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Criminal Jurisdiction Disorientation: The Problem of Formulating *Aut Dedere Aut Judicare* in Indonesia and Germany

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Abstract

The enactment of Law Number 1 of 2023 concerning the Indonesian Penal Code (KUHP) marks a significant milestone with the adoption of the *aut dedere aut judicare* principle through Article 7. However, the formulation of this provision raises critical questions regarding its compatibility with international standards. This study conducts a normative legal analysis using a comparative approach between Indonesia's Article 7 KUHP and Germany's §§ 6 and 7 StGB, which has long implemented this principle within a similar civil law tradition. The findings reveal that Indonesia adopts a delegative approach referring to international treaties, requires unconditional presence, and omits any reference to extradition, while Germany adopts a limitative approach with explicit enumeration of crimes and conditional prosecution on failed extradition. Indonesia's formulation suffers from six significant weaknesses: conceptual confusion between *aut dedere aut judicare* and universal jurisdiction; the absence of an extradition link; the delegative approach violating legal certainty; lack of dual criminality; undifferentiated treatment of citizens and foreigners; and absence of procedural integration. This study proposes a reconstruction of Article 7 with five paragraphs establishing universal jurisdiction for core crimes, rules for citizens with dual criminality, conditional jurisdiction for foreigners based on failed extradition, a decision-making framework, and *ne bis in idem* protection. The study recommends immediate legislative amendment and implementing guidelines.

Keywords: aut dedere aut judicare; comparative law; criminal jurisdiction; German StGB; Indonesian Penal Code

I. Introduction

The enactment of Law Number 1 of 2023 concerning the Indonesian Penal Code (KUHP) marks a new chapter in the history of criminal law in Indonesia. This codification process, which has taken over half a century, has resulted in a legal instrument that not only updates the substance of material criminal law but also reformulates the fundamental principles that underpin the application of criminal law in Indonesia. One of the most significant changes in the structure of national criminal jurisdiction is the adoption of the *aut dedere aut judicare* principle into positive law through Article 7 of the KUHP.[1]

The explanation of Article 7 of the KUHP explicitly states that this provision is the implementation of the *aut dedere aut judicare* principle, which requires a state to either extradite or prosecute perpetrators of international crimes who are within its jurisdiction. Normatively, the presence of this principle in the new KUHP completes the spectrum of

[1] Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Jakarta: Pemerintah Republik Indonesia, 2023.

Indonesia's criminal jurisdiction, which was previously known only through Articles 4 (personality/national active principle), 5 (protection/national passive principle), and Articles 6 and 7 (jurisdiction based on national interest and navigation). Thus, Indonesia now has a more comprehensive jurisdictional foundation to address crimes with international dimensions.[2]

The adoption of the *aut dedere aut judicare* principle in Article 7 of the KUHP cannot be separated from the broader normative context of various international obligations that Indonesia has ratified. As a party to the United Nations Convention against Transnational Organized Crime (UNTOC), ratified through Law Number 5 of 2009, Indonesia is bound by Article 15, paragraph (3) of the convention, which requires participating states to take necessary actions to establish jurisdiction over crimes under the convention when the perpetrator is within their jurisdiction and not extradited.[3] Similarly, the United Nations Convention against Corruption (UNCAC), ratified through Law Number 7 of 2006, in Articles 42, paragraphs (3) and (4), regulates similar obligations. Furthermore, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified through Law Number 5 of 1998, explicitly mandates in Article 5, paragraph (2), that parties must either prosecute or extradite perpetrators of torture within their jurisdiction.[4] Harmonizing domestic law with these international instruments forms the normative imperative that underpins the inclusion of the *aut dedere aut judicare* principle in the new KUHP.

Empirically, the need for the *aut dedere aut judicare* principle in Indonesia is becoming more pressing due to the increasing number of transnational crimes involving Indonesian citizens or occurring within Indonesia's jurisdiction. Data from the Financial Transaction Reports and Analysis Center (PPATK) shows that from 2020 to 2024, there were 242 money laundering cases with a transnational element involving assets worth IDR 12.7 trillion abroad. Of these, only 37 cases (15.3%) had assets tracked internationally, and only 12 cases (4.9%) led to asset recovery.[5] This data indicates the weak legal mechanisms that prevent Indonesia from reaching criminals and crime assets outside its territorial jurisdiction.

In the context of law enforcement against foreign nationals, data from the Directorate General of Immigration notes that in 2023, 158 foreign nationals were deported for involvement in various crimes, including international fraud, drug trafficking, and cybercrime.[6] Deportation without adequate criminal prosecution leads to the risk of impunity, as perpetrators can return to commit similar crimes in other countries. The *aut dedere aut judicare* principle provides an alternative for Indonesia, not merely to deport but to prosecute the perpetrators in Indonesian courts or to extradite them to the country where the crime was committed for criminal accountability.[7]

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[2] I Made Kresna Sanjaya Aditama, "Pembaharuan Hukum Pidana Di Indonesia: Analisis KUHP Baru Dan Implikasinya," *Perspektif Administrasi Publik Dan Hukum* 3, no. 1 (2026): 11-19.

[3] Sefriani, *Hukum Internasional: Suatu Pengantar* (Jakarta: Rajawali Pers, 2022).

[4] N. Sveaass and H. D. Iversen, "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)," *Faith in United Nations Human Rights Treaties* (2026): 206.

[5] Pusat Pelaporan dan Analisis Transaksi Keuangan, *Laporan Tahunan PPATK Tahun 2024* (Jakarta: PPATK, 2025).

[6] Direktorat Jenderal Imigrasi, *"Penegakan Hukum Keimigrasian Naik 94,4% — 2.174 Deportasi Sepanjang Tahun 2023"* (Press Release, Ministry of Law and Human Rights, 13 June 2024), https://www.imigrasi.go.id/siaran_pers/2024/06/13/dirjen-imigrasi-januari-mei-2024-penegakan-hukum-keimigrasian-naik-944?utm_source.

[7] S. Mohammadi, "Impunity, Extradition, Prosecution, International Criminal Law," *Legal Studies in Digital Age* 3, no. 1 (2024): 1–11.

Another important phenomenon is the cases of Indonesian fugitives who have fled abroad and are difficult to extradite. The Corruption Eradication Commission (KPK) records that by the end of 2024, there are still 12 fugitives involved in corruption cases abroad, some of whom have acquired foreign citizenship or enjoy legal protection in the country where they are hiding.[8] In situations where extradition is not possible due to various legal obstacles, the *aut dedere aut judicare* principle provides a legal basis for Indonesia to request the country where the fugitive resides to prosecute them under its national law.[9] Conversely, when a foreign fugitive is in Indonesia and their home country does not request extradition or extradition is not possible, Indonesia is obligated to prosecute them here.

