircraft Criminal acts in the field of information technology or other
- c. criminal acts that result in or occur in the territory of the Unitary State of the Republic of Indonesia or Indonesian ships or Indonesian aircraft (UU No 1 Tahun 2023, 2023).

Then, in the explanation of article 4 letter a of Law 1/2023, what is meant by "the territory of the Unitary State of the Republic of Indonesia" is a unit of sovereign territory on the mainland, inland areas, archipelago waters, along with the seabed and land below, and the airspace above it as well as all areas that border and state rights in the territorial sea, additional zones, exclusive economic zones, and continental shelf regulated in the Law (UU No 1 Tahun 2023, 2023).

As for what is meant by "other criminal acts", for example, criminal acts against state security or criminal acts formulated in international agreements that have been ratified by Indonesia, as explained in the explanation of article 4 letter c of Law 1/2023 "The criminal act is committed against the interests of Indonesia or Indonesian citizens".

In the Criminal Code No. 1 of 2023, it expands the territorial principle by adding criminal acts in the field of information technology which refers to the current development of the digital world. In today's digital era, criminal acts can be committed through digital platforms, such as the internet, social media and online applications. Form:

- a. Cybercrime: criminal acts committed over the internet such as hacking, phishing and the spread of malware.
- b. Spread of false information: criminal acts committed through social media and other platforms, such as the spread of hoaxes and false information.
- c. Use of technology to commit criminal acts: criminal acts committed using technology such as the use of drones to conduct reconnaissance or the use of online applications to commit fraud.

The provisions in the Criminal Code No. 1/2023 already include what is currently regulated in articles 2 and 3 of the Criminal Code as well as amendments (expansion including Indonesian aircraft). This provision also covers new developments, namely criminal acts in the field of information technology or other criminal acts that as a result are experienced or occur in Indonesian territory, this provision is much more developed than the provisions of articles 2 and 3 of the Criminal Code.

### **Territorial Policy Exemption**

The application of this territorial principle does not allow for the absence of exclusion. This exemption, against people, not all people who commit criminal acts in a country will be tried using the laws of that country. Exceptions for people are: foreign heads of state, diplomatic officials of foreign countries, foreign state public ships, military bases of foreign countries, and also officers of international institutions (Auli, 2024).

The exception to the head of state is a manifestation of *asa par in parem non habet imprium* which means that the head of state cannot be punished by using other laws of the state under his leadership or he cannot be punished using the laws of other countries. However, the development of the principle has an exception, namely it is still applied to the head of state in crimes of a serious nature such as the crime of genocide, crimes against humanity, and also crimes against war (Dr.Scott, 2023).

In addition, the acting diplomatic officer of a foreign country is responsible for the state if he commits an act that is contrary to the law due to his mistake or negligence so as to cause a violation of international legal obligations. In diplomatic matters, it has immunity from criminal, civil, administrative jurisdiction of the receiving country, except in certain cases such as personal activities outside their functions.

The territorial principle also cannot be applied to criminal acts that are not regulated in the national criminal law. If an act is not regulated as a criminal act in Indonesian law, then the law cannot be applied even if the act is carried out in Indonesian territory (Dr.Scott, 2023).

### **b. Active National Principles**

The principle of active national is a principle based on the nationality of the perpetrator of a criminal act. This principle contains the view that Indonesian criminal law follows its citizens abroad. This principle is based on the idea that the laws of a sovereign state always follow the rules of their state. The concept of state sovereignty which states that every sovereign state can also expect every citizen to obey the laws of his country wherever he is. According to the active national principle, Indonesian criminal law applies to every Indonesian citizen who is in the territory of another country, in addition to being subject to his own national law (although not subject to all the provisions of his criminal law) also subject to the national criminal law of the country in which he is located based on the territorial principle (Ali, 2011).

