

Legal Protection of State Land Against Land Encroachment in Indonesia: Normative Ambiguity in Article 502 of the 2023 Criminal Code and a Reformulation Model

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ABSTRACT

This article examines the normative ambiguity embedded in the phrase “right to use state land” in Article 502 of Law Number 1 of 2023 concerning the Indonesian Criminal Code and its implications for the legal protection of state land from land encroachment. State land is not merely an economic asset; under Article 33 paragraph (3) of the 1945 Constitution and the Basic Agrarian Law, it is a public resource that must be administered for the greatest prosperity of the people. Nevertheless, state land remains vulnerable to fraudulent transfer, unlawful occupation, forged documentary claims, informal control, and transactions that exploit administrative delay or weak asset registration. The study applies normative legal research using statutory, analytical, and conceptual approaches. Primary legal materials include the 1945 Constitution, the Basic Agrarian Law, Government Regulation Number 18 of 2021, Government Regulation in Lieu of Law Number 51 of 1960, and Law Number 1 of 2023. The analysis employs systematic and teleological interpretation to assess whether Article 502 can protect state land that has not yet been certified or formally attached to a specific land right. The findings show that Article 502 is progressive because it recognises fraudulent dealings over rights connected with state land, yet its formulation remains insufficiently determinate. The absence of a clear statutory category for “right to use state land” creates interpretive inconsistency, weakens the principle of *lex certa*, and risks excluding uncertified government assets from criminal-law protection. The article proposes a reformulation model that clarifies the categories of protected state land, synchronises criminal provisions with agrarian law, and integrates asset recovery through an *ultimum remedium* approach and a double-track system of sanctions and restorative measures.

Keywords: state land protection; legal certainty; Article 502 Criminal Code; land encroachment; agrarian law; normative legal research

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INTRODUCTION

Land encroachment against state land is a recurring form of unlawful conduct in Indonesia. The problem is not limited to private boundary disputes; it directly implicates public assets, development programmes, social conflict management, and the constitutional mandate that land and natural resources be controlled by the state and used for public welfare. Article 33 paragraph (3) of the 1945 Constitution establishes that land, water, and natural resources are controlled by the state and utilised for the greatest prosperity of the people. In agrarian law, this constitutional mandate is elaborated through the doctrine of the state right of control (*hak menguasai negara*), which positions the state not as a private owner but as a public authority entrusted to regulate, allocate, use, and supervise land

resources (Republic of Indonesia, 1945, art. 33(3); Republic of Indonesia, 1960, arts. 2 and 4; Harsono, 2008; Santoso, 2017).

Despite this public-law character, state land is frequently exposed to encroachment and fraudulent control. The modes of conduct include physical occupation without permission, the falsification of documents, the sale or exchange of land that the offender does not lawfully control, the creation of credit encumbrances, leasing or mortgaging land without authority, and the exploitation of bureaucratic delay in asset certification. These practices may be committed by individuals, organised groups, or corporations. Their consequences are serious: the loss or reduction of state assets, potential state financial losses, disruption of public development projects, prolonged social conflict, and erosion of public trust in land administration.

The Indonesian Cabinet Secretariat has identified several recurring patterns involving state land assets: government land that has formally obtained land rights but is physically controlled by other parties; government land acquired from earlier historical processes or handover records but controlled by the community; and certified government land that is physically occupied by parties who also possess competing certificates (Sekretariat Kabinet Republik Indonesia, 2022). The same problem becomes more difficult when government assets have not yet been certified. Uncertified state land may still represent public property or assets under state control, but its evidentiary status is weaker in law enforcement. This gap creates an opportunity for opportunistic occupation and fraudulent transactions.

The older statutory instrument for addressing unlawful occupation is Government Regulation in Lieu of Law Number 51 of 1960 concerning the Prohibition of the Use of Land Without Permission from the Entitled Person or Their Authorised Representative. Article 2 prohibits the use of land without valid permission, while Article 6 provides criminal sanctions. However, the sanction is relatively light and was designed for a different socio-legal context. It is therefore less responsive to contemporary forms of land crime, especially those involving documentary fraud, credit encumbrance, corporate interests, or organised land mafia practices (Government of Indonesia, 1960; Marsono et al., 2024).