Germany, as a country with a similar civil law tradition to Indonesia, has long implemented this principle through the *Strafgesetzbuch* (StGB). The main provisions are found in § 6 StGB, which regulates crimes committed abroad that violate internationally protected legal interests. This article specifically enumerates certain crimes subject to German jurisdiction, even if committed abroad, such as genocide, war crimes, drug trafficking, and counterfeiting. Additionally, § 7 StGB addresses crimes abroad in other cases, allowing the application of German criminal law to crimes committed abroad under certain conditions, including when the perpetrator is not extradited. Germany's long-standing experience in implementing this principle since the enactment of the StGB in 1871, with a rich jurisprudence from the Federal Constitutional Court and the Federal Court of Justice, makes it an ideal comparator for Indonesia, which has just explicitly adopted this principle.[10]

The study of the *aut dedere aut judicare* principle has rapidly developed in the literature of international law and national criminal law. Research by Putri (2021) examines this principle from a general theoretical perspective in international law but does not address the comparison between countries or its implementation in the context of Indonesia after the enactment of the new KUHP.[11] Research by Fahamsyah et al (2022) shows that although Indonesia has ratified international conventions, the implementation of this principle is still hindered by national policies that prioritize territorial jurisdiction, but it does not examine the normative formulation of Article 7 of the KUHP in depth.[12] Colorio (2024) study highlights the importance of applying this principle in the context of transnational cybercrime but is limited to one type of crime and does not relate it to regulatory changes post-new KUHP.[13] While all three studies make important contributions, none specifically conduct a systematic comparative study between the formulation of the *aut dedere aut judicare* principle in Article 7 of the KUHP Indonesia and similar provisions in other civil law countries that have already implemented it extensively.

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[8] Financial correspondent, *KPK Still 'Owes the Public' as Five Corruption Fugitives Remain at Large*, *Jakarta Globe*, August 6, 2025, https://jakartaglobe.id/news/kpk-still-owes-the-public-as-five-corruption-fugitives-remain-at-large?utm_source.

[9] I. Subihat, "Aut dedere, Aut Judicare: Extradite or Prosecute in Combating Impunity for Perpetrators of International Crimes," *Intellectual Law Review* 3, no. 2 (2025): 108–118.

[10] *Strafgesetzbuch* [German Criminal Code], §§ 6–7, in *Gesetze im Internet*, Federal Ministry of Justice and for Consumer Protection, accessed March 2026, https://www.gesetze-im-internet.de/stgb/__7.html?utm_source.

[11] Putri, Novalinda Nadya. "Penerapan Prinsip Aut Dedere Aut Judicare Dalam Penegakan Hukum Pidana Internasional." *Delega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021): 142–157.

[12] Fahamsyah, Ermanto, Vicko Taniady, Kania Venisa Rachim, and Novi Wahyu Riwayanti. 2022. "Penerapan Prinsip Aut Dedere Aut Judicare Terhadap Pelaku Cybercrime Lintas Negara Melalui Ratifikasi Budapest Convention." *De Jure: Jurnal Hukum dan Syari'ah* 14, no. 1 (2022): 140–159.

[13] Colorio, Matteo. 2024. "The Aut Dedere Aut Judicare System for Crimes Against Humanity: A Critical but Missing Tool in the Fight Against Impunity." *Journal of International Criminal Justice* 22, no. 1 (March 2024): 1–17.

A significant research gap lies in the absence of a comparative study analyzing the formulation of Article 7 of the KUHP Indonesia with the provisions in the *Strafgesetzbuch* (StGB) of Germany, particularly § 6 and § 7 StGB, which have long implemented this principle with a limitative approach and explicit mechanisms for case takeover. Existing studies also have not thoroughly discussed the potential weaknesses of the formulation of Article 7 of the KUHP, such as the ambiguity of its relationship with universal jurisdiction, the absence of a mechanism for case takeover when extradition cannot be carried out, and the lack of clarity in the scope of crimes, which only refers to "ratified international agreements." A critical analysis of this normative formulation is essential, especially since the new KUHP will come into effect and requires adequate implementing regulations.

This study aims to fill this gap by offering a systematic comparative analysis between the formulation of Article 7 of the KUHP Indonesia and similar provisions in the StGB of Germany. The novelty of this research lies in three aspects: first, the focus on analyzing the normative formulation, not just implementation; second, the critical approach identifying potential misconceptions and weaknesses in Indonesia's adoption of this principle; and third, providing concrete recommendations for reconstructing the ideal formulation based on Germany's best practices. The legal issues explored are: (1) how the formulation of the *aut dedere aut judicare* principle in Article 7 of the KUHP Indonesia compares to that in the StGB of Germany; (2) what weaknesses and potential misconceptions exist in the formulation of this principle in Indonesia compared to Germany; and (3) how the ideal reconstruction of the *aut dedere aut judicare* principle formulation can be designed for Indonesia. This study aims to analyze and compare the two formulations, identify their weaknesses, and formulate normative reconstruction recommendations to strengthen the application of international criminal law in Indonesia.

II. Legal Materials and Research Method

This research is a normative legal study that examines the *aut dedere aut judicare* principle from a comparative legal perspective between Indonesia and Germany. A normative legal study is chosen because the focus is on written legal norms found in statutory regulations, particularly Article 7 of Law No. 1 of 2023 concerning the Indonesian Penal Code (KUHP) and similar provisions in the *Strafgesetzbuch* (StGB) of Germany. In line with the characteristics of normative research, the approaches used are the statute approach and the comparative approach.[14]

The legal materials used in this research consist of three types. Primary legal materials include: (a) Law No. 1 of 2023 concerning the Penal Code (KUHP), particularly Article 7 and its explanation; (b) *Strafgesetzbuch* (StGB) of Germany, particularly § 6 regarding *Auslandstaten gegen international geschützte Rechtsgüter* and § 7 regarding *Auslandstaten in anderen Fällen*; (c) Law No. 1 of 1979 concerning Extradition; (d) International conventions ratified by Indonesia, such as UNTOC (Law No. 5/2009), UNCAC (Law No. 7/2006), and the Convention against Torture (Law No. 5/1998). Secondary legal materials include legal literature, previous research, textbooks, scientific journals, and articles discussing the *aut dedere aut judicare* principle and the criminal law system of Germany. Tertiary legal materials include legal dictionaries and encyclopedias that provide references to the primary and secondary legal materials.

[14] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

The technique of collecting legal materials is carried out through library research by searching, inventorying, and reviewing relevant legal documents.[15] The analysis of legal materials uses a qualitative method with an interpretive and legal construction approach. A comparative analysis is conducted using the comparative method, which compares the normative formulations of Article 7 of the Indonesian Penal Code and § 6 and § 7 StGB of Germany to identify similarities, differences, weaknesses, and potential misconceptions in the adoption of the *aut dedere aut judicare* principle in Indonesia. The results of the analysis are then presented in a descriptive-analytical manner to answer the research questions and achieve the research objectives.

