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Overcapacity in Indonesia's Prisons: The Role of Criminal Law Reform in Sustainable Solutions

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Abstract

Overcrowding is an unresolved problem occurred in Indonesia. So far, most criminal acts are threatened with a criminal sentence in the form of imprisonment. The reform of this Indonesian criminal law has been realized with the enactment of Law Number 1 of 2023. This research aims to examine the contents of Law Number 1 of 2023 concerning the Criminal Code as an update to the Criminal Code/*Wetboek van Strafrecht* (WvS), which has been in force in Indonesia. This is the doctrinal research with a conceptual and comparative approaches. The findings show that the revised Criminal Code introduces a novel approach to criminal law by explicitly outlining the objectives and guidelines for punishment, thereby directly influencing law enforcement practices. Furthermore, this new Criminal Code also provides alternative sanctions other than imprisonment.

Keywords

Overcapacity, New Criminal Code, Corrections Law, Correctional Institutions

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Introduction

The correctional system in Indonesia is currently regulated based on Law Number 22 of 2022 concerning Corrections (hereinafter used as the Corrections Law). This law is a replacement for Law Number 12 of 1995 concerning Corrections[1]. This is considered no longer in accordance with the laws developing in society and does not fully reflect the needs for implementing the correctional system.

The Corrections Law emphasizes the creation of justice, equilibrium, restoration of social relationships, legal protection, and guarantees for the rights of detainees, children, convicts and assisted children. This reflects a progressive regulation of correctional functions. The correctional functions listed in the Corrections Law include service, coaching, community guidance, care, security and observation[2]. Correctional Institutions serve as the institutions administering correctional systems and functions. According to the Corrections Law, the correctional system is organized with the following objectives: a) to guarantee the protection of the rights of prisoners and children; b) to improve the quality of personality and independence of inmates, encouraging acknowledgment of their offenses, so that they realize their mistakes, improve themselves, and not to repeat criminal acts, so that they can be accepted again by the community, live normally as good, law-abiding, responsible citizens, and play an active role in development; and c) to ensure public protection to the community from repetition of criminal acts.

To align with these goals, prisons have prepared various development programs for inmates based on education level, gender, religious beliefs, and type of crime committed. Additionally, the rehabilitation programs are adapted to the duration of each child

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1 Iqrak Sulhin, "Corrections (Pemasyarakatan) after Law Number 22 of 2022: New Principles and Policy Identification Regarding the Functions of Probation and Parole Offices," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (November 30, 2022): 457, https://doi.org/10.30641/kebijakan.2022.V16.457-478.

2 Ervan Efendi and Syafri Hariansah, "The Role Of Correctional Institutions In Ensuring The Right To Health Of Prisoners In Indonesia: A Systematic Literature Review," *Journal of Law, Politic and Humanities* 4, no. 6 (September 2024), https://doi.org/10.38035/jlph.v4i6.

inmate's sentence. The correctional system aims to restore the unity of the prisoner's life relationship, which aim to realize mistakes, not repeat them, and be able to reintegrate into society and play an active role in development[3]. Philosophically, Indonesian correctional institutions prioritize rehabilitation and social reintegration, therefore, the correctional program must be effectively implemented to fulfill this foundational mission.

In practice, the correctional system has not worked ideally. The Correctional Database System as of October 2024 shows that the number of residences in prisons is 188.772 people with a residential capacity of 99.184 people, indicating overcapacity rate of 90.33%. This severe overcapacity illustrates a critical systemic issue, with the primary consequence being the inability of existing facilities to accommodate inmates adequately.

Overcrowded can also impact the quality of nutrition, sanitation, prisoner activities, health services and care for vulnerable groups. Not infrequently, facilities that do not meet or lack resources mean that special treatment requirements or special needs for vulnerable groups have not been met. This has the potential to cause injustice to prisoners because they lose their right to a decent living space and human treatment, which is clearly stated in the second principle of Pancasila, which reads *"Kemanusiaan yang adil dan beradab"* (Just and civilized humanity).

The overcapacity that occurs in prisons is influenced by several factors[4], including the high number of criminal acts, the high percentage of use of prison sentences according to applicable regulations, and the imbalance in the provision of prison sentences with the available infrastructure. Imprisonment is the type of criminal sanction that is most often stipulated in criminal legislation so far. More than 90% of criminal acts contained in legislation are punishable by imprisonment, due to an

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[3] Mu'alim Nuzulul Shiyam, "Implications of the Correctional System on the Right to Integration of Prisoners," *Ratio Legis Journal* 4, no. 1 (March 2025), https://jurnal.unissula.ac.id/index.php/rlj/article/viewFile/44548/12317.

[4] Prio Budi Tri Utomo and Yusuf Saefuddin, "Implementation of The Concept of Restorative Justice in Overcoming Over Capacity in Correctional Institutions," *Proceedings of International Conference on Legal Studies (ICOLAS)* 14 (November 2023): 400–403, https://doi.org/10.30595/pssh.vl4i.1073.

imperative formulation approach in the criminal law system. This framework encourages judges to favor imprisonment, which is reflected in the fact that approximately 85% of court rulings result in prison sentences[5].

Yet, the moral utility of prisons depends on how they are used. Imprisonment, as a deeply impactful social experience, can inflict more psychological and emotional harm than any other social sanction. Not only does it restrict the body and space of those incarcerated, but it also expiates the soul, will, and thought[6].

Prison overcrowding, while not a novel issue, remains an enduring and complex problem that has yet to be effectively addressed. However, overcrowded nor is it a problem that can only be handled by correctional system without the participation of other criminal justice sub-enforcers. Lawrence M. Friedman stated that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the structure of the law, the substance of the law, and the legal culture[7]. in the Indonesian Constitution, specifically Article 28G paragraph (2) of the 1945 Constitution, guarantees every individual's right to be free from torture and treatment that undermines human dignity. Therefore, attention should be paid to prisoners in prisons in terms of guaranteeing their rights and not degrading human dignity.

In the context of enforcing criminal justice, the application of the Criminal Code (hereinafter used with the term Criminal Code WvS) is the thing with the most influence on overcapacity that happened. The Criminal Code currently being enforced is the Criminal Code which originates from Dutch colonial law. This legal code adheres strictly to the principle of formal legality, focusing solely on the legality of actions and legal certainty, with the aim of punishment in the form of

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[5] Salman Luthan, "Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara," *Jurnal Hukum Ius Quia Iustum* 2, no. 4 (September 4, 1995): 59–61, https://doi.org/10.20885/iustum.vol2.iss4.art7.