A more modern criminal-law response appears in Article 502 of Law Number 1 of 2023 concerning the Criminal Code. Article 502 criminalises fraudulent acts that include selling, exchanging, or burdening with credit ties a right to use state land, a house, a plant business, or a nursery located on land where another person has a right or joint right. It provides imprisonment of up to five years or a category V fine. This provision reflects an important legislative effort to protect rights connected with land from fraudulent transactions. Yet, its central phrase, “right to use state land” (*hak menggunakan tanah negara*), remains normatively ambiguous. The phrase does not correspond neatly to the taxonomy of land rights under the Basic Agrarian Law or to the categories of state land recognised under Government Regulation Number 18 of 2021.

The ambiguity matters for criminal justice. Criminal provisions must satisfy the requirements of legal certainty, including *lex certa* and *lex stricta*. A vague formulation may create inconsistent interpretation by investigators, prosecutors, judges, land administrators, and asset managers. It may also lead to a restrictive interpretation in which uncertified government assets, or state land not yet attached to a formal land right, are deemed outside the scope of Article 502. Such an interpretation would weaken legal protection precisely in cases where state land is most vulnerable.

This article therefore focuses on two research questions. First, what are the main problems in the legal protection of state land in the handling of land encroachment crimes in Indonesia? Second, how should the legal norm on land encroachment against state land be reformulated to ensure legal certainty, justice, and utility? The novelty of this study lies in its specific focus on the normative ambiguity of Article 502 of the 2023 Criminal Code and its relation to the agrarian-law concept of state land. Rather than treating land encroachment merely as a general criminal offence, this study situates the offence within the integrated framework of criminal law, agrarian law, state asset protection, and restorative asset recovery.

Conceptual and Normative Framework

1. State land and the state right of control

The concept of state land must be distinguished from private ownership by the state. Under Indonesian agrarian law, the state right of control is a public authority derived from the collective relationship between the Indonesian people and land. Article 2 of the Basic Agrarian Law gives the state authority to regulate the allocation, use, supply, and maintenance of land; determine and regulate legal relationships between persons and land; and regulate legal relationships concerning legal acts related to land. The objective is not state ownership in the civil-law sense but the organisation of land for public welfare (Republic of Indonesia, 1960, art. 2; Harsono, 2008; Santoso, 2017).

Article 4 of the Basic Agrarian Law further provides that, based on the state right of control, various rights over land may be granted to and held by individuals, groups, and legal entities. These include ownership rights, cultivation rights, building rights, use rights, lease rights, and other rights recognised by law. In addition, Government Regulation Number 18 of 2021 defines land directly controlled by the state as land not attached to any land right, not waqf land, not communal/customary land, and not regional-government-owned assets. This definition is crucial because it shows that “state land” can exist both as land directly controlled by the state and as land from which derivative rights are granted or managed.

The difficulty emerges when Article 502 refers to a “right to use state land” without defining whether the phrase covers only derivative rights that have been formally issued, such as use rights or management rights, or whether it also covers state land assets that remain uncertified but are recorded, controlled, or allocated for public purposes. This conceptual uncertainty is the main normative problem examined in this article.

2. Legal protection and legal certainty in criminal provisions

Legal protection refers to the legal mechanisms through which rights, interests, and public values are safeguarded from unlawful interference. In public-law contexts, legal protection includes preventive protection through clear regulation and repressive protection through effective enforcement and remedies (Hadjon, 1987). For state land, legal protection must preserve public assets, prevent unlawful private appropriation, and ensure that land remains available for constitutionally mandated public purposes.

In criminal law, legal protection must also comply with legality. The principle of legality requires that criminal prohibitions be sufficiently clear, prospective, and narrowly interpreted. The sub-principles of *lex certa* and *lex stricta* require criminal norms to be formulated with determinacy and applied without expansive analogy that disadvantages the accused. These requirements protect individuals from arbitrary punishment while also guiding law enforcement institutions in a predictable manner (Ashworth & Horder, 2013; Fuller, 1969;

Hart, 2012). A criminal provision that protects public land but contains an undefined operative phrase risks failing both functions: it may be too uncertain for fair enforcement and too narrow to protect public assets effectively.

The phrase “right to use state land” must therefore be assessed from two sides. From the perspective of the accused, the formulation must be clear enough to identify the prohibited conduct. From the perspective of the public interest, the formulation must be precise enough to prevent offenders from escaping liability merely because the state asset has not yet been fully registered or categorised in administrative land records.