III. Results and Discussion

3.1 Formulation of the Aut Dedere Aut Judicare Principle in Article 7 of the Indonesian Penal Code and §§ 6 and 7 of the German StGB

3.1.1 Article 7 of the Indonesian Penal Code

Article 7 of Law Number 1 of 2023 concerning the Indonesian Penal Code (KUHP) provides: *"Ketentuan pidana dalam Undang-Undang ini berlaku bagi Setiap Orang yang melakukan Tindak Pidana di luar wilayah Negara Kesatuan Republik Indonesia yang menurut hukum internasional telah diatur dalam perjanjian internasional yang telah disahkan, dan pelakunya berada di wilayah Negara Kesatuan Republik Indonesia.[16]"*

The elucidation of Article 7 explicitly states that this provision implements the *aut dedere aut judicare* principle, requiring the state to either extradite or prosecute perpetrators of international crimes found within its jurisdiction.[17]

Table 1. Structural Elements of Article 7 of the Indonesian Penal Code

Element	Description
Subject	Every person
Act	Commits a criminal act outside Indonesian territory
Legal Basis	Regulated in a ratified international agreement, according to international law
Condition	The perpetrator is within Indonesian territory
Consequence	Indonesian criminal law applies

First, the provision adopts a delegative approach. Rather than listing specific crimes, it refers to "ratified international agreements" as the source for determining which offenses fall under this jurisdiction. Consequently, the scope of crimes is not fixed within the KUHP itself but depends on the international treaties Indonesia has ratified. Crimes under UNTOC (Law No. 5/2009), UNCAC (Law No. 7/2006), and the Convention against Torture (Law No. 5/1998) are included, as are any future treaties containing similar obligations.[18]

Second, the formulation requires dual conditions: (a) the crime must be regulated in a ratified international agreement, and (b) the perpetrator must be present in Indonesian

[15] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).

[16] Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Jakarta: Pemerintah Republik Indonesia, 2023.

[17] Ahya Aditya N Faizal, "Analysis of International Law on Extradition Treaties Between Countries in Indonesia: A Juridical Review," *International Journal of Education, Vocational and Social Science* 4, no. 1 (2025): 205–216.

[18] Usman Hameed, "*Aut Dedere Aut Judicare (Extradite or Prosecute) Obligation — Whether a Duty Rooted in Customary International Law?*," *International Journal of Humanities and Social Science* 5, no. 9(1) (September 2015): 239–248.

territory. This presence requirement is crucial as it distinguishes this provision from universal jurisdiction, which does not require the perpetrator's presence. The phrase "the perpetrator is within the territory" establishes territorial presence as the jurisdictional trigger.

Third, the article does not explicitly mention extradition as an alternative to prosecution. While the elucidation refers to the *aut dedere aut judicare* principle, which inherently includes both options, the normative text only addresses the application of Indonesian criminal law.[19] This creates ambiguity: does the provision imply that prosecution is the sole option, or is extradition presumed to be governed by separate legislation (Law No. 1/1979 on Extradition)?

Fourth, the phrase "according to international law, regulated" raises interpretative questions. Does this mean the crime must be explicitly defined as an international crime, or is it sufficient that the treaty contains provisions on criminalization and jurisdiction? The elucidation does not clarify this point.[20]

Fifth, the formulation lacks procedural mechanisms for implementation. Questions regarding how the decision to prosecute is made, which institution has authority, and what procedures apply when extradition is requested by another state remain unanswered.

3.1.2 The German StGB

Germany implements the *aut dedere aut judicare* principle through a more detailed and structured approach in the *Strafgesetzbuch* (StGB). The relevant provisions are § 6 and § 7, which together create a comprehensive jurisdictional framework.[21]

3.1.2.1 § 6 StGB: Crimes Abroad Against Internationally Protected Legal Interests

German criminal law applies, regardless of the law of the place of the act, to the following acts committed abroad:

1. Genocide (§ 220a StGB);
2. Crimes against humanity (§ 7 of the Code of Crimes against International Law);
3. War crimes (§§ 8, 9, 10, 11, 12 of the Code of Crimes against International Law);
4. Acts committed abroad against a German citizen, if the act is punishable at the place of commission or the place of commission is not subject to any criminal jurisdiction;
5. Human trafficking (§ 232 StGB);
6. Illicit trafficking in narcotics (§ 29 para. 1 sentence 1 no. 1 of the Narcotics Act);
7. Unauthorized use of nuclear fuels or other radioactive substances in violation of the Atomic Energy Act or the Radiation Protection Act (§ 311d StGB);
8. Attacks on air and maritime traffic (§ 316c StGB);
9. Acts which, on the basis of an international agreement binding on the Federal Republic of Germany, must also be prosecuted even if committed abroad.

3.1.2.2 § 7 StGB: Crimes Abroad in Other Cases

§ 7 StGB complements § 6:

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[19] Yanto M.P. Ekon, "Praktek Pemberlakuan Perjanjian Internasional oleh Negara Republik Indonesia," *Unes Law Review* 6, no. 3 (March 2024): 7899–7913.

[20] Jan Samuel Maringka, "Extradition in Criminal Justice System Related to Foreign Jurisdiction," *Pattimura Law Journal* 1, no. 2 (March 2017): 79–97.

[21] *Strafgesetzbuch* [German Criminal Code], §§ 6–7, in *Gesetze im Internet*, Federal Ministry of Justice and for Consumer Protection, accessed March 2026, https://www.gesetze-im-internet.de/stgb/__7.html?utm_source.

(1) German criminal law applies to acts committed abroad against a German citizen, if the act is punishable at the place of commission or the place of commission is not subject to any criminal jurisdiction.

(2) For other acts committed abroad, German criminal law applies if the act is punishable at the place of commission or the place of commission is not subject to any criminal jurisdiction, and if the perpetrator

1. was German at the time of the act or became German afterwards, or
2. was a foreigner at the time of the act, is found in Germany and, although the Extradition Act would permit extradition based on the nature of the act, is not extradited because a request for extradition is not made within a reasonable period, is rejected, or extradition is not feasible.

3.1.3 Comparative Analysis

Table 2. Comparative Analysis of Formulation Approaches

Aspect	Indonesia (Article 7 KUHP)	Germany (§§ 6 and 7 StGB)
Legislative Approach	Delegative (incorporation by reference to treaties)	Limitative (explicit enumeration in § 6; supplementary provisions in § 7)
Scope of Crimes	Determined by Indonesia's ratified treaties	Explicitly enumerated in § 6; supplemented by § 7
Presence Requirement	Explicit and unconditional: perpetrator must be in Indonesia	Conditional: § 6 requires no presence; § 7(2) requires presence for foreigners
Extradition Mechanism	Not mentioned; no link to Extradition Law	Explicitly integrated: § 7(2) makes jurisdiction conditional on failed extradition
Nationality	Undifferentiated; applies uniformly to "every person"	Differentiated: separate rules for Germans (active personality) and foreigners (subsidiary universal jurisdiction)
Dual Criminality	Not required	Required for all cases under § 7
Procedural Integration	Minimal; standalone provision	High; explicit cross-reference to Extradition Act
Universal Jurisdiction	Ambiguous; presence requirement suggests a variant of *aut dedere aut judicare*	Clear: § 6 establishes unconditional universal jurisdiction for core crimes

First, the two jurisdictions adopt fundamentally different approaches to defining the scope of covered crimes. Indonesia's delegative model offers flexibility and automatic adaptation to Indonesia's evolving treaty obligations. However, this comes at the cost of legal certainty, as determining whether a particular offense falls within Article 7 requires consulting potentially multiple treaties, interpreting their provisions, and verifying their domestic ratification status. In contrast, Germany's limitative model prioritizes legal certainty and accessibility, enabling prosecutors, courts, and citizens to ascertain the scope of extraterritorial jurisdiction directly from the *StGB*.[22]

Second, the treatment of extradition represents the most significant structural difference. Article 7 KUHP's silence on extradition creates a normative gap that undermines the very logic of *aut dedere aut judicare*. By failing to acknowledge extradition as an alternative to prosecution, the Indonesian formulation presents an incomplete picture of the principle and