[6] Sam Souryal and John Whitehead, *Ethics in Criminal Justice : In Search of the Truth*, Seventh Edition (New York: Routledge, 2019).

[7] Fitri Hikmayasari and Joko Setiyono, "Criminal Law Policy for Overcoming Crimes of Sexual Violence in Indonesia," *International Journal of Social Science Research and Review* 7, no. 5 (May 2024), http://dx.doi.org/10.47814/ijssrr.v7i5.2131.

retaliation/deterrence and lacks a sense of justice for the perpetrator, victim and society. In a rigid criminal system, the aim of punishment is only based on the objectives retributive which is solely retaliation and deterrence against the perpetrator[8].

Criminal impositions are based only on the provisions of the law (Criminal Code WvS) as the teaching of the principle of formal legality, causes the understanding of law enforcement officials that punishment is suffering that must be imposed by the state on law violators, as a logical consequence of actions that violate the law[9]. Consequently, law enforcement officials tend to assume that if every act fulfills all the elements in the offense formulation with the necessity of punishment, paying insufficient attention to achieving a balance between legal certainty, flexibility, and justice.

The principles of punishment in the context of the criminal system are one of the important components that form a substantive criminal system. As stated by Barda Nawawi Arief, there are three main problems of criminal law in the form of "criminal acts" (punishable offence/criminal act/*actus reus*), "error" (guilt/guilt/*mens rea*), and "criminal" (*straf*/punishment), that is only a component/sub-system of the entire criminal law system which in essence is also a criminal system. Within the structure of the criminal system, the three main problems – criminal acts, culpability, and sanction – do not function as isolated elements, but rather exist within an integrated framework often referred to as the General Section (General Part) or General Rules/provisions (General Rules). In these General Rules, the conceptual structure of the criminal law system (penal system) is included, encompassing provisions regarding the principles, objectives of crime/punishment, rules/guidelines for punishment, as well as various general juridical definitions/limitations relating to these three main issues (criminal act, error and crime)[10].

The issue of prison overcrowding in Indonesia is longstanding and has been addressed in various scholarly works. Previously, there was a

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[8] Umi Rozah Aditya, *Filsafat Pemidanaan Dalam Sistem Pemidanaan KUHP 2023 (Aplikasi Dalam Kebijakan Hukum Pidana* (Semarang: Yoga Pratama, 2023).

[9] Aditya.

[10] Barda Nawawi Arief, *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan* (Semarang: Pustaka Magister, 2012).

study entitled " Optimalisasi Pemidanaan Lain sebagai Upaya Alternatif Pengganti Pidana Penjara" written by Rhenald Daeng Lommpo and a study entitled "Pidana Kerja Sosial Salah Satu Alternatif Mengurangi Kelebihan Kapasitas di Lembaga Pemasyarakatan" written by Rudi Hartono Nainggolan. The article discusses that imprisonment is considered incapable of achieving the purpose of punishment, so that other alternative punishments are viewed, namely social work and restitution, as an alternative. Another study entitled "Kajian Yuridis tentang Overcrowded yang Terjadi di Lembaga Pemasyarakatan Kelas IIA Manado Berdasarkan Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 11 Tahun 2017" written by Graciella Patras, which discusses the problem of overcrowding, but does not discuss alternative punishments and the renewal of the Criminal Code. In another study entitled "Kebijakan Kriminal dalam Mengatasi Kelebihan Kapasitas (Overcrowded) di Lembaga Pemasyarakatan" written by Moh Fadhil and the article entitled "Peran Program Community Based Corrections sebagai Alternatif Pemidanaan dalam Mengurangi Overcrowding di Lembaga Pemasyarakatan" written by Mitro Subroto, et al., also discusses overcrowding but does not focus on discussing what alternative sentencing can be imposed as an effort to reduce overcrowding.

This study is different from previous studies as this study discusses further the objectives and guidelines for criminalization in the new Criminal Code and looks at the new Criminal Code as a whole, what alternatives can be used to overcome overcrowding which has long been a problem in Indonesia. In this study, the author discusses the synchronization between the Correctional Law and the new Criminal Code to understand the overall politics of criminal law and the main objectives of correctional institutions.

The previous Criminal Code (WvS), inherited from Dutch colonial law, laks explicit provisions regarding the aims of punishment and its contents are still not in accordance with the Indonesia's sociocultural context. , In other words, the Criminal Code WvS is a colonial product regulation. In the development of Indonesian criminal law, Law Number 1 of 2023 concerning the Criminal Code (hereinafter used as the New Criminal Code) was finally passed on December 6, 2022, and promulgated on January 2, 2023, as a form of criminal law reform.

This criminal law reform comprehensively includes, Legal Substance, Legal structure , and Legal Culture.

In line with what was conveyed by W. Clifford at the 32nd International Seminar Course on Reform in Criminal Justice in 1973 in Japan as follows:

> *"On the one hand, there is the need for a wider view of criminal policy as an integral part of general political and social policy of a given country. It is a reflection of local mores and customs and by a product of development. From this wider viewpoint criminal policy cannot be something apart from the more general social situation but must be developed from it and through it"*

There have been many changes in the New Criminal Code, one of the fundamental changes is the explicit inclusion of the objectives and guidelines for punishment that were previously not listed explicitly in the Criminal Code WvS . On this basis, the formulation of the problem to be studied can be determined, namely what is the philosophy of punishment in the New Criminal Code? and what is the formulation of criminal law policy in the New Criminal Code as an effort to overcome overcapacity in prisons?

The author conducted doctrinal legal research to examine the above problems. Doctrinal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzes the relationships between the rules, explains areas of difficulty and perhaps predicts future development[11]. The approach used a conceptual approach and comparative approaches. The conceptual approach departs from the views and doctrines that develop in legal science. This comparative approach was carried out by comparing the laws of one country with the laws of one or more other countries regarding the same matter[12]. Two sources of legal research were used, namely primary legal materials consisting of statutory regulations, secondary in the form of

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[11] Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan ke-3 (Jakarta: Kencana Prenada Media Group, 2007).