#### **1. Active National Principle in Criminal Code No. 1 of 1946**

The active national principle is a principle based on citizenship, where the law of a country applies to its citizens who commit crimes abroad, and is regulated in article 5 of the Criminal Code: "Criminal provisions in Indonesian laws are applied to citizens who commit crimes outside Indonesia":

- a. one of these crimes in Chapters 1 AND II of the Second Book and articles 160, 161, 240, 279, 450 and 451.

- b. One of the acts that is considered a crime by a criminal provision in Indonesian law, while according to the laws of the country where the act is committed is threatened with a criminal offense
- c. The prosecution of the case as referred to in point 2 can also be carried out if the accused becomes a citizen after committing the act.

The principle of active nationalism regulated in article 5 paragraph (1) -paragraph (2) aims to prevent Indonesian citizens from committing crimes in other countries. If this principle does not exist, then Indonesian citizens who commit criminal acts in other countries can avoid criminal prosecution in that country cannot be prosecuted because the acts are committed outside the territory of the Indonesian state. With the existence of article 5 paragraphs (1) to paragraph (2), Indonesian citizens who commit criminal acts in other countries can be prosecuted and tried using the Criminal Code in Indonesia (Setyaningsi, 2020).

2. The active national principle in the Criminal Code No. 1 of 2023

The new Criminal Code was ratified through Law No. 1 of 2023 which still upholds the national principle of passive and active but with some important changes that expand its scope and effectiveness. The regulation is contained in article 4 of the New Criminal Code, which states that "

- a. Indonesian criminal law remains valid for Indonesian citizens who commit criminal acts abroad"Applies not only to crimes, but also certain offenses
- b. It does not always require the principle of double criminality, especially in cases that are in the national interest.
- c. Adding a legal mechanism for Indonesian citizens who commit crimes abroad to still be prosecuted in Indonesia, they must depend on the laws of other countries.

The new Criminal Code strengthens the principle of active national by expanding the scope of criminal acts that can be prosecuted and reducing dependence on the principle of Double Criminality. Article 4 of the new Criminal Code provides more flexibility for Indonesia to enforce the law against its citizens who commit crimes abroad, especially if the act is detrimental to the state's interests

**3. Comparison of Territorial and National Principles of Active in the Context of the Application of Criminal Law in Indonesia**

A comparison of the territorial and national principles of active criminal law shows the complexity of the application of the law in a global context. Each has different goals and scopes but complements each other in maintaining law and order both at home and abroad.

The effectiveness of territorial and national principles of active territory in the context of the application of criminal law can be analyzed from various aspects, including state sovereignty, legal protection and challenges faced.

a. Asas teritorial

The application of the territorial principle is based on the place where the crime occurred, the territorial principle states that the criminal law of a country applies to every person who commits a criminal act in Indonesia which is explained in articles 2 and 3 of the Criminal Code No. 1 of 1946 "criminal provisions in Indonesian law are applied to every person who commits a criminal act in Indonesia". Then it was expanded in article 3 of the Criminal Code "the criminal provisions of Indonesian laws apply to every person outside the territory of Indonesia who commits a criminal act in a water vehicle or Indonesian aircraft"(Rohman, 2022). then expanded in article 4 of the Criminal Code No. 1 of 2023 "then regulated in article 4 of the Criminal Code No. 1 of 2023 which states "the criminal provisions in the Law apply to every person who commits the following:

- 1. Criminal acts in the territory of the unitary state of the Indonesian republic
- 2. Criminal acts on Indonesian ships or Indonesian aircraft.
- 3. Criminal acts in the field of information technology or other criminal acts that as a result are experienced or occur in the territory of the Unitary State of the Republic of Indonesia or Indonesian ships or Indonesian aircraft.