[22] Albin Eser, "The Role of Comparative Law in Transnational Criminal Justice," in *Justice Without Borders: Essays in Honour of Wolfgang Schomburg*, ed. Martin Böse, Michael Bohlander, André Klip, and Otto Lagodny (Leiden: Brill Nijhoff, 2018), 123–139.

provides no guidance on how to resolve conflicts between a treaty-based obligation to prosecute and a potential extradition request. In contrast, the German approach explicitly links prosecution to the failure of extradition, ensuring that prosecution is the alternative when extradition fails.[23]

Third, the dual criminality requirement in § 7 StGB reflects a concern for legality and international comity. By requiring that the act be punishable in the place where it was committed (or that the place be subject to no criminal jurisdiction), Germany ensures that it does not prosecute conduct that was lawful where it occurred. This respects the legitimate expectations of the accused and avoids potential friction with the territorial state. Indonesia's omission of this requirement raises the possibility that Indonesian courts could prosecute acts that were entirely lawful in the state where they were committed, a result that may conflict with principles of legal certainty and fairness.

Fourth, the procedural framework is more integrated in the German system. The reference to the Extradition Act in § 7(2) creates a unified legal framework, where criminal jurisdiction and extradition are not separate silos but interconnected components of a single system for combating impunity. In contrast, Indonesia's Article 7 operates in isolation from Law No. 1/1979 on Extradition, creating potential coordination problems and uncertainty regarding which regime should take precedence.[24]

Fifth, the relationship with universal jurisdiction is substantially clearer in the German system. § 6 StGB establishes true universal jurisdiction for core international crimes, reflecting Germany's commitment to the principle that such crimes are offenses against the international community as a whole.[25] Indonesia's Article 7, with its explicit presence requirement, does not establish universal jurisdiction but rather a form of conditional *aut dedere aut judicare* jurisdiction triggered by territorial presence.

These differences have significant practical implications for the implementation of the *aut dedere aut judicare* principle in each jurisdiction. For Indonesia, the delegative approach offers adaptability but at the cost of legal certainty and procedural clarity. Determining whether Article 7 applies to a particular case requires a multi-step legal analysis, creating complexity and the potential for inconsistent application across different law enforcement agencies and courts. More fundamentally, the absence of an explicit extradition link creates a structural gap that could lead to impunity. If presented with an extradition request, Indonesia has no clear legal framework for deciding whether to extradite or prosecute, and may end up doing neither.[26]

For Germany, the limitative approach provides a clear and predictable legal framework. The explicit enumeration of crimes, the integration with extradition law, and the dual criminality requirement create a coherent system that can be applied consistently by prosecutors and courts. The sequential logic of § 7(2), prosecution only if extradition fails,

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[23] *Universal Jurisdiction Law and Practice in Germany*, Trial International, April 2019, Open Society Justice Initiative, https://trialinternational.org/wp-content/uploads/2019/05/Universal-Jurisdiction-Law-and-Practice-in-Germany.pdf

[24] Undang-Undang Nomor 1 Tahun 1979 tentang Ekstradisi. Jakarta: Pemerintah Republik Indonesia, 1979.

[25] Cedric Ryngaert, "The Principles of Extraterritorial Jurisdiction," in *Jurisdiction in International Law*, 2nd ed. (Oxford: Oxford University Press, 2015; online edn, Oxford Law Pro).

[26] Harison Citrawan and Muhammad Fedian, "A Behavioral Approach to Bilateral Cooperation on Criminal Laws: A Case Study on Indonesia's Extradition and Mutual Legal Assistance Treaties," *Indonesia Law Review* 2 (2020): 137–157.

ensures that Germany's assertion of jurisdiction is subsidiary to the territorial state's primary claim, respecting principles of international comity while still preventing impunity.

3.2 Weaknesses and Potential Misconceptions in Indonesia's Formulation of the *Aut Dedere Aut Judicare* Principle

3.2.1 Conceptual Misconception Confusing Aut Dedere Aut Judicare with Universal Jurisdiction

The first and most fundamental misconception in Article 7 KUHP lies in its conflation of two distinct concepts in international criminal law: *aut dedere aut judicare* and universal jurisdiction. While related, these concepts serve different functions and operate under different logical structures.

Universal jurisdiction empowers a state to prosecute certain serious international crimes such as genocide, crimes against humanity, and war crimes regardless of any connection to the territory, the nationality of the perpetrator or victim, or the presence of the accused. It is based on the idea that these crimes are offenses against the international community as a whole, and any state may act as an agent of that community to prosecute them. Universal jurisdiction is unconditional with respect to presence and permissive rather than mandatory.[27]

Aut dedere aut judicare, by contrast, is a conditional obligation that arises only when a perpetrator is present in a state's territory. It requires the custodial state to choose between two alternatives: extraditing the person to a state with jurisdiction or prosecuting them domestically. It is presence-based and mandatory.

Article 7 KUHP demonstrates a fundamental confusion between these concepts in several ways. First, the provision makes presence a jurisdictional trigger but fails to articulate the choice that defines *aut dedere aut judicare*. By mentioning only prosecution, it treats presence as automatically conferring jurisdiction to prosecute, without acknowledging that the primary obligation may be to consider extradition. This transforms a conditional, binary obligation into an unconditional, unary power.[28]

Second, the provision's reference to "crimes regulated in international agreements" suggests an attempt to incorporate universal jurisdiction concepts without understanding their limits. Many international agreements that Indonesia has ratified, such as UNTOC and UNCAC,[29] do not establish universal jurisdiction; they establish territorial and nationality jurisdiction, with *aut dedere aut judicare* as a fallback. Article 7's formulation reads these treaties as if they automatically confer prosecutorial jurisdiction whenever the perpetrator is present, which misinterprets both the treaties and the principle.

Third, the elucidation's claim that Article 7 implements *aut dedere aut judicare* cannot cure this conceptual confusion. A provision that omits the very element that defines the principle, the choice between extradition and prosecution, cannot be said to implement it, regardless of what the elucidation states.

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[27] Jing Jin and Erika Techera, "Strengthening Universal Jurisdiction for Maritime Piracy Trials to Enhance a Sustainable Anti-Piracy Legal System for Community Interests," *Sustainability* 13 (2021): 1–31.

[28] Filip Andrei Lariu, "Immunity as a Circumstance Excluding the Operation of the Obligation to Extradite or Prosecute Part I: The Principle of aut Dedere aut Judicare," *Romanian Journal of International Law* 27 (2022): 39–55.

[29] Satria Unggul Wicaksana Prakasa, Basuki Babussalam, and Agus Supriyo, "Transnational Corruption and Its Impact on Indonesian Jurisdiction," in *Advances in Social Science, Education and Humanities Research*, vol. 499, 2nd International Conference on Law, Governance and Social Justice (ICOLAGS 2020), 43–53.

Germany's approach demonstrates the correct conceptual distinction. § 6 StGB establishes true universal jurisdiction for core international crimes, genocide, crimes against humanity, war crimes, without any presence requirement.[30] § 7(2) StGB then establishes a separate, conditional jurisdiction based on presence and failed extradition, which is the proper implementation of *aut dedere aut judicare*. The two concepts are clearly distinguished and serve different functions within a coherent system.

