

# Changes in Minimum Criminal Sanctions for Corruption Offenses in the National Criminal Code Based on the Perspective of the Purpose of Punishment

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## Abstract

The National Criminal Code brings about a paradigm shift in punishment from retributive justice to restorative justice, which emphasizes recovery. Through the process of recodification of criminal law, a number of provisions on corruption in the Anti-Corruption Law were revoked and re-regulated in the National Criminal Code. However, the new regulations have sparked debate due to changes in the minimum prison sentence. There are concerns that this change will weaken the severity of criminal punishment for corruption, which has been understood as a crime that harms the public interest. Based on this background, this paper examines the factors behind the changes to the minimum criminal sanctions for corruption in the National Criminal Code and analyzes these changes from the perspective of the objectives of criminal punishment in Indonesia. This study uses the normative legal research method (*doctrinal research*) with *a statute approach* and *a conceptual approach*. The results of the discussion show that the changes in minimum criminal sanctions were driven by a number of factors, including philosophical, sociological, and juridical factors. The objectives of punishment in the National Criminal Code are aimed at protecting the community and rehabilitating perpetrators, the changes to



the minimum penalties for corruption, although designed to create balance, tend to shift the focus towards rehabilitation, thereby risking weakening the protection of society if not accompanied by the recovery of state losses, the application of additional sanctions, consistency in verdicts, and improvements to the rehabilitation system, which still faces structural and cultural problems.

### **Keywords**

Special Minimum Penalties, Corruption Crimes, National Criminal Code, Purpose of Punishment

## **Introduction**

Corruption can essentially be understood from its linguistic meaning, which originates from Latin and describes an act of destruction, decay, distortion of the truth, and contamination of the values of honesty and integrity. This meaning shows that corruption is not merely related to the unlawful taking of property, but includes various forms of abuse, misappropriation, and dishonesty that cause moral decline and injustice. With such a broad meaning, corruption can be understood as an act that destroys the order of trust and causes harm to others for the benefit of individuals or certain groups.<sup>1</sup>

In practice, corrupt behavior can begin with simple acts of dishonesty in everyday life, such as students cheating, merchants shortchanging customers, and illegal fees or extortion. However, when these practices occur on a larger scale involving authority, resources, and the public interest, the impact becomes even greater.<sup>2</sup>

The level of corruption in Indonesia remains alarming. The results of ICW's monitoring of corruption cases during the 2019-2023 period show an upward trend in the number of cases and defendants, with the number of cases rising from 1,019 in 2019 to 2,056 in 2022, with the

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<sup>1</sup> B H Priyono, *Korupsi: Melacak Arti, Menyimak Implikasi* (PT Gramedia Pustaka Utama, 2018), <https://books.google.co.id/books?id=VOp8DwAAQBAJ>.

<sup>2</sup> Janwan Tarigan, *Mengenal Korupsi : Sejarah, Arti Korupsi, & Pendidikan Anti Korupsi* (Malang: Intelegensia Media, 2022).

number of defendants increasing from 1,125 to 2,249, before declining in 2023 to 1,649 cases with 1,718 defendants.<sup>3</sup> Then, Deputy Chairman of the KPK Ibnu Basuki Widodo said that throughout 2024 to the second quarter of 2025, there were 1,878 corruption cases that had been handled, with details involving members of the DPR and DPRD in 364 cases, heads of institutions or ministries in 41 cases, mayors, regents, and their deputies in 171 cases, 443 cases involving echelon I to IV civil servants, 31 cases involving judges, 13 cases involving prosecutors, 6 cases involving police officers, and 485 cases involving the private sector.<sup>4</sup> The fact that various state officials and law enforcement officers were involved shows that corruption has been ongoing and is structural in nature. This situation indicates that corruption not only causes financial losses to the state, but also damages public trust in state institutions and the legal system, which should uphold justice. Based on this data, it can be seen that corruption remains a serious problem in Indonesia. Due to its systemic nature, widespread occurrence, and significant impact on the life of the state, corruption is no longer viewed as an ordinary crime but as *an extraordinary crime* requiring special handling and criminal law policies.

The term *extraordinary crime* was originally used to refer to gross human rights violations, as reflected in Article 5 of the 1998 Rome Statute, which defines genocide, crimes against humanity, war crimes, and crimes of aggression as the most serious crimes of concern to the international community. In Indonesian, these are known as kejahatan luar biasa (extraordinary crimes). In Indonesia, the concept of

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<sup>3</sup> Indonesia Corruption Watch, *Catatan 100 Hari Prabowo-Gibran Dan Proyeksi Pemberantasan Korupsi 2025: Kartel Politik Dan Disorientasi Hukum Ancam Pemberantasan Korupsi* (2025), <https://antikorupsi.org/sites/default/files/dokumen/OUTLOOK%20ICW%20Pemberantasan%20Korupsi%202025%20dan%20Catatan%20100%20Hari%20Prabowo-Gibran.pdf>.