[12] Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan ke-3 (Jakarta: Kencana Prenada Media Group, 2007).

writings about law, both books, and journals[13]. The author examines the comparison between the new and old Criminal Code as well as juxtaposes it with the Corrections Law to examine the problem of overcrowding that occurs.

A. Legal Objectives of Sentencing in the New Indonesian Criminal Code: A Juridical, Philosophical, and Sociological Analysis

A "Criminal" is generally defined as 1) Someone involved in illegal activities or who has committed a criminal offense, and 2) someone who has been convicted of a crime[14]. Criminal law, on the other hand, refers to the body of law that defines criminal offenses and specifies corresponding punishment. However, not all wrongful or unlawful acts are automatically classified as criminal act; certain unlawful and injurious act supposed to be criminal act[15].

According to Muladi and Barda Nawawi Arief, in their book entitled *"Teori-Teori Dan Kebijakan Pidana",* a criminal offense encompasses several defining characteristics:

a. Punishment is essentially an imposition of suffering or other unpleasant consequences.
b. Punishment is deliberately imposed by an authorized entity or authority.
c. This penalty is imposed on someone who has committed a criminal offense according to law.

Criminal law reform contains the meaning of an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society[16]. In the context of substantive or material criminal law, this reform is exemplified in the development of the New Criminal Code, oriented

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[13] Marzuki.

[14] Bryan A. Garner, "Black's Law Dictionary" (Thomson Reuters, n.d.).

[15] Peter Mahmud Marzuki, *An Introduction to Indonesian Law*, Second Edition (Setara Press, 2012).

[16] Faisal Faisal et al., "Progressive Consderation of Judges in Deciding Sentencing Under Indonesia New Criminal Code," *Jambe Law Journal* 6, no. 1 (2023): 85–102, https://doi.org/10.22437/jlj.6.1.85-102.

towards the "idea of balance". This principle is operationalized through various dimensions, including[17]:

a. Monodualistic balance between the collective interests of society and the rights of individuals
b. Balance between the protection/interests of perpetrators and victims of criminal acts
c. Balance between "objective" (external actions) and "subjective" (person/internal attitude) elements/factors
d. Balance between formal legal standards and material criteria
e. Balance between legal certainty, flexibility, and justice
f. Balance between national values with global/international/universal values.

The basic idea of "balance" is realized in the three main problems of criminal law, 1) the definition and classification of criminal acts, 2) the problem of guilt/criminal responsibility, and 3) the problem of "criminals and punishment"[18].

Criminal law politics is basically an activity that involves the process of determining goals and how to implement those goals. In this case, it is related to the decision-making process or selection through selection among various existing alternatives, regarding the goals of the future criminal law system. To make these decisions and choices, various policies are prepared, which are oriented towards various main problems in criminal law (acts that are against the law, criminal wrongdoing/responsibility, and various alternative sanctions which are both criminal (*straf*) and action (*maatregel*)[19].

In general, the purposes of punishment are categorized into two main theoretical frameworks, namely the absolute theory and the relative theory.[20] These theories were developed by legal scholars to conceptualize

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17 Aksi Sinurat, *Azas-Azaz Hukum Pidana Materil Di Indonesia* (Kupang: Lembaga Penelitian Universitas Nusa Cendana, 2023).

18 Sinurat.

19 Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton University Press, 1961).

20 Iwan Darmawan, Roby Satya Nugraha, and Alfies L. Sihombing, "The Development of Punishment in Indonesian Criminal Law," *Jurnal Akta* 11, no. 4 (Desember 2024).

the goals of criminal prosecution, regardless of the socio-cultural values held by scholars. These theories are:

a. Absolute/Retributive Theory

Absolute theory or also called retaliation theory (retributive theory/*vengelding* theories) appeared in the 17th century and is associated with prominent thinkers, , such as Immanuel Kant, Hegel, Herbart, Leo Polak, and Julius Stahl. This perspective holds that crime solely as providing retribution for the actions committed by the perpetrator. As stated by Hugo Grotius, the evil of the passion (which is swallowed up) because of the evil of the action, meaning evil suffering befalls due to evil deeds[21].

The theory of retribution says that punishment does not have practical aims, such as reforming criminals[22]. The crime itself contains the elements of a criminal sentence. Absolutely criminal, because a crime was committed. There is no need to think about the benefits of criminal punishment[23].

A simple retributivist justification provides a philosophical account corresponding to these feelings: someone who has violated the rights of others should be penalized. Punishment restores the moral order that has been breached by the original wrongful act. The idea is strikingly captured by Immanuel Kant's claim that even if a society were on the verge of dissolving, it would be morally obligated to carry out justice by executing its last murderer. Society not only has a right to punish a person who deserves punishment, but it has a duty to do so. In Kant's view, a failure to punish those who deserve it leaves guilt upon the society. Similarly, G. W. F. Hegel argues that punishing a criminal affirms their

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[21] Bambang Poernomo, *Asas-Asas Hukum Pidana* (Jakarta: Ghalia Indonesia, 1985).

[22] Piong Khoyfung and Mulyono Mulyono, "Provisions Of The Death Penalty In The Theory Of Punishment From The Perspective Of National Legal Objective," *International Journal Of Social, Policy, and Law (IJOSPL)* 4, no. 2 (June 2023).

[23] Samosir Djisman, *Fungsi Pidana Penjara Dalam Sistem Pemidanaan Di Indonesia* (Bandung: Bina Cipta, 1992).

status as a rational moral agent and gives them what is justly owed[24].

Retributivism justifies punishment through sentencing on the ground that it is deserved by the offender. On this view, punishment is justified because people have made the choice to commit crime[25]. This justification explains imprisonment in terms of just deserts for a wrong that has been done. This philosophy reflects a *Kantin* view that offenders must be punished because they deserve it. Traditionally, retribution was considered a form of revenge, whereby offenders were made to suffer in kind for the amount of harm they caused others. In support of this view, retributions cite natural law sanctions, *lex talionis* (equal retalion) sanctions, and religious sanctions that condoned the morality of an "eye for an eye and a tooth for a tooth"[26].

b. Relative/Objective Theory

Relative theory views crime to protect the interests of society. Spearheaded by thinkers, such as Karl O. Christiansen, this theory regards criminal sanctions not as retribution, but as tools for achieving beneficial outcomes for society[27]. The main objectives of punishment are maintaining public order, repairing losses received by society because of crime, correcting criminals, eliminating criminals, preventing crime.