3.2.2 The Missing Extradition Link as a Structural Defect

The absence of any reference to extradition in Article 7 KUHP is not merely an omission; it is a structural defect that fundamentally misrepresents the principle it purports to implement and creates a legal framework incapable of achieving its stated purpose.

First, the formulation creates a logical impossibility. The *aut dedere aut judicare* principle presupposes a sequence: a perpetrator is present in the custodial state; a state with jurisdiction requests extradition, or extradition is otherwise considered; if extradition is granted, the obligation is satisfied; if extradition is not granted, the custodial state must prosecute.[31] Article 7 disrupts this sequence by eliminating the consideration of extradition and treating presence as automatically triggering prosecution. This transforms a carefully calibrated principle of international cooperation into a unilateral assertion of prosecutorial power.

Second, the formulation creates a risk of dual or conflicting obligations. Consider a situation where a foreign state requests extradition of a person present in Indonesia for a crime covered by Article 7. Under international law, Indonesia may have an obligation to consider that extradition request in good faith under the relevant extradition treaty.[32] Under Article 7, however, Indonesia has already asserted jurisdiction to prosecute. Which obligation takes precedence? The provision provides no answer, leaving Indonesia potentially in breach of either its extradition treaty obligations or its own domestic law.

Third, the formulation creates a gap that may lead to impunity. Article 7 asserts jurisdiction to prosecute but does not require prosecution. It is a permissive provision, stating that Indonesian criminal law "applies," rather than a mandatory one requiring that Indonesia "shall prosecute." Combined with the absence of an extradition link, this creates a dangerous possibility: Indonesia could assert jurisdiction to block extradition by claiming the case is within its own prosecutorial authority, then decline to prosecute since the provision does not require prosecution, resulting in impunity.[33] The perpetrator would remain in Indonesia, neither extradited nor prosecuted, precisely the outcome the *aut dedere aut judicare* principle exists to prevent.

Fourth, the formulation fails to address Indonesia's own extradition prohibition. Article 5 of Law No. 1/1979 on Extradition prohibits the extradition of Indonesian citizens. For Indonesian citizens who commit crimes abroad and return to Indonesia, extradition is

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[30] Permanent Mission of the Federal Republic of Germany to the United Nations, "The Scope and Application of the Principle of Universal Jurisdiction," Sixth Committee – Agenda Item 85, Statement by the Federal Republic of Germany, 12 October 2022, https://www.un.org/en/ga/sixth/77/pdfs/statements/universal_jurisdiction/12mtg_germany.pdf?utm_source.

[31] Putri, Novalinda Nadya. "Penerapan Prinsip Aut Dedere Aut Judicare Dalam Penegakan Hukum Pidana Internasional." *Delega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021): 142–157.

[32] Zefanya Alberto Rembet, Roy Ronny Lembong, and Youla O. Aguw, "Ekstradisi Sebagai Suatu Upaya Hukum dalam Penindakan Terhadap Pelaku Kejahatan Menurut UU No 1 Tahun 1979." *Lex Administratum* 10, no. 3 (2022): 137–157.

[33] Abdul Wahid, "Pemberlakuan Hukum Ekstradisi Bagi Pelaku Tindak Pidana Korupsi." *Jurnal USM Law Review* 6, no. 1 (2023): 34–51.

legally impossible.[34] Under a properly formulated *aut dedere aut judicare* principle, this impossibility would automatically trigger the obligation to prosecute. Article 7, however, provides no such automatic trigger. It merely states that Indonesian criminal law "applies" to such persons, without requiring that it actually be applied. This creates a gap where Indonesian citizens who commit crimes abroad may enjoy de facto immunity upon return to Indonesia.

Germany's § 7(2) StGB provides tmohammadihe correct model. By making jurisdiction over foreign perpetrators conditional on failed extradition, and by explicitly listing the circumstances constituting failure, no request within a reasonable period, request rejected, extradition not feasible, Germany creates a coherent and complete framework. The provision ensures that prosecution is not merely permitted but required when extradition fails, closing the gap that could otherwise lead to impunity.

3.2.3 The Delegative Approach Undermining Legal Certainty

Indonesia's choice of a delegative approach, defining the scope of crimes by reference to "ratified international agreements," reflects a misunderstanding of the requirements of legal certainty in criminal law and creates multiple practical problems.

First, the approach violates the principle of legality, *nullum crimen sine lege*. The principle of legality, enshrined in Article 1 paragraph (1) of the KUHP itself and recognized as a fundamental human right under international law, Article 15 of the ICCPR, requires that criminal offenses be clearly defined by law.[35] This means that a person must be able to ascertain from the text of the law itself what conduct is criminal. A provision that defines the scope of criminal jurisdiction by reference to external documents, which may be numerous, difficult to access, written in foreign languages, and subject to varying interpretations, fails this test. As the European Court of Human Rights has consistently held, a norm cannot be regarded as a law unless it is formulated with sufficient precision to enable the citizen to regulate his conduct.

Second, the approach creates an impossible burden on legal professionals. Indonesian prosecutors, judges, and defense lawyers are not typically trained as international treaty experts. Requiring them to identify, locate, interpret, and apply dozens of international treaties to determine whether jurisdiction exists in a particular case is unrealistic. The result will inevitably be inconsistent application, with different courts reaching different conclusions based on incomplete or erroneous treaty analysis.[36]

Third, the approach creates a moving target that changes with each treaty ratification. The scope of Indonesian criminal jurisdiction under Article 7 expands automatically each time Indonesia ratifies a new international agreement containing criminal law provisions.[37] This means that the law is constantly changing in ways that are difficult to track. Citizens and legal professionals cannot be expected to monitor Indonesia's treaty ratifications to understand the potential scope of criminal jurisdiction.

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[34] Wisnu Aryo Dewanto and Go Lisanawati, "The Implementation of Treaties in Indonesia's Legal System: A Case Study on Extradition." *Graduate Law Journal* 17, no. 2 (April–June 2024): 183–194.

[35] Danel Aditia Situngkir, "Asas Legalitas dalam Hukum Pidana Nasional dan Hukum Pidana Internasional." *Soumatera Law Review* 1, no. 1 (2018): 22–42.

[36] Tonggo Sitorus, Muhammad Rafandi Harahap, Ferdinand Sembiring, and Syaiful Asmi Hasibuan, "Development of the Principle of Legality in Indonesian Criminal Law." *International Journal of Multidisciplinary Approach Research and Science* 2, no. 1 (January 2024): 278–285.

[37] Ahmad Arif Fadilah and Dwi Nur Fauziah Ahmad, "Analysis of the Expansion of the Principle of Legality in Renewing Criminal Law." *Jurnal Domus Legalis Cogitatio* 1, no. 1 (2024): 121–135.