If a Foreign Citizen (WNA) commits a criminal act in Indonesia, they can be arrested and detained by the police. The process of arrest and detention must follow the applicable legal procedures to ensure that the rights of suspects are protected. The police are obliged to provide information to the embassy or consulate of the country of origin of the foreigner who is arrested

(*Warga Negara Asing Dan Pengakuan Hukum Pidana Di Indonesia: Sebuah Analisis Komprehensif*, 2024). This process is regulated in the Criminal Procedure Code (KUHP):

1. Article 18 of the Criminal Procedure Code: Declares that an arrest can only be made based on a written order from the acting authority and must be accompanied by a clear reason.
2. Article 20 of the Criminal Code: states that within 1x24 hours after the arrest, the police are obliged to notify the arrest to the victim's family or a person who is in the same house as the suspect. (Kitab Undang-Undang Hukum Acara Pidana No 8 Tahun 1981, 1981)

Foreign citizens who are charged with criminal acts will be tried in Indonesian courts. In this process, they are entitled to legal assistance and translators if needed. Indonesian courts must ensure that foreigners understand all indictments and ongoing judicial processes. This procedure is regulated in the Criminal Code:

1. Article 54 of the Criminal Code: Declares that the suspect or defendant has the right to obtain legal assistance from one or more legal counsel during the time and at each level of examination, in accordance with the procedures specified in this Law.
2. Article 177 of the Criminal Code: Stating that in the event that the suspect or the defendant or witness does not understand Indonesian, the court is obliged to provide a sworn translation.

If proven guilty, Foreign Citizens can be sentenced in accordance with the applicable laws in Indonesia. This punishment can be in the form of imprisonment, fines or other punishments depending on the type of criminal act committed.

As in the case of Guido Torres Morales, a Peruvian citizen who committed the crime of trafficking 950 grams of cocaine narcotics in Bali in 2019 and in the snare of Law No. 35 of 2009 concerning Narcotics article 113 paragraph 2 "Whoever without haka knows against the law, producing, importing, exporting or distributing class I narcotics is sentenced to imprisonment for a minimum of 5 years, for a maximum of life and a fine of at least 1 billion and a maximum of 10 billion". December 12, 2019: Guido Torres Morales was found guilty by the Denpasar Bali State Court and sentenced to 17 years in prison and a fine of 2 billion.

The case of Guido Torres Morales is an important example of how territorial principles are applied in the context of international criminal law, and the challenges faced in law enforcement against foreign nationals (WNA) who commit violations in Indonesian territory.

In its implementation, Indonesia faces various challenges because it involves various legal, technical and geopolitical aspects. Like cross-border crime, territorial principles often face obstacles in handling cross-border crimes, such as information technology cases or cybercrime. Although criminal acts occur outside the territory of Indonesia, the impact can be felt within the country, so it requires the expansion of the interpretation of territorial principles (Santoso, 2020).and International Jurisdictional Conflicts Often arise when the perpetrator of a criminal act is a foreign citizen or the crime occurs at the border that violates the country's sovereignty. The absence of bilateral agreements between Indonesia and the country of origin of the perpetrator is often an obstacle in law enforcement.

Indonesia applies the territorial principle and in some cases also applies extraterritorial jurisdiction, to enforce the law against Foreign Citizens. The process involves arrest, detention, trial, and fair punishment in accordance with Indonesian Law despite facing challenges in law enforcement. With a clear legal framework and integration of international law, it is hoped that the Indonesian legal system can provide equal justice for all people in its territory.

#### b. National Principles

The application of the national principle is based on citizenship where this principle means that the law of a country follows its citizens wherever they are while giving authority to other countries to try their citizens. in accordance with the provisions of the Criminal Code No. 1 of 1946 article 5 "criminal provisions apply to Indonesian citizens who commit criminal acts abroad"

And Criminal Code No. 1 of 2023 article 8 paragraph (1) of the criminal provisions in the Law applies to every Indonesian citizen who commits a criminal act outside the territory of Indonesia. Paragraph (2) of the provisions as intended in paragraph (1) applies if the act is also a criminal act in the country where the criminal act was committed. Paragraph (3) of the provisions as intended in paragraph (1) does not apply to criminal acts that are threatened with a maximum fine of category III. Paragraph (4) the prosecution of a criminal act as intended in paragraph (1) is carried out even if the suspect is an Indonesian citizen, after the criminal act is committed as long as the act is a criminal act in the country where the crime was committed.