This theory is also called goal theory (utilitarian theory), which is a type of consequentialism[28]. Bentham's utilitarian philosophy is grounded in three main principles: (1) the greatest happiness principle,

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[24] Kent Greenawalt, "Punishment," *Journal of Criminal Law and Criminology* 74, no. 2 (1983), https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/jclc74&id=360&men_tab=srchresults.

[25] M. Cavadino, J. Dignan, and G. Mair, *The Penal System: An Introduction*, 5th edition (London: Sage, 2013).

[26] Souryal and Whitehead, *Ethics in Criminal Justice : In Search of the Truth*.

[27] Syarif Hidayatulloh, "Criminal Space In Household Waste Management," *Jurnal Justiciabelen* 7, no. 2 (2024): 18–28.

[28] Dhruv Sanjeev Purkar, "Application Of Utilitarianism Theory Of Punishment In Rarest Of Rare Crimes," *Indian Journal Of Integrated Research in Law* IV, no. II (n.d.).

which advocates for actions that maximize pleasure and minimize pain[29]; (2) the hedonistic principle, which defines happiness as the presence of pleasure and the absence of pain[30]; and (3) the principle of impartiality, which asserts that each individual's happiness is equally important, regardless of status and background[31].. When these are applied to punishment, utilitarianism holds, "that punishment is justified whenever it has beneficial effects on society, and not necessarily when it is 'fair' or only when the lawbreaker 'deserves' it"[32]. Furthermore, punishment should be utilized to maximize the total pleasure or minimize the total pain of all parties affected by the crime. The purpose for punishment associated with the utilitarian perspective include: deterrence, incapacitation, and rehabilitation[33].

Deterrence entails getting someone not to do something because they fear the consequences of that act. To understand deterrence on the most basic level, think about why you do not put your hand down on a stove burner; you avoid doing so because you know that the burner is very hot and would burn you, and you do not want to experience that consequence. Many punishments are designed with the idea of deterrence in mind. Lawmakers and others who design punishment systems create penalties that they believe it will make potential offenders think twice about carrying out an act of wrongdoing[34].

In circumstances where deterrence proves less effective or where establishing a deterrent policy is constrained – such as when limited law enforcement resources reduce the likelihood of apprehension – policymakers often turn to incapacitation. This refers to punishments

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[29] John Stuart Mill, *Utilitarianism* (London: Parker, Son, and Bourn, West Strand, 1863).

[30] Matti, *Social Ethics and Policy: Liberal Utilitarianism and Applied Ethics*.

[31] Hayry Matti, *Social Ethics and Policy: Liberal Utilitarianism and Applied Ethics* (New York: Routledge, 1994).

[32] MacCaleb R, "Rejustifying Retributive Punishment on Utilitarian Grounds in Light Of Neuroscientific Discoveries More Than Philosophical Calisthenics!," *Cleveland State Law Review* 63, no. 2 (2015).

[33] Michael C Braswell, Belinda R Mccarthy, and Bernard J Mccarthy, *Justice, Crime, And Ethics*, Tenth (New York: Routledge, 2020).

[34] Mikaila Mariel Lemonik Arthur, *Law and Justice Around the World : A Comparative Approach* (University of California Press, 2020), https://www.proquest.com/legacydocview/EBC/6020712?accountid=49069.

that are carried out simply to prevent offenders from committing future offenses, such as extremely long prison sentences or the death penalty. While such punishments might seem very severe, they are severe not because the severity might discourage other offenders but rather because the severity simply keeps the offender away from the opportunity to reoffend. When incapacitation takes the form of very long prison sentences, it is sometimes called warehousing[35].

While rehabilitation, or a process of restoring someone to health and normal life, may not seem like a punishment, this is exactly how many societies have historically handled offenses. Like deterrence, rehabilitation is designed to reduce crime, but in this case, it focuses on addressing the underlying causes of criminal behavior, aiming to reintegrate the offender as a law-abiding and productive member of society [36].

Over time, the theory has developed into more than just these two theories. Legal experts have created many theories about the purpose of punishment that can be used when considering sanctions given to individuals who commit offenses to provide a deterrent effect, provide benefits, and encourage them to stop committing future offenses. The theories of punishment and the objectives of punishment offered in the development of law have developed in accordance with the needs of society.

According to Barda Nawawi Arief in his dissertation, the purpose of crime/punishment should be understood in the context of the national interest in public protection, and should encompass four key aspects or scope of community protection, namely: 1) preventing and dealing with crime, 2) rehabilitating the perpetrator of a crime or try to change and influence his behavior so that he returns to obeying the law and becomes a good and useful citizen, 3) preventing arbitrary treatment or actions outside the law (inhumane), 4)resolving conflicts caused by criminal acts can restore balance and bring a sense of peace in society.

Criminal law politics has the aim of punishment to be directed at protecting society from crime, while promoting societal harmony,

[35] Arthur.
[36] Arthur.

considering not only the interests of society at large , but also those of victims or perpetrators[37].

In the draft academic manuscript of the draft law on the book of criminal law, the basis for formulating the purpose of punishment starts from the idea that crime is essentially only a tool to achieve goals. These goals are framed around two main targets, namely "protection of society" including crime victims and "protection/development of individual perpetrators of criminal acts"[38].

According to Sudarto, the objectives formulation of punishment must contain, namely: 1) objective which includes the view of protecting society (social defense) and nature general prevention; 2) the objective contains the aim of rehabilitation and resocialization of convicts (special prevention); 3) in accordance with the view of customary law regarding customary reaction to restore the balance of the cosmos because evil is considered to have shaken the balance (imbalance); and 4) spiritual in nature, which is in accordance with the First Principle of Pancasila[39]. These objectives clearly illustrate that criminal law is prospective and future oriented.

Furthermore, in the draft academic manuscript of the draft law written on the book of criminal law, punishment must also be oriented towards the "person" factor (the perpetrator of the crime), so the idea of criminal individualization also underlies the general rules of punishment. The main idea of criminal individualization will be included in the following general rules:

a. emphasizes that no one should be subjected to punishment for a criminal act unless personal culpability can be established.

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[37] Moh. Hasyim Asy'ari, Alex Ramalus, and Fauzi Syam, "The Role of Indonesian Legal Politics in the Development of the Indonesian Criminal Law System Based on the Fourth Principle," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 2497–2506, https://doi.org/10.37680/almanhaj.v5i2.3894.