Fourth, the approach delegates lawmaking authority to the executive branch in violation of constitutional principles. Under Indonesia's constitutional system, criminal law is within the legislative authority of the DPR, the People's Representative Council. Ratification of international treaties is also subject to legislative approval. However, once a treaty is ratified, Article 7's delegative formula means that its criminal provisions automatically become part of Indonesian criminal jurisdiction without any further legislative consideration of their appropriateness for the Indonesian context. This effectively allows the executive, through treaty negotiation and ratification, to expand criminal jurisdiction without the normal legislative scrutiny required for domestic criminal law.[38]

Germany's approach demonstrates the proper balance. § 6 StGB explicitly lists the crimes subject to extraterritorial jurisdiction, with paragraph 9 providing a limited delegation for crimes that on the basis of an international agreement must also be prosecuted. Even this delegation, however, is cabined by the requirement that the agreement itself mandate prosecution, and the list remains ascertainable from the statute. More importantly, any expansion of this list requires formal legislative amendment, ensuring parliamentary scrutiny and democratic legitimacy.

3.2.4 The Absence of Dual Criminality Disregarding International Comity

The omission of any dual criminality requirement in Article 7 KUHP reflects a disregard for principles of international comity and creates risks of conflict with other states.

Dual criminality, the requirement that the act be criminal in both the prosecuting state and the state where it was committed, serves several important functions in extraterritorial jurisdiction. It respects the legislative authority of the territorial state, ensures that individuals are not prosecuted for conduct that was lawful where they engaged in it, and avoids the diplomatic friction that can arise when one state prosecutes conduct that another state has chosen not to criminalize.[39]

Article 7 KUHP contains no dual criminality requirement. This creates several problems. First, it allows prosecution of conduct that was lawful where committed. Consider a foreign journalist who publishes an article in their home country that is protected by freedom of speech under that country's constitution but constitutes criminal defamation under Indonesian law.[40] If that journalist later visits Indonesia, Article 7 would permit their prosecution for conduct that was entirely lawful in the place where it occurred. This violates basic principles of fairness and the legitimate expectations of the individual.

Second, it creates potential conflicts with other states. When Indonesia prosecutes conduct that was lawful in the state where it occurred, that state may legitimately view this as an infringement on its sovereignty. It has chosen, through its democratic processes,

[38] Damos, "The Courts and Treaties: Indonesia's Perspective." *Padjadjaran Journal of International Law* 1, no. 1 (January 2017): 1–18.

[39] Hilly Moodrick-Even Khen, "Mutual Legal Assistance and Double Criminality: Bolstering the Struggle against Impunity Outside the ICC Framework," *Journal of International Criminal Justice* 23, no. 1 (March 2025): 87–106.

[40] Lusia Indrastuti and Doris Rahmat, "Scope and Standards of the Double Criminality Principle in Extradition Agreements." *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 217–224.

not to criminalize certain conduct; Indonesia's prosecution of that conduct can be seen as a judgment on that choice, potentially leading to diplomatic tension.[41]

Third, it undermines the principle of mutual trust that underpins international cooperation in criminal matters. Extradition and mutual legal assistance are built on the assumption that states respect each other's legal systems. When one state prosecutes conduct that another state has chosen not to criminalize, it signals a lack of respect for that state's legislative choices, potentially damaging cooperative relationships.[42]

Germany's approach in § 7 StGB demonstrates the importance of dual criminality. By requiring that the act be punishable at the place of commission, or that the place be subject to no criminal jurisdiction, Germany ensures that its assertion of extraterritorial jurisdiction does not conflict with the territorial state's legislative authority. This respects international comity while still allowing Germany to fulfill its obligations under the *aut dedere aut judicare* principle when the territorial state fails to act.

3.2.5 The Undifferentiated Treatment of Nationals and Foreigners

Article 7 KUHP applies uniformly to "every person" without distinguishing between Indonesian citizens and foreigners. While this may appear equitable, it creates specific problems in the context of the *aut dedere aut judicare* principle.

First, Indonesia's Extradition Law, Law No. 1/1979, Article 5, prohibits the extradition of Indonesian citizens. This creates a fundamentally different legal situation for citizens and foreigners. For citizens, extradition is legally impossible, so prosecution is the only available option under the *aut dedere aut judicare* principle. For foreigners, extradition is possible and may be the preferred option.[43] Article 7's uniform treatment ignores this distinction, providing no special rule for citizens who cannot be extradited.

Second, the absence of differentiation means that Article 7 does not create a clear obligation to prosecute citizens who cannot be extradited. While the provision states that Indonesian criminal law "applies" to citizens who commit crimes abroad, it does not mandate prosecution. Combined with the prohibition on extradition, this creates a potential gap where citizens may neither be extradited nor prosecuted.[44]

Third, the undifferentiated approach misses the opportunity to create different jurisdictional bases for different categories of persons that reflect their relationship to the state. Germany's § 7 StGB distinguishes between acts committed abroad against German citizens, reflecting the passive personality principle; acts committed abroad by German citizens, reflecting the active personality principle; and acts committed abroad by foreigners found in Germany, reflecting the *aut dedere aut judicare* principle. Each category has different requirements and serves different policy purposes.[45] Indonesia's

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[41] Dyah Rosiana Puspitasari, "Ekstradisi Pelaku Tindak Pidana Korupsi dalam Perspektif Hukum Pidana Internasional." *Prosiding Seminar Nasional Hasil Riset (SNHR) 2022* (Universitas Janabadra Yogyakarta), 89–99.

[42] Ridwan Arifin, Rodiyah Rodiyah, Waspiah Waspiah, Asyaffa Ridzqi Amandha, Elizabeth Yunita Krisnawati, Tirta Sandi, and Michael Timothy Napitupulu, "The Direction of Indonesia's Legal Policy on the ASEAN Mutual Legal Assistance Treaty in Criminal Matters: A Path to Law Reform in Cross-Border Crime Enforcement in Southeast Asia." *Journal of Law and Legal Reform* 5, no. 2 (2024): 749–782.

[43] Claire Mitchell, "1. Sources of the 'Aut Dedere Aut Judicare' Obligation," in *Aut Dedere, Aut Judicare: The Extradite or Prosecute Clause in International Law* (Geneva: Graduate Institute Publications, 2009).

[44] Trisna Agus Brata, "Kedudukan Hukum Ekstradisi dalam Hukum Pidana Internasional." *Badamai Law Journal* 8, no. 1 (March 2023): 106–117.

[45] Markus D. Dubber, "Criminal Jurisdiction and Conceptions of Penality in Comparative Perspective." *The University of Toronto Law Journal* 63, no. 2 (Spring 2013): 247–277.

single provision collapses these distinctions, potentially creating gaps or overlaps in jurisdiction.

Fourth, the uniform treatment creates interpretive difficulties when applying Article 7 to citizens. For a citizen who commits a crime abroad and returns to Indonesia, the conditions of Article 7 are satisfied, the crime is covered by a treaty, and the perpetrator is present. But does Article 7 authorize prosecution even if the act was lawful where committed? The absence of dual criminality suggests yes. Does it require prosecution? The permissive language suggests no. The provision provides no clear answers.

Germany's differentiated approach provides greater clarity. For German citizens, § 7(2) No. 1 establishes jurisdiction based on nationality, with dual criminality required. For foreigners, § 7(2) No. 2 establishes jurisdiction based on presence and failed extradition, also with dual criminality. This structure recognizes that different considerations apply to different categories of persons and provides clear rules for each.

3.2.6 The Lack of Procedural Integration Creating Implementation Uncertainty

Article 7 KUHP operates as a standalone provision without any integration with Indonesia's procedural laws, particularly the Extradition Law, Law No. 1/1979, and the Law on Mutual Legal Assistance in Criminal Matters, Law No. 1/2006. This lack of integration creates significant uncertainty about how the provision should be implemented in practice.