3. Land encroachment as a multi-jurisdictional legal problem

Land encroachment is rarely a purely criminal problem. It often involves overlapping administrative records, civil claims, competing certificates, historical occupation, community control, state asset management, and possible criminal fraud. A criminal conviction may punish the offender but does not automatically resolve ownership, cancel defective certificates, clear physical occupation, or restore public assets. Consequently, legal protection of state land requires coordination among criminal, civil, administrative, and land-registration mechanisms (Makalew, 2013; Sopacua, 2019; Kusnianto, 2024).

This multi-jurisdictional character explains why a reformulation of Article 502 should not be limited to heavier punishment. A more effective model must clarify the protected legal object, distinguish civil disputes from fraudulent conduct, provide a screening mechanism based on *ultimum remedium*, and allow asset recovery or restorative measures through a double-track system. The purpose of criminal law is not only to impose bodily punishment but also to protect the legal order, prevent repetition, and restore the disturbed legal condition where possible (Packer, 1968; Ramadhani et al., 2012).

METHOD

This study applies normative legal research. The research problem is doctrinal because it concerns the ambiguity of a legal norm, namely the phrase “right to use state land” in Article 502 of Law Number 1 of 2023 concerning the Criminal Code. Normative legal research is appropriate because the object of analysis is not empirical behaviour but the structure, coherence, meaning, and normative consequences of legal rules (Butarbutar, 2018; Marzuki, 2021; Muhaimin, 2020).

Three approaches are used. First, the statutory approach identifies and compares the relevant provisions in the 1945 Constitution, the Basic Agrarian Law, Government Regulation Number 18 of 2021, Government Regulation in Lieu of Law Number 51 of 1960, and the 2023 Criminal Code. Second, the analytical approach evaluates the clarity, consistency, and enforceability of the legal norm. Third, the conceptual approach is used to develop a reformulation model based on legal certainty, state asset protection, *ultimum remedium*, and the double-track system.

The legal materials consist of primary legal materials, secondary legal materials, and tertiary materials. Primary materials include statutes and official legal instruments. Secondary materials include scholarly books, journal articles, and legal commentaries on agrarian law, criminal law, and land disputes. The analysis uses systematic interpretation and teleological interpretation. Systematic interpretation reads Article 502 together with the agrarian-law framework that regulates the hierarchy of land rights. Teleological interpretation

examines the purpose of the provisions: the protection of lawful land interests, prevention of fraudulent land transactions, and preservation of state land for public welfare.

RESULTS AND DISCUSSION

1. The evolving pattern of land encroachment against state land

The term land encroachment refers to the unlawful taking, occupation, control, or use of land without observing the applicable legal rules. In criminal-law discourse, it may include conduct that violates the rights of another person or public authority over land through unlawful physical occupation or fraudulent acts (Jaminuddin Marbun et al., 2021; Marjan et al., 2023). In the context of state land, the offence has a wider public dimension because the legal object is not only an individual proprietary interest but also a public asset connected to constitutional welfare objectives.

Historically, the old Criminal Code regulated fraudulent acts related to land rights through Article 385, commonly associated with *stellionate*. In the new Criminal Code, the relevant provision is Article 502, which reorganises the offence within the framework of fraudulent conduct. The shift is significant because contemporary land encroachment does not always occur through open physical occupation. It may occur through transactional manipulation, the false sale of land, the creation of credit burdens, the concealment of existing encumbrances, or the exploitation of documentary uncertainty.

Article 502 is therefore an important legislative development. It extends criminal-law attention to fraudulent dealings involving land, houses, plant businesses, nurseries, and rights connected with state land. However, its effectiveness depends on whether the protected object is sufficiently determinate. If the phrase “right to use state land” is interpreted narrowly, the provision will only apply to situations where a formal right has already been issued. Such an interpretation would leave vulnerable land assets that are directly controlled by the state, recorded as government assets, or historically acquired but not yet fully certified.

2. Normative ambiguity in Article 502 of the 2023 Criminal Code

Article 502 of the 2023 Criminal Code provides that any person who, with the intention of unlawfully benefiting themselves or another person, sells, exchanges, or burdens with a credit tie a right to use state land, or a house, plant business, or nursery located on land on which another person has a right or joint right, may be punished by imprisonment for up to five years or a category V fine (Republic of Indonesia, 2023, art. 502). In substance, the provision seeks to protect legitimate land-related interests from fraudulent transactions.