[38] Faculty of Law, University Diponegoro, Jl. dr. Antonius Suroyo, Tembalang, Semarang, Indonesia and Riski Dysas Prabawani, "A New Paradigm of Corrections: Open Prisons and the Aims of Punishment Under the New Indonesian Criminal Code," *International Journal Of Multidisciplinary Research And Analysis* 08, no. 05 (May 31, 2025), https://doi.org/10.47191/ijmra/v8-i05-74.

[39] Sudarto Sudarto, *Pemidanaan, Pidana Dan Tindakan* (BPHN, 1982).

b. in the provisions on reasons for expunging a crime, especially reasons for forgiveness, the issues of "error", coercion, forced defense that exceeds the limit, inability to take responsibility and problems of children under 12 years are included.
c. sentencing guidelines require judges to consider several factors, including: the motive, inner attitude and mistakes of the perpetrator, the way the perpetrator committed the crime, his or her personal history and socio-economic situation as well as the influence of the crime on the future of the perpetrator of the crime, the influence of the crime on the victim and the victim's family, forgiveness from the victim and/or their family, and/or the public's view of the crime committed.
d. in the guidelines for granting forgiveness/forgiveness, judges consider the personal circumstances of the maker and humanitarian considerations.
e. with respect of aggravating and mitigating circumstances, sentencing decision may be influenced by factors, such as the offender's willingness to surrender himself to the authorities after committing the crime; whether the defendant is willing to provide compensation or repair the damage caused; whether the crime caused significant psychological trauma; whether the perpetrator is pregnant; the degree of responsibility borne; whether the perpetrator is a civil servant who violated the obligations of his position/abused his power; whether he abuses his skills/profession; and whether it is a repetition of a criminal act.

In line with this, the New Criminal Code which will come into force on January 2, 2026, contains the objectives of punishment, which were not previously explicitly included in the Criminal Code WvS. The purpose of punishment is contained in Article 51 of the New Criminal Code[40], which states that punishment aims to: 1) prevent the commission of criminal acts by enforcing legal norms for the protection of society; 2)

[40] M. Ainun Najib, Marli Candra, and Shahidra Abdul Khalil, "Reading Indonesian Criminal Code through the Lens of Surah Al-Maidah Verse 44," *Ma'al: Jurnal Laboratorium Syariah Dan Hukum* 5, no. 2 (April 2024).

socialize convicts by providing training and guidance so that they become good and useful people; 3) resolving conflicts caused by criminal acts, restore balance and bring a sense of security and peace in society; and 4) foster a sense of regret and relieve the convict of guilt.

The first and third objectives of punishment are included in the opinion of Prof. Barda Nawawi Arief, that it the aspect of protecting the community against criminal acts. Meanwhile, the second and fourth objectives of punishment fall into the aspect of individual protection/development. These goals are intended for prisoners to receive coaching and guidance to become better and more useful people, as well as to foster a sense of regret in prisoners, making them do not commit criminal acts again in the future. The aim of this punishment is also aimed at relieving the prisoner of his guilt.

The purpose of punishment is further elaborated in Article 52 of the New Criminal Code, which explicitly states that punishment must not be used as a means to degrade human dignity[41]. This aim is intended to protect perpetrators from arbitrary acts of retaliation and inhumane sanctions for criminal acts that have been committed. The fundamental rationale for punishment, and the conceptual understanding of its function, is crucial in legitimizing the implementation of crimes and actions (strafsoort) in a criminal law book. This normative orientation gains greater depth when viewed through the lens of H.L. Packer, which stated that: "Punishment is a necessary but lamentable form of social control. It is lamentable because it inflicts suffering in the name of goals whose achievement is a matter of chance"[42]. As in the opinion of H.L. Packer, understanding the ambiguity regarding crime and punishment entails the following commitments: 1) not make criminal institutions into tyrannical and destructive tools, 2) carry out careful research on criminal institutions and the criminal justice process, especially research and assessment of strengths and weaknesses as a means of preventing crime, and 3) carefully consider the measures to determine an act as a crime[43].

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[41] Sahran Hadziq, "The National Criminal Code's Penalties for the Tourism Industry," *Ahmad Dahlan Indonesian Law Journal* 2, no. 1 (June 2024): 1–7, https://doi.org/10.12928/adil.v1i1.734.

[42] H.L. Packer, *The Limits of the Criminial Sanction* (California: Stanford University Press, 1968).

[43] Packer.

With the objectives and guidelines for punishment in the New Criminal Code, the philosophy of punishment becomes related to law enforcement practices, where judges must consider the principles of justice when imposing sentences. Punishment is no longer perceived solely as a mechanism of retribution, but rather as a means of achieving social justice, harmony and rehabilitation. Therefore, the existence of these criminal objectives serves as a limitation for judges to make humane and fair decisions, so that the criminal objectives in the New Criminal Code and the "idea of balance" in criminal law enforcement can be effectively realized.

B. Criminal Law Policy Formulation

Criminal law politics can be interpreted as criminal law reform. As articulated by A. Mulder as followed by Barda Nawawi Arief that *strafrecht politiek* (penal policy) refers to a strategic framework that involves[44]: a) determining the extent to which existing criminal las provisions need to be changed or updated; b) establishing preventive measures to deter the occurrence of criminal acts; and c) regulating procedures for criminal investigation, prosecution, adjudication, and enforcement. Or in other words, the main thing inside penal policy is the establishment of criminal law, namely by criminalizing criminal acts that exist in society.

Two central problems in criminal policy using penal (criminal law) mechanisms, namely identifying which actions should be punished and what sanctions should be used and determining the appropriate forms of criminal sanction, encompassing penalties, protective measures, and other punitive responses applicable offenders[45].

In relation to criminal law reform, this article is intended to examine whether the formulation of new criminal law policies can reduce overcrowding in prison. Criticism of prison sentences was also conveyed by Barda Nawawi Arief. According to Barda, in his book Anthology of

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[44] Barda Nawawi Arief, *RUU KUHP Baru: Sebuah Restrukturisasi Dan Rekonstruksi Sistem Hukum Pidana Indonesia* (Semarang: Pustaka Magister Ilmu Hukum UNDIP, 2016).

[45] K Nanakorn, *Criminal Law General Provision*, 5th ed., 2023.