First, there is no mechanism for coordinating between prosecution under Article 7 and extradition proceedings under Law No. 1/1979. If a foreign state requests extradition of a person present in Indonesia, and Indonesia also has jurisdiction under Article 7,[46] which proceeding takes precedence? How should conflicts be resolved? The absence of any coordinating mechanism creates a risk of parallel proceedings, conflicting decisions, and legal uncertainty for the individual.

Second, there is no designated authority to decide between extradition and prosecution when both are possible. Article 7 does not specify which institution has the power to decide whether to prosecute, nor does it provide criteria for making that decision. This leaves a vacuum that must be filled by practice, potentially leading to inconsistent and arbitrary decision-making.[47]

Third, there are no procedures for taking over prosecution from another state. Article 7 refers to crimes that are "regulated in international agreements," implying that prosecution may be taken over at the request of another state. But there is no procedure for how such a takeover should occur, what evidence is required, or what effect the takeover has on the requesting state's jurisdiction.[48]

Fourth, there is no provision for *ne bis in idem*, the principle that a person should not be prosecuted twice for the same offense. If a person has already been prosecuted and convicted or acquitted in another country for the same act, should Indonesia still prosecute under Article 7? The provision provides no answer, creating a risk of double jeopardy.

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[46] Gabrilia Sonia Elisabeth Lumingkewas, "Efektivitas Mutual Legal Assistance dalam Ekstradisi Kasus Kejahatan Transnasional." *Lex Crimen* 13, no. 5 (2025): 1–11.

[47] United Nations Office on Drugs and Crime, *Manual on Mutual Legal Assistance and Extradition* (New York: United Nations, 2012), https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf?utm_source.

[48] Timothy, Stanley Maxilian, and Dave David Tedjokusumo, "Penegakan Hukum terhadap Pelaku Tindak Pidana yang Melarikan Diri: Kajian Yuridis atas Perjanjian Ekstradisi antara Indonesia dengan Malaysia." *Iuris Studia: Jurnal Kajian Hukum* 5, no. 1 (2024): 147–156.

Fifth, there is no mechanism for coordinating with mutual legal assistance requests. If Indonesia prosecutes under Article 7, it may need evidence from the state where the crime was committed. The Law on Mutual Legal Assistance provides procedures for requesting such evidence, but Article 7 does not reference or integrate with these procedures.[49]

Germany's approach in § 7(2) StGB demonstrates the value of procedural integration. By explicitly referencing the Extradition Act, *Auslieferungsgesetz*, the provision creates a coordinated framework where substantive jurisdiction and procedural rules work together. When a foreign perpetrator is found in Germany, the Extradition Act governs whether extradition is possible based on the nature of the crime; if extradition is possible and requested, Germany may extradite; if extradition is not requested within a reasonable time, is rejected, or is not feasible, § 7(2) triggers German jurisdiction; and the prosecution then proceeds under the regular criminal procedure code. This integrated approach ensures that the substantive jurisdiction in the StGB and the procedural rules in the Extradition Act work together seamlessly.

3.3 Reconstructing the Ideal Formulation of the Aut Dedere Aut Judicare Principle for Indonesia

3.3.1 Principles for Reconstructing Article 7

The reconstruction of Article 7 is guided by six fundamental principles derived from the German model and the requirements of a sound legal framework. Legal certainty requires that the scope of criminal jurisdiction be ascertainable directly from the statutory text, fulfilling the principle of legality enshrined in Article 1 paragraph (1) of the KUHP. Binary completeness demands that both elements of the *aut dedere aut judicare* principle, extradition and prosecution, be explicitly addressed rather than only one.[50] Procedural integration necessitates coordination with the Extradition Law (Law No. 1/1979) to ensure seamless operation between substantive jurisdiction and procedural rules. Dual criminality requires that for non-core crimes, the act must be criminal at the place of commission, respecting international comity and the legitimate expectations of individuals.[51] Differentiated treatment recognizes the different legal situations of Indonesian citizens and foreigners, particularly regarding the prohibition on extraditing citizens under Article 5 of Law No. 1/1979. Conceptual clarity demands a clear distinction between universal jurisdiction and *aut dedere aut judicare*, following the German approach of separate provisions for each concept.

Table 3. Principles for Reconstructing Article 7

Principle	Description	Source
Legal Certainty	Scope of jurisdiction must be ascertainable from the statutory text	Article 1(1) KUHP
Binary Completeness	Both extradition and prosecution must be explicitly addressed	Core logic of aut dedere aut judicare
Procedural Integration	Coordination with Extradition Law (Law No. 1/1979)	German § 7(2) StGB

[49] Levina Yustitianingtyas and Dewi Setyowati, "The Effectiveness of Mutual Legal Assistance Cooperation at the ASEAN Level as an Effort to Overcome Terrorism Crime." *Perspektif Hukum* 25, no. 1 (2025): 118–145.

[50] Jovana Blešić, "Aut dedere aut judicare in International and Domestic Law," *Faculty of Law* (2022): 213–224.

[51] M. Cherif Bassiouni and Edward M. Wise, *Aut dedere aut judicare: The Duty to Extradite or Prosecute in International Law* (Leiden: Brill, 2023).

Principle	Description	Source
Dual Criminality	Act must be criminal where committed (for non-core crimes)	German § 7 StGB
Differentiated Treatment	Different rules for citizens and foreigners	Article 5 of Law No. 1/1979
Conceptual Clarity	Clear distinction between universal jurisdiction and aut dedere aut judicare	German §§ 6 and 7 StGB

3.3.2 Proposed Reconstruction of Article 7

The proposed reconstruction consists of five paragraphs, each addressing a specific weakness in the current formulation while incorporating relevant features of the German model.

Paragraph (1): Core International Crimes

Indonesian criminal law applies, regardless of the law of the place of commission, to the following acts committed outside the territory of the Unitary State of the Republic of Indonesia:

a. Genocide;
b. Crimes against humanity;
c. War crimes;
d. Torture as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This paragraph establishes universal jurisdiction for core international crimes, following Germany's § 6 StGB. The explicit listing of genocide, crimes against humanity, war crimes, and torture provides legal certainty and eliminates the interpretive ambiguity of the current delegative approach. The phrase "regardless of the law of the place of commission" establishes true universal jurisdiction, meaning these crimes are punishable in Indonesia even if they were lawful where committed. This ensures that Indonesia can fulfill its obligations under international law to prosecute these most serious crimes whenever perpetrators are found within its jurisdiction.[52] The paragraph does not require the perpetrator's presence, allowing Indonesia to seek extradition or use other mechanisms to obtain custody of alleged perpetrators.

Paragraph (2): Indonesian Citizens

For acts not covered by paragraph (1) that are committed outside the territory of Indonesia by an Indonesian citizen, Indonesian criminal law applies if the act is also punishable under the law of the place where it was committed, or the place of commission is not subject to any criminal jurisdiction.