Paragraph (5) Indonesian citizens outside the territory of the Indonesian republic who commit criminal offences as referred to in paragraph (1) cannot be sentenced to death if the criminal act according to the law of the country where the crime was committed is not threatened with the death penalty (Dr. Siti Khodija, 2023).

If an Indonesian citizen is involved in crimes such as human trafficking, rape, money laundering and others abroad, then Indonesian criminal law can be applied to prosecute the perpetrator, in accordance with the active national principle that the laws of a country apply to its citizens wherever they are even though the act is not a criminal act in that country but a criminal act in the Indonesian state. then the act will be tried using Indonesian law.

In addition, the application of the active national principle in practice cannot be done absolutely. This is because there are restrictions related to the sovereignty of the country where the crime is committed. because in addition to the law of a country that applies to its citizens wherever they are, the active national principle also gives authority to other countries to prosecute their citizens who commit crimes in the region.

The application of Indonesian criminal law outside the territory of the country is by other countries Where Indonesian citizens are located (Setyaningsi, 2022). A legal basis is needed that can bridge the relationship between the two countries in the form of:

1. International cooperation

International cooperation is cooperation between countries or international organizations to achieve common goals, solve global problems or enhance common interests. The cooperation can be carried out in the form of formal cooperation or based on mutual assistance or reciprocity.

2. Help each other.

International cooperation can be carried out in the form of mutual assistance in criminal matters with other countries through bilateral or multilateral forums in accordance with the provisions of laws and regulations. Reciprocity is only carried out if the country to be cooperated with has entered into a mutual assistance cooperation agreement with the state of Indonesia or based on the principle of reciprocity (UU No 1 Tahun 2006 Tentang Bantuan Timbal Balik, 2006).

3. Extra-radiance agreement

The technique of handing over perpetrators of predicate crime and criminal acts of experimentation, assistance and malicious agreement in other countries to the Indonesian state will experience obstacles if Indonesia and the country do not have a legal basis to bridge it. In this case, the extradition treaty can serve as a legal basis to connect the two countries.

The extradition treaty regulated in Law No. 1 of 1979 is an agreement between two countries to return suspects or convicts. One of the challenges in the application of the active national principle is that Indonesia and the country where the perpetrator of the crime is located does not have an extradition agreement (UU No 1 Tahun 1979 Tentang Ekstradisi, 1997). The practice of extradition is a formal process handed over by one person to another country based on an agreement between the countries.

Based on the jurisdiction of individuals (*personal*) both active national and passive nationals, Indonesia has the authority to implement the provisions of Indonesian law for Indonesian citizens who are outside the territory of Indonesia. The authority to exercise personal jurisdiction outside the territory of Indonesia is limited by the sovereignty of other countries where Indonesian citizens are located. In principle, each country has its own legal sovereignty, so the consequence is that there is no single reason that can justify an intervention against the legal sovereignty of a country.

The application of Indonesian criminal law against Indonesian citizens who commit criminal acts outside the territory of Indonesia is generally regulated in article 5 of the Criminal Code No. 1 of 1946 and also expanded in article of the Criminal Code No. 1 of 2023. The starting point of this active national principle is the citizenship of the perpetrator of a criminal act. This principle contains the view that Indonesia's criminal law follows its citizens abroad.

Both the territorial principle and the active national principle have a comparison in their application and play an important role in the Indonesian criminal law system. The territorial principle ensures that everyone who commits a criminal act in Indonesia is subject to national law In the old Criminal Code, this principle applies to criminal acts in the territory of the Republic of Indonesia, including Indonesian-flagged ships and aircraft. The expansion includes



information technology in the new Criminal Code, such as cybercrime that has an impact on Indonesia, while the active national principle allows Indonesia to enforce the law against its citizens abroad. In the old and new Criminal Code, this principle protects the national interest by imposing criminal law on Indonesian citizens abroad. However, its implementation often faces obstacles because the sovereignty of the country where the crime occurred must be respected. Despite various challenges, the integration of international law and bilateral/multilateral agreements can help improve the effectiveness of these two principles in law enforcement.