The core problem is that the phrase “right to use state land” is not expressly defined. The Basic Agrarian Law recognises several types of land rights, including ownership right, cultivation right, building right, use right, and lease right. Government Regulation Number 18 of 2021 recognises management rights, land rights, apartment units, and land registration mechanisms. Yet neither framework uses “right to use state land” as a self-standing and clearly delimited category. This creates a gap between criminal-law terminology and agrarian-law taxonomy.

The ambiguity may generate at least four enforcement problems. First, investigators may hesitate to apply Article 502 to uncertified government assets because the land is not yet attached to a formal right. Second, prosecutors may face difficulty proving that the object of the offence is a “right” rather than merely physical control, administrative allocation, or

public asset status. Third, judges may produce inconsistent decisions because the phrase permits both narrow and broad interpretations. Fourth, offenders may exploit administrative gaps by arguing that uncertified state land is outside the criminal-law provision.

From the perspective of criminal-law legality, this is a *lex certa* problem. Criminal provisions must be sufficiently precise so that the public can know what is prohibited and law enforcement can apply the law consistently. At the same time, from the perspective of state asset protection, the lack of precision weakens the capacity of criminal law to respond to sophisticated land encroachment. Thus, the problem is not merely linguistic; it affects legal certainty, public asset recovery, and the practical ability of the state to protect land from unlawful appropriation.

3. Disharmony between criminal, agrarian, administrative, and civil mechanisms

The second major problem is regulatory disharmony. Government Regulation in Lieu of Law Number 51 of 1960 addresses the use of land without permission. Its object is primarily unlawful use or occupation, and its sanction is relatively light. Article 502 of the 2023 Criminal Code addresses fraudulent transactions involving rights connected with state land and objects above land. The Basic Agrarian Law regulates the broader structure of land rights and the state right of control. Civil law and administrative law remain necessary for certificate cancellation, eviction procedures, compensation, and restoration of possession. Each instrument has a function, but their interaction is not fully integrated.

This disharmony produces fragmented enforcement. If a person unlawfully occupies state land, the older 1960 regulation may apply. If a person fraudulently sells or burdens a right connected with state land, Article 502 may apply. If the dispute involves competing certificates, cancellation or administrative correction may be required. If compensation or return of control is needed, civil proceedings may still be necessary. Consequently, criminal proceedings alone may punish the offender but fail to restore the land asset. This explains why earlier studies have observed that criminal judgments in land encroachment cases do not automatically guarantee the recovery or execution of land rights (Makalew, 2013; Sopacua, 2019).

The disharmony is particularly problematic for state land because the public interest requires both accountability and restoration. A legal response that ends with imprisonment but leaves the land in unlawful occupation does not fully protect the state asset. Conversely, treating every land conflict as a criminal case risks over-criminalising civil or administrative disputes. The solution must therefore distinguish fraudulent or bad-faith conduct from genuine disputes over legal status, while ensuring that public land assets can be restored when criminal elements are proven.

4. Systematic and teleological interpretation of Article 502

A systematic interpretation requires Article 502 to be read together with the Basic Agrarian Law and Government Regulation Number 18 of 2021. A teleological interpretation requires the provision to be understood in light of its protective purpose: preventing fraudulent land transactions, safeguarding lawful land interests, and protecting state land as a public asset. The following analytical matrix summarises the result of this interpretation.

Point of analysis	Agrarian-law basis	Article 502 issue	Interpretive result
State right of control	Article 2 of the Basic Agrarian Law authorises the state to regulate	The phrase "right to use state land" may be read	The phrase should be interpreted in harmony with the state right of control and should cover state