Criminal Law Policy (Developments in Drafting the Concept of the New Criminal Code)[46]:

> *"Prison crime is currently experiencing a "period of crisis", because it is one of the "less preferred" types of crime. Numerous sharp criticisms have been directed at this type of crime of deprivation of liberty, both in terms of its effectiveness and other negative consequences that accompany or are related to the deprivation of a person's liberty. These sharp and negative criticisms are not only directed at imprisonment according to the traditional retributive view which is suffering in nature, but also towards imprisonment according to the modern view which is more humanitarian in nature and emphasizes elements of improvement for the offender (reformation, rehabilitation and resocialization)".*

This New Criminal Code has been created in accordance with Indonesia's socio-cultural values, and its objectives and guidelines for criminal punishment have been explicitly stated in the New Criminal Code, where these have also been prepared in accordance with the values that have developed in Indonesian society.

Articles 53 to 56 of the New Criminal Code contain the sentencing guidelines. In Article 53 are important for law enforcement officials, especially judges, to realize the objectives of punishment as stated in Article 51 of the New Criminal Code. Judges in trying criminal cases are obliged to uphold law and justice, and when faced with legal certainty and justice, judges must prioritize justice. Justice and legal certainty are two legal goals that are often incompatible and difficult to avoid in legal practice. The more laws and regulations satisfy the demands of predictability and uniformity, the higher the risk it might suppress considerations of fairness and context.

The Code also emphasizes the principle of individualization in sentencing – recognizing that people differ in their capacity to discern right from wrong. While offenders must be prosecuted, and the criminal sanction must be implemented, considering both objective facts and

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[46] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Cetakan Ke 2 (Jakarta: Prenadamedia Group, 2010).

subjective circumstances. This approach reflects a balanced and lawful application of criminal measures. The reasons for using criminal enforcement on individuals represent the objectivity in enforcing the measures according to the rule of law[47].

Another important issue is "Individualization of Punishment", which refers to the alignment between the punishment imposed and the offender's specific conduct and circumstances. The reform of the offender is important to prevent recidivism[48].

Looking at several criminal law policies in the Criminal Code, there are several criminal law reforms which can be seen as a form that retaliation against perpetrators of criminal acts is not focused on punishment in the form of imprisonment, so that it can reduce overcrowded in Prison, that is First in Article 54 paragraph (2) of the New Criminal Code has been arranged about the principle of pardoning judges or Judicial Pardon. In the Explanation of the New Criminal Code, judges can forgive someone who has been proven to have committed a minor crime for which they are charged. When giving an apology, the judge must include it in the decision.

Previously, the Criminal Code WvS rigidly applied the principle of legality and used imprisonment as a remedy to overcome crime[49]. One example is the case of Minah's grandmother[50], that can be considered a light case, but in reality, the judge still sentenced her to a criminal decision, where with the judge's principle of forgiveness. Mild cases such Minah's grandmother's case should be given forgiveness by the judge, so that the judge not only upholds the principle of legal certainty, but also pays attention to the human side and justice.

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47 "The Rule of Law and the Individualization of Punishment in Thailand," *Kasetsart Journal of Social Sciences* 44, no. 2 (2023), https://doi.org/10.34044/j.kjss.2023.44.2.35.

48 "The Rule of Law and the Individualization of Punishment in Thailand."

49 Aulia Rizka Estiningtyas, Ulfatul Hasanah, and Rusmilawati Windari, "Comparison of the Legal Regulation of the Rechterlijk Pardon in Indonesia and the Netherlands," *Jurnal Suara Hukum* 6, no. 1 (June 21, 2024): 162–86, https://doi.org/10.26740/jsh.v6n1.p162-186.

50 Vincentius Patria Setyawan and Itok Dwi Kurniawan, "The Urgence Of Rechterlijk Pardon Regulation In Criminal Law Renewal," *Jurnal Inovasi Penelitian* 2, no. 2 (July 2021): 643–50, https://media.neliti.com/media/publications/469645-the-urgence-of-rechterlijk-pardon-regula-f595ae25.pdf.

This new alternative to criminal punishment introduced in the New Criminal Code is rooted in casuistic considerations that have emerged from the practice of criminal law enforcement in Indonesia. It responds particularly to the challenges faced in handling minor crimes that do not actually require punishment. Judicial Pardon (judge's forgiveness) allows judge discretionary authority in situations where strict legal formalism conflicts with a sense of justice and humanity. Judges may encounter internal ethical dilemmas when presiding over cases of minor infractions—feeling a tension between the dictates of conscience and the imperatives of legal certainty and formal legality, which mandate punishment once guilt has been legally established. In cases of minor crimes, judges often experience inner conflict, when handing down an acquittal decision, of course it will be contrary to legal certainty and the principle of legality that every person who is proven guilty of committing a criminal act because they fulfill the elements of the article charged must be punished[51]. In principle, besides these considerations, judge also sees that there was forgiveness given by the victim by considering the reparations for the damage caused by the perpetrator[52].

Second, Article 57 of the New Criminal Code states that criminal offenses are punishable by alternative principal penalties, so a lighter principal penalty must be preferred[53], if this has been considered appropriate and can support the achievement of the objectives of the sentence. In the New Criminal Code, punishment is not intended to cause suffering and humiliate the dignity of other people, so that when imposing a sentence, the judge must prioritize imposing a lighter sentence on the convict first. This type of serious crime can be used if the

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[51] Vincent Patria Setyawan and Itok Dwi Kurniawan, "Permaafan Hakim Dalam Pembaruan Hukum Pidana Indonesia," *Jurnal Dunia Ilmu Hukum (JURDIKUM)* 1, no. 1 (June 11, 2023): 20–24, https://doi.org/10.59435/jurdikum.v1i1.97.

[52] Mufatikhatul Farikhah, "The Judicial Pardon Arrangement as a Method of Court Decision in the Reform of Indonesian Criminal Law Procedure," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 8, no. 1 (2021): 1–25, https://doi.org/10.22304/pjih.v8n1.a1.

[53] M. Musa et al., "Guidelines for Implementing Imprisonment Sentences with Single Formulation (A Critique of Book I of the National Criminal Code)," *Law Reform* 20, no. 1 (2024): 106–34.

judge considers other lighter criminal sanctions to be less appropriate for the purpose of the punishment. This provision serves as an explicit reminder for judges to give decisions to prisoners in a principle of the objectives of the sentence.