## CONCLUSION

The territorial principle is based on the place where the crime occurred while the active national principle is based on Indonesian citizenship. Both are important to ensure that Indonesian criminal law can be applied effectively in a variety of situations, both at home and abroad. In practice, the application of these two principles can cause jurisdictional conflicts with other countries. Therefore, it is important to consider principles that can bridge relations between Indonesia and other countries in the form of international cooperation that can be carried out in the form of formal cooperation or based on mutual assistance or the principles of *repositas*. including, the technique of handing over the perpetrators of criminal acts to the Indonesian state will experience obstacles if Indonesia and the perpetrator country do not have a previous extradition agreement.

## REFERENCES

- Ali, M. (2011). *Dasar-Dasar Hukum Pidana*.
- Auli, R. christina. (2024). *bunyi pasal 2 KUHP tentang asas teritorial*.
- Dr. jonaedin Efendi, S.H.I., M.H dan Prof. Dr. Johnny Ibrahim, S.H., S.E., M.M., M. H. (2020). *metode penelitian hukum Normatif dan Empiris*.
- Dr. Siti Khodija, orin gusta andini. (2023). *keberlakuan asas nasional aktif, tafsir pasal 8 KUHP Produk baru indonesia*. 24 Januari 2023.
- Dr.Kotija, S. (2023). *asas wilayah/teritorial. perlindungan dan nasional pasif: tafsir paasal 4 kuhp baru produk indonesia*. Kompas.
- Kartanegara, S. (1965). , *Hukum Pidana, Kumpulan Kuliah Prof.Satochid Kartanegara SH dan Pendapat-Pendapat Para Ahli Hukum Terkemuka*.
- Kitab Undang-Undang Hukum Acara Pidana No 8 Tahun 1981, Pub. L. No. 8 (1981).
- Konstitusi 1945 (1945).
- Martiman, P. (2019). *Memahami Dasar-Dasar Hukum Pidana Indonesia* (P. Pradnya (ed.)).
- Remmelik, J. (2003). Aturan pidana dalam undang-undang Hindia Belanda, berlaku bagi tiap-tiap orang yang dalam daerah Hindia Belanda melakukan perbuatan yang dapat dipidana. In *hukum pidana, komentar atas pasal-pasal terpenting dari Kitab Undang-Undang hukum pidana belanda dan pedananya dalam kitab undang-undang hukum pidana indonesia*.
- Remmelink, J. (2003). *Hukum Pidana, Komentar atas Pasal- Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*.
- Rohman, F. (2022). *Memahami arti asas teritorial dalam hukum pidana dan internasional*. Berita Nasional.
- Santoso, T. (2020). Asas teritorial dalam hukum pidana indonesia: penertian dan perkembangan. *Hukum Dan Kriminologi*, 1(1), 12–17.
- Setiawan, B. (2021). *“Tantangan Ekstradisi dalam Penegakan Hukum Pidana Internasional”*. *Jurnal Kriminologi Indonesia*, 15(2), 78-92.
- Setyaningsi, N. P. A. (2020). Penerapan asa nasional aktif terhadap tindak pidana pencucian uang. *Jurnal Hukum*.
- Setyaningsi, N. P. A. (2022). penerapan asas nasional aktif terhadap tindak pidana pencucian uang. *Jurnal Hukum*, 2, 13.
- Syahrial, F. (2022). *Asas-Asas Dalam Hukum Pidana*. 4–5.
- UU No 1 Tahun 1979 Tentang Ekstradisi, Pub. L. No. 1 indonesia (1997).
- UU No 1 Tahun 2006 Tentang Bantuan Timbal Balik, Pub. L. No. 1 (2006).
- UU No 1 Tahun 2023, Pub. L. No. 1 (2023).
- Warga negara asing dan pengakan hukum pidana di indonesia: sebuah Analisis Komprehesif*. (2024). Redaksi Literasi Hukum.