	allocation, use, supply, maintenance, and legal relations concerning land for public welfare.	narrowly as only a formal derivative right.	land interests that require public protection, including uncertified assets where state control can be legally proven.
Types of land rights	Article 4 of the Basic Agrarian Law recognises rights over land granted based on the state right of control, including ownership, cultivation, building, use, and lease rights.	Article 502 does not specify whether “right to use state land” refers to use right, management right, permits, allocations, or other lawful forms of control.	A definition is needed to align Article 502 with the recognised taxonomy of land rights and state land administration.
State land category	Government Regulation Number 18 of 2021 identifies land directly controlled by the state and regulates management rights, land rights, apartment units, and registration.	Uncertified state land or government assets may be excluded by a narrow reading.	The protected object should include direct state-controlled land, government assets, management-right land, and derivative lawful utilisation rights.
Criminal-law legality	The legality principle requires clear and non-analogical criminal norms.	An undefined operative phrase creates inconsistent enforcement and possible overbroad or under-inclusive application.	Reformulation must satisfy <i>lex certa</i> by defining the object, the conduct, the required unlawfulness, and the relation to the entitled party.

The table shows that Article 502 should not be treated as a detached criminal provision. Its object is embedded in the wider agrarian-law structure. Without systematic reading, the phrase “right to use state land” may become detached from the Basic Agrarian Law and from the state’s constitutional responsibility to protect land for public welfare. Without teleological reading, the provision may fail to protect the precise category of land most vulnerable to encroachment: state land that has legal-administrative status but incomplete registration or certification.

5. Reformulation of the phrase “right to use state land”

The reformulation should pursue two objectives. First, it should clarify the protected legal object so that law enforcement can apply Article 502 predictably. Second, it should preserve the criminal-law requirement that only unlawful and culpable conduct is punished. The proposed reformulation should not criminalise genuine administrative uncertainty or good-faith civil disputes. It should focus on conduct involving unlawful benefit, fraudulent transfer, concealment, bad faith, or unauthorised encumbrance of state land interests.

The phrase “right to use state land” should be expressly defined to include: (a) land directly controlled by the state, whether registered or not, provided that state control can be proven through statutory, administrative, asset, or land-registration documents; (b) state land allocated to ministries, agencies, state institutions, regional governments, state-owned enterprises, or other authorised public bodies; (c) land under management rights or other public-law control arrangements; (d) derivative rights granted over state land, including use rights, building rights, cultivation rights, lease rights, permits, or other lawful utilisation arrangements recognised by law; and (e) houses, buildings, plant businesses, nurseries, or

other objects located on such land where another party has a lawful right or legally protected interest.

A possible legislative clarification could be formulated as follows: “For the purposes of this Article, a right to use state land shall include any legally recognised right, authority, permit, allocation, management right, or lawful control over land directly controlled by the state, including state land that has not yet been certified but is recorded, allocated, controlled, or administered as a state or public asset according to the laws and regulations.” This proposed wording preserves legal certainty because it links the protected object to legally provable documentation, while preventing offenders from exploiting the absence of formal certificates.

6. Integrated settlement model: ultimum remedium and double-track system

A reformulation of Article 502 should be accompanied by an integrated settlement model. The model should begin with verification of land status by competent land and asset-management authorities. This verification should determine whether the land is private land, customary land, waqf land, regional-government asset land, land directly controlled by the state, or land subject to management rights or derivative rights. Only after the object is clearly classified should criminal-law analysis proceed.

The principle of ultimum remedium should operate as a filter. Criminal law should be used as a last resort where the conduct involves fraud, bad faith, unlawful benefit, forged documents, unauthorised transfer, deliberate concealment, or repeated unlawful occupation after lawful warning. If the matter is a genuine civil dispute over title or an administrative error without fraudulent intent, civil or administrative mechanisms should be prioritised. This approach prevents over-criminalisation while preserving the capacity of criminal law to address serious land crimes (Komang Surya Mahesa et al., 2025).

When the criminal elements are fulfilled, the sanction should not be limited to imprisonment or fines. A double-track system separates punishment from measures. Punishment expresses culpability and deterrence, while measures aim to restore the disturbed legal condition. In land encroachment against state land, relevant measures may include restitution, compensation, cancellation of unlawful documents through the appropriate administrative process, prohibition of further control or transfer, restoration of land possession to the competent public authority, and recovery of benefits obtained through the offence. This model better reflects justice because the public asset is restored, not merely symbolically protected (Ramadhani et al., 2012).

7. Proposed operational model for law enforcement and land administration

The following operational model is proposed to translate the reformulation into practice.