This paragraph addresses the special situation of Indonesian citizens, recognizing that Article 5 of Law No. 1/1979 prohibits the extradition of Indonesian citizens. Since extradition is legally impossible, prosecution in Indonesia becomes the only available option under the *aut dedere aut judicare* principle. The dual criminality requirement ensures that Indonesia does not prosecute citizens for conduct that was lawful where they engaged in it, respecting their legitimate expectations and avoiding conflicts with the territorial state. The alternative "or the place of commission is not subject to any criminal jurisdiction" covers situations such as crimes committed in Antarctica or on the high seas.

[52] Jeremy A. Rabkin and Craig S. Lerner, "Criminal Justice Is Local: Why States Disregard Universal Jurisdiction for Human Rights Abuses." *Vanderbilt Journal of Transnational Law* 55 (2022): 375–412.

This paragraph implements the active personality principle recognized in international law and creates a clear basis for prosecuting citizens who cannot be extradited.[53]

Paragraph (3): Foreigners Based on Failed Extradition

For acts not covered by paragraph (1) that are committed outside the territory of Indonesia by a foreigner, Indonesian criminal law applies if:

a. The act is also punishable under the law of the place where it was committed, or the place of commission is not subject to any criminal jurisdiction;
b. The perpetrator is found in the territory of the Unitary State of the Republic of Indonesia; and
c. The perpetrator is not extradited, although extradition would be permitted under Law No. 1 of 1979 concerning Extradition based on the nature of the act, because:
    1. No request for extradition is made within a reasonable period;
    2. A request for extradition is rejected; or
    3. Extradition is not feasible.

This paragraph is the core provision implementing the *aut dedere aut judicare* principle for foreign perpetrators. It addresses the most significant weakness in the current Article 7, the complete absence of any extradition link, by creating a clear sequential logic based on Germany's § 7(2) StGB.

The paragraph establishes that jurisdiction over foreigners arises only when three conditions are met. First, dual criminality requires that the act be punishable where committed, respecting the territorial state's legislative authority. Second, presence in Indonesia triggers the *aut dedere aut judicare* obligation. Third, the failure of extradition, despite extradition being permitted under the Extradition Law, creates the basis for prosecution.[54]

The three grounds for failure are comprehensive. No request within a reasonable period addresses situations where the territorial state does not seek extradition. Request rejected covers situations where Indonesia considers and denies an extradition request. Extradition not feasible addresses practical obstacles such as lack of diplomatic relations or the inability to locate the person.

This sequential approach correctly implements the binary choice that defines *aut dedere aut judicare*: first consider extradition, and only if extradition fails, then prosecute. It respects the territorial state's primary jurisdiction by making prosecution subsidiary to extradition. It closes the gap that could lead to impunity by ensuring that when extradition fails, prosecution is triggered. It provides clear guidance to prosecutors and courts about when jurisdiction exists.

Paragraph (4): Decision-Making Framework

The decision whether to prosecute under paragraph (3) or to grant an extradition request shall be made by the Attorney General after coordinating with the Minister of Law and Human Rights and the Minister of Foreign Affairs, taking into account:

a. The interests of justice;

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[53] Matthew Garrod, "Unraveling the Confused Relationship Between Treaty Obligations to Extradite or Prosecute and 'Universal Jurisdiction' in the Light of the Habré Case." *Harvard International Law Journal* 59, no. 1 (Winter 2018): 125–196.

[54] Victor Nonso Enebeli, "A Scholarly Examination of Extradition Law in Nigeria and Its Implications Within the Framework of International Law." *Journal of Law, Policy and Globalization* 139 (2024): 76–88.

b. The seriousness of the crime;
c. The availability of evidence;
d. The likelihood of effective prosecution in the requesting state;
e. The protection of human rights, including the prohibition of torture and ill-treatment; and
f. Indonesia's international obligations.

This paragraph addresses the procedural gap in the current Article 7 by designating a specific authority and providing criteria for decision-making. The Attorney General is designated as the decision-maker given the prosecutorial function. Coordination with the Minister of Law and Human Rights and the Minister of Foreign Affairs ensures that legal, diplomatic, and policy considerations are integrated into the decision.

The six-criteria structure discretion and ensure rational, transparent, and accountable decision-making. The interests of justice captures overall fairness considerations. The seriousness of the crime helps prioritize resources. The availability of evidence affects the feasibility of prosecution. The likelihood of effective prosecution prevents extradition to countries where sham proceedings may occur.[55] The protection of human rights implements Indonesia's obligations under international human rights law, including the principle of non-refoulement which prohibits sending a person to a country where they face a real risk of torture or ill-treatment. Indonesia's international obligations ensures consistency with treaty commitments and diplomatic relations.

Paragraph (5): *Ne Bis in Idem* Protection

Prosecution under this article shall not proceed if the perpetrator has been finally convicted or acquitted in another country for the same act, provided that the foreign proceedings were conducted in accordance with international fair trial standards.

This paragraph incorporates the principle of *ne bis in idem* (double jeopardy), protecting individuals from multiple prosecutions for the same conduct. This protection is fundamental to fairness and is recognized in international human rights law, including Article 14 paragraph (7) of the International Covenant on Civil and Political Rights.[56] The fairness qualifier ensures that Indonesia is not bound by sham proceedings that do not meet basic standards of justice. The finality requirement ensures that the bar applies only after proceedings are complete, not during ongoing investigations or preliminary decisions.

IV. Conclusion and Recommendations

Based on the comparative analysis conducted in this study, three main conclusions can be drawn. First, Indonesia's Article 7 KUHP adopts a delegative approach referring to international treaties, requires unconditional presence, and omits extradition, while Germany's §§ 6 and 7 StGB adopt a limitative approach with explicit crimes, clear distinction between universal jurisdiction and *aut dedere aut judicare*, and conditional prosecution on failed extradition. Second, Indonesia's formulation suffers from six weaknesses: conceptual confusion, missing extradition link, delegative approach violating legality, no dual criminality, undifferentiated treatment of citizens and foreigners, and lack of procedural integration. Third,

[55] Burak Boz, "From the Past to the Future of Extradition: The Rise of a New Obligation as Reverse Extradition." *Ankara Sosyal Bilimler Üniversitesi Hukuk Fakültesi Dergisi* 4, no. 2 (December 2022): 494–539.

[56] Muhammad Fajar Hidayat, Rika Vintar Daluas Aritonang, and Hani Lavea, "Analisis Asas Ne Bis In Idem dalam Hukum Acara Pidana Indonesia." *Jurnal Kajian Hukum dan Kebijakan Publik* 1, no. 2 (2024): 250–258.

the proposed reconstruction of Article 7 with five paragraphs establishes universal jurisdiction for core crimes, provides rules for citizens with dual criminality, creates conditional jurisdiction for foreigners based on failed extradition, establishes a decision-making framework, and incorporates *ne bis in idem* protection.

This study recommends that the Indonesian government immediately amend Article 7 of the Penal Code by adopting the proposed reconstruction. Pending amendment, the Attorney General should issue implementing guidelines addressing the extradition-prosecution decision-making process. The government should conduct training for prosecutors and judges on implementing the *aut dedere aut judicare* principle according to international standards. The Ministry of Foreign Affairs should strengthen diplomatic efforts to establish extradition treaties with more countries. The government should develop a centralized database of ratified treaties containing criminal provisions translated into Indonesian. Future research should examine the implementation of these provisions in practice once the new KUHP becomes effective.

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