Third, Article 65 of the New Criminal Code introduces a significant reformulation of the types of principal penalties compared to the earlier WvS Criminal Code. Article 10 of the Criminal Code WvS regulates the main penalties which consist of the death penalty, imprisonment, fines and cover-up penalties, while the New Criminal Code regulates the main penalties which consist of imprisonment, cover-up penalties, supervision penalties, fines, and community service penalties. In the explanation of Article 65 of the New Criminal Code, the main criminal threats for criminal acts formulated in Book Two basically include the types of imprisonment and fines. While cover-up crime, supervision crime, and community service crime are basically models of criminal implementation as an alternative to imprisonment. The inclusion of this type of crime is a consequence of the adoption of criminal law, which considers the balance of interests between the actions and circumstances of the perpetrator of the crime (deed-offender criminal law) to develop alternatives to imprisonment.

Fourth, Article 70 of the New Criminal Code paragraph (1) outlines circumstances under which punishment may be waived entirely, provided the sentencing remains consistent with Articles 51 through 54. The circumstances under which punishment may not be imposed include: the defendant is a child or elderly (over 75); the defendant is a first time criminal; the loss and suffering of the victim is not too great; the defendant has paid compensation to the victim; the defendant was not aware that the crime he committed would result in major losses; the crime occurred due to strong instigation from another person; the victim of the crime encouraged or set in motion the crime; the crime was the result of a situation that is unlikely to happen again; the defendant's personality and behavior convinces that he will not commit the crime; the defendant arose within a family setting or resulted from.

As the principle of judge's forgiveness emerges, judges in considering criminal sentences in their decisions can consider Article 70 of the New Criminal Code paragraph (1). Itis expected that this can be one of the efforts to create a sense of justice in the law and the

implementation of the law, which provides alternative sentences other than prison and is expected to reduce overcrowding in prisons.

Article 70 of the New Criminal Code expressly states that it is possible not to impose a prison sentence in certain circumstances. However, this cannot also be applied to criminal acts, which carry a prison sentence of 5 years or more, crimes subject to statutory minimum sentences, serious offenses deemed dangerous or significantly harmful to society, or non-criminal offenses that result in financial or economic losses to the state. The limitations governing the application of Article 70 paragraph (1) are further delineated in Article 70 paragraph (2).

Fifth, Article 71 of the New Criminal Code contains regulations that allow a maximum fine of Category V and a minimum of Category III for a person who commits a crime that carries a sentence of less than 5 (five) years, with the judge's consideration of the purpose of the sentence and the guidelines for the sentence, so that the judge considers that the person does not need to be sentenced to prison. The provisions in Article 71 are limited to cases without a victim, where the victim expresses no objection, and where it is not a repetition of a criminal act. The prioritization of fines as an alternative to deprivation of liberty is the result of the influence of the modern school of criminal law, which is based, among other things, on the doctrine of "let the punishment fit the criminal". A reflection that the regulation and application of fines does not only consider to the nature of the criminal act committed, is also seen in Article 7.02 of the American Law Institute's Model Penal Code which regulates "criteria for imposing fines (dhi.protection of the public) with the imposition of fines based on considerations of the nature and circumstances of the crime and the history and character of the accused[54].

Sixth, Article 75 and Article 76 of the New Criminal Code can be imposed on a person who commits a criminal act for the first time, which carries a maximum prison sentence of 5 (five) years and a maximum prison sentence of no more than 3 (three) years. These sentences are subject to both general and special conditions. Generally, the offender must not reoffend, while special conditions may require the offender to provide restitution within a specified period or comply with certain

[54] Rupert Cross, *The English Sentencing System* (London: Butterwoths, 1975).

behavioral obligations, excluding restrictions on religious, ideological, or political freedoms.

Supervision punishment can be viewed as if it were the same as an acquittal, because the perpetrator is outside the correctional institution, especially by the victim. Hence, the victim's consent may be considered as a condition for imposing a supervised sentence. Judges are encouraged to ensure that victims have the opportunity to obtain compensation prior to issuing a supervision sentence. The interests of victims in criminal supervision need to receive more attention considering that the Criminal Procedure Code has not provided protection for crime victims. Currently, the regulations in the Criminal Procedure Code regulate the rights of suspects and defendants more than protecting victims. As a result, the rights of crime victims receive less attention[55].

As an alternative to the crime of deprivation of liberty[56], this criminal supervision in all its aspects aligns with universal developments. This can be seen in the recommendations proposed by Sub Committee II of the Sixth United Nations Congress in the Prevention of Crime and the Treatment of Offenders (180) in Caracas, which stated, among other things, as follows: "in resolution on alternatives to imprisonment, the Congress recommended that Member States examine their legislation with a view to removing legal obstacles to utilize alternatives to apply in appropriate cases in countries, where such existence exists on wider community participation in the implementation of alternatives to prosecution and aiming at the activities of criminals."

Seventh, Article 85 of the New Criminal Code which regulates that a person who commits a crime, which carries a prison sentence of less than 5 (five) years, and the judge imposes a maximum prison sentence of 6 (six) months or a maximum fine of Category II, may be instead be subjected to community service. This community service must range between a minimum of 8 (eight) hours and a maximum of 240 (two hundred and forty) hours. The prosecutor carries out supervision over

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[55] Puteri Hikmawati, "Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif," *Negara Hukum* 7, no. 1 (June 2016).

[56] IP Hapsari, "The Nature of the Judge's Imposition of Penal Supervision Against Children Conflicts With Justice to Realize Justice," *Proceedings of the 1st UMGESHIC International Seminar on Health, Social Science and Humanities (UMGESHIC-ISHSSH 2020)* 585 (2020): 576–81.

the implementation of this community service crime and guidance is carried out by community counselors, while community service punishment is a type of punishment that must be served by convicts outside the institution by carrying out community service.

This community service sentence is not paid because it is criminal in nature (works as a penalty). Community service sanctions will trigger prisoners to feel ashamed and guilty for what they have done. By placing psychological pressure on perpetrators, social work sanctions are expected to make them realize what they have done and stop doing the same thing. This is where it will show recovery from the perpetrator. In contrast to the theory of retaliation, which seems to be less effective so far, as well as the current state of correctional institutions which are too full, alternative sanctions such as social work sanctions are necessary.