Stage	Main actor	Legal function	Expected output
1. Initial report and factual screening	Police, prosecutor, land office, asset manager	Identify whether the case concerns state land, private land, overlapping certificates, or mere civil disagreement.	Preliminary classification of legal object and alleged conduct.
2. Administrative and asset-status verification	Land office, ministry/agency/regional asset unit, state-owned enterprise where relevant	Confirm whether the land is certified, uncertified but recorded as state asset, under management right, or subject to a derivative right.	Official verification report to support criminal, civil, or administrative pathway.
3. Criminal element assessment	Investigator and prosecutor	Assess unlawful benefit, fraudulent transaction, forged documents,	Decision whether Article 502 or another criminal provision is applicable.

		concealment, unauthorised credit encumbrance, or bad faith.	
4. Ultimum remedium filter	Prosecutor, court, land authority	Separate genuine civil/administrative disputes from conduct requiring criminal prosecution.	Appropriate pathway: administrative/civil settlement or criminal prosecution.
5. Double-track sanction and measures	Court and enforcement agencies	Combine punishment with restitution, compensation, document correction, and asset recovery where legally justified.	Criminal accountability and restoration of state land or public asset status.
6. Post-decision execution and monitoring	Land office, asset manager, prosecutor/court execution authority	Ensure that land status, possession, and records are restored and future transactions are prevented.	Sustainable protection of the state land asset.

This model addresses two weaknesses at once. It avoids the excessive criminalisation of ordinary civil disputes, and it prevents serious land encroachment from being treated as a minor administrative irregularity. It also ensures that criminal-law intervention contributes to asset recovery. Such an approach is more consistent with the public-law character of state land and the constitutional duty to manage land for public welfare.

For prosecutors and judges, the model clarifies the evidentiary sequence. The status of the land must be proven first; the unlawful conduct must then be linked to the protected land interest; and finally the appropriate sanction and restorative measure must be selected. For land administrators, the model highlights the urgency of completing land asset registration and improving coordination with criminal justice institutions. For ministries, agencies, and regional governments, it underscores the need for accurate asset documentation because Article 502 will be difficult to enforce without reliable proof of state control.

CONCLUSION

The legal protection of state land against land encroachment in Indonesia remains problematic because the relevant criminal, agrarian, administrative, and civil-law instruments are not fully harmonised. Article 502 of the 2023 Criminal Code is an important development because it criminalises fraudulent transactions involving rights connected with state land. However, the phrase “right to use state land” is normatively ambiguous. The phrase is not clearly synchronised with the categories of land rights under the Basic Agrarian Law or with the definition of state land under Government Regulation Number 18 of 2021. As a result, uncertified state land and government assets may be vulnerable to exclusion from criminal-law protection.

The ambiguity affects legal certainty and enforcement consistency. It creates uncertainty for investigators, prosecutors, judges, land administrators, and asset managers. It also allows offenders to exploit gaps between land registration and criminal-law formulation. The problem is intensified by regulatory disharmony: the 1960 regulation primarily addresses unauthorised use, Article 502 addresses fraudulent transactions, agrarian law governs land status, and civil or administrative mechanisms remain necessary to restore control or correct certificates.

The reformulation should define “right to use state land” in a manner that covers legally provable state land interests, including land directly controlled by the state, registered

or uncertified government assets, land under management rights, and derivative rights or lawful utilisation arrangements over state land. The proposed model should combine systematic and teleological interpretation, an ultimium remedium filter, and a double-track system that links punishment with asset recovery. Such a model better reflects legal certainty, justice, and utility because it not only punishes land encroachment but also restores and protects state land as a public asset.

Recommendations

- a. The legislature should amend or provide an authoritative explanation of Article 502 by defining the scope of “right to use state land” and synchronising it with agrarian-law categories.
- b. The Ministry of Agrarian Affairs/National Land Agency and state asset managers should accelerate the certification and documentation of state land assets, especially land that is physically vulnerable to occupation or transactional manipulation.
- c. Law enforcement institutions should apply an ultimium remedium approach to distinguish fraudulent land crimes from genuine civil or administrative disputes.
- d. Courts should be encouraged to combine criminal sanctions with restorative measures, including compensation, restitution, cancellation of unlawful documents through proper legal channels, and recovery of public land assets where legally proven.
- e. Future research should examine court decisions applying Article 502 after the 2023 Criminal Code is fully implemented to evaluate whether the proposed interpretive and reformulation model is reflected in judicial practice.

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