This model has also been adopted in the Netherlands, where it is referred to as Community Service Order (CSO). The history of social work sanctions in the Netherlands began around mid-1961, at which time punishment through prison attracted a lot of criticism. The type of punishment in the Netherlands consists of imprisonment, detention, community service, and fines [57]. Besides that, CSO in the Netherlands is considered more effective than imprisonment in reducing recidivism[58].

New criminal law policies in Article 71, Article 75, Article 76, and Article 85 of the New Criminal Code in the form of alternative punishments in the form of fines, supervision penalties, and community service penalties can be developed as an alternative to short-term forms of deprivation of liberty (short prison sentence), so that the convict can be helped to free himself from guilt. On the other hand, the community can interact actively to help convicts socialize again and be useful in society. This criminal alternative can reduce the destructive effects of deprivation of liberty.

Eighth, the New Criminal Code introduces the possibility of mediation, as stated in Article 132 paragraph (1) letter g. it is stated that the prosecutor's authority is declared invalid if there has been a resolution

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[57] Jamin Ginting, "Sanksi Keja Sosial Sebagai ALternatif Bentuk Pemidanaan Dalam Sistem Hukum Di Indonesia," *Law Review* XIX, no. 3 (March 2020).

[58] Miranda Boone, "Only for Minor Offences: Community Services in the Netherlands," *European Journal of Probation University of Bucharest* 2, no. 1 (2010).

outside the judicial process as regulated in the law. This mediation is considered to fulfill the values of justice and benefit, but relatively not with the value of certainty. This is because penal mediation encourages the re-establishment of equality between the parties, decisions that can be accepted by the parties, and harmony in society. Meanwhile, on the other hand, there are no firm and adequate regulations regarding the possibility of a peaceful resolution between the perpetrator and the victim, particularly regarding the provision of compensation or compensation, which is a means of diversion to stop prosecution or criminal imposition. Current Positive Legal Process Settlement Efforts in Practice are aimed at achieving a "win-win solution". As articulated by Covey, a "win-win solution "can satisfy all parties involved in the case and win the same, because the philosophically it is[59]:

> *"Win-Win is a frame of mind and heart that constantly seeks mutual benefit in all human interactions. Win-Win means that agreements or solutions are mutually beneficial, or mutually satisfying. With a Win-Win solution, all parties feel good about the decision and feel committed to the action plan. Win-Win sees life as a cooperative, not a competitive arena."*

Win-win is a framework of thinking and feeling that always seeks mutual benefits in all interactions between humans. Win-win means everyone benefits because the agreement or problem solving is profitable and satisfying for both parties. With a win-win solution, all parties feel happy with the decision taken and are bound to participate in implementing the agreed action plan. This principle sees life as a collaboration, not a competitive arena[60].

This policy of "Out-of-court settlement" is based on justice and values that are in accordance with Indonesian society in general and is formulated against the background of ideas for reforming the Criminal Law (Penal Reform), and is correlated to the issue of pragmatism. The "Penal Reform" background include the ideas of victim protection, harmonization, restorative justice, overcoming rigidity/formality in the

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[59] Stephen Covey, *The Seven Habits of Highly Effective People* (Covey Leadership Center, 1994).

[60] Covey.

current system, and avoiding the negative effects of the current Criminal Justice System and Sentencing System, especially in looking for other alternatives to imprisonment. The background to pragmatism is, among other things, to reduce stagnation or accumulation of cases ("the problems of court case overload"), to simplify the judicial process.

Table 1: New Criminal Code in Efforts to Overcome Overcapacity

No	Articles in the New Criminal Code	Efforts to Overcome Prison Overcapacity
1.	Article 54 paragraph (2) of New Criminal Code	There is a basis for the judge's forgiveness
2.	Article 57 of the New Criminal Code	Guide to use lighter principal penalties first
3.	Article 65 of the New Criminal Code	Includes types of crimes that are not previously included in the Criminal Code WvS
4.	Article 70 of the New Criminal Code	It is possible that a prison sentence may not be imposed under certain circumstances
5.	Article 71 of the New Criminal Code	The alternative is a fine
6.	Article 75 and Article 76 of the New Criminal Code	The alternative is criminal supervision
7.	Article 85 of the New Criminal Code	Alternative community service punishment
8.	Article 132 paragraph (1) letter g of the New Criminal Code	Out-of-court settlement

Sources: New Criminal Code, 2025

The New Criminal Code provides new alternatives to minimize prison sentences imposed by judges. The inclusion of the objectives and guidelines for punishment in the New Criminal Code creates a new paradigm in sentencing, namely that judges must prioritize aspects of protecting society against criminal acts and individual perpetrators of criminal acts in imposing sentences so that they are in accordance with the values that exist in Indonesian society.

This is further supported by the existence of new regulations in the New Criminal Code, which provide other alternatives to imprisonment. Judges are now given the discretion to replace prison terms with fines, community service sentences, or supervision sentences, provided these alternatives fulfills the intended purpose of punishment. In addition to regulations regarding sanctions, there is a principle of forgiving judges for minor crimes and the emergence of resolving cases outside the judicial process, namely through mediation. In addition, there are also regulations regarding certain circumstances in which it is possible to be punished.

From this overview, it can be stated that the political criminal law contained in the New Criminal Code has significantly demonstrated a regulation whose sanctions orientation does not tend to impose criminal sanctions in the form of imprisonment, but shows several alternative possibilities to replace imprisonment by considering the objectives and guidelines of punishment in imposing sentences.

Conclusion

The philosophy of punishment in the New Criminal Code is characterized by the inclusion of the objectives and guidelines for punishment. This development is deeply connected to the law enforcement practices by considering the principles of justice when the judge imposes a sentence. Punishment is considered an effort to achieve social justice, not only as an act of revenge that prioritizes punishment in the form of imprisonment. Apart from that, the New Criminal Code also regulates alternative criminal sanctions other than prison, namely fines, supervision and community service. Complementing these alternative

criminal sanctions, there is also the principle of judge's forgiveness (Judicial Pardon) and mediation has been regulated in the New Criminal Code. In the development of the New Criminal Code in imposing sentences, it is not only oriented towards prison but there are other alternative criminal sanctions and other ways to resolve the problem of criminal acts. As a result, this can reduce overcrowded in prison. By reducing overcrowding in prisons, it is expected that training programs for prisoners will run better so that the objectives of the punishment itself can be achieved.

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