<sup>4</sup> Firda Janati and Jessi Carina, "Data KPK: Setelah Swasta, Pejabat Eselon Dan Anggota DPR-DPRD Paling Banyak Korupsi," *Kompas.Com*, 2025, <https://nasional.kompas.com/read/2025/09/17/13312931/data-kpk-setelah-swasta-pejabat-eselon-dan-anggota-dpr-dprd-paling-banyak>.

extraordinary crimes has expanded along with the development of new forms of crime, so that it no longer refers only to crimes that directly take human lives, but more generally to crimes that are committed systematically, have a broad impact, and cause great harm, such as corruption.<sup>5</sup> Corruption as *an extraordinary crime* is a criminal act that requires an extraordinary legal approach to combat it, so that the punishment policy for the perpetrators is designed to be heavier and stricter than for general criminal acts. This approach is reflected in the punishment policy, particularly in the formulation of criminal sanctions imposed on perpetrators. Criminal sanctions not only serve as a form of retribution, but also as a means of prevention and protection of the public interest.

The Indonesian legal system imposes strict criminal sanctions on corruption through Law No. 31 of 1999, as amended by Law No. 20 of 2001 on Eradication of Corruption (hereinafter referred to as the "Anti-Corruption Law"). This law specifically regulates various forms of corruption crimes and their criminal sanctions in a special manner ( ) and is placed as a special rule (*lex specialis*) outside the Criminal Code. One of the important features of the Anti-Corruption Law is the formulation of relatively heavy criminal sanctions, including specific minimum criminal provisions, both in the form of imprisonment and fines. This formulation is not only intended to provide a deterrent effect but also to limit the discretion of judges in handing down overly lenient sentences and to demonstrate the state's seriousness in combating corruption.

However, it cannot be denied that changes in society have necessitated adjustments to criminal law in Indonesia, given that legal developments cannot be separated from social dynamics and progress, especially with the emergence of various new forms and modes of crime

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<sup>5</sup> Muhammad Hatta, *Kejahatan Luar Biasa (Extra Ordinary Crime)* (Lhokseumawe: Unimal Press, 2019).

that require criminal law to be adaptive, responsive, and dynamic.<sup>6</sup> Indonesia then passed the National Criminal Code through Law Number 1 of 2023 (hereinafter referred to as the "National Criminal Code"). The National Criminal Code brings about a change in the perspective on punishment, whereby punishment is no longer understood solely as a form of retribution against the perpetrator of a criminal act. This reform is marked by the inclusion of the purpose of punishment as one of the considerations in the sentencing process, so that punishment is not solely based on the fulfillment of the elements of a crime and the offender's guilt, but also takes into account the objectives to be achieved through the imposition of punishment. This change marks a shift from retributive justice (the imposition of punishment purely as retribution) towards restorative justice (the resolution of cases focused on restoring the situation). The goal is to achieve a balance between the protection of society, victims, and perpetrators of criminal acts as a manifestation of social justice values.<sup>7</sup>

Social justice is essentially realized through an agreement between the state and its citizens, which is enshrined in legislation as a guideline for the implementation of rights and obligations. In John Rawls' view, social justice emphasizes the fulfillment of non-material justice, such as respect for dignity, rights, freedom, and equal opportunities, because these aspects are directly related to the independence of citizens. In line with this, the fifth principle of Pancasila, "*Social Justice for All Indonesian People*," affirms the state's goal of realizing the welfare and prosperity of the people as a characteristic *of a welfare state*.<sup>8</sup>

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<sup>6</sup> Muhammad Axel Putra and Ade Adhari, "Perubahan Pidana Minimal Khusus Terhadap Delik Korupsi Dalam Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *UNES Law Review* 6, no. 2 (2023): 4817–26, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2.1306>.

<sup>7</sup> Michael Adyhaksa Padang, Billi J Siregar, and Rosmalinda Rosmalinda, "Keberpihakan Pemidanaan Dalam Undang-Undang Nomor 1 Tahun 2023," *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 2 (2024): 64–71, <https://doi.org/https://doi.org/10.56128/jkih.v4i2.348>.

<sup>8</sup> Eta Yuni Lestari et al., "Reformulasi Peraturan Tentang Disabilitas Dalam Bidang Pendidikan Berdasarkan Nilai Keadilan Sosial," *LITIGASI* 25, no. 2 (October 31, 2024): 150–71, <https://doi.org/10.23969/litigasi.v25i2.18342>.

The value of social justice then became one of the foundations for the reform of national criminal law. This reform was realized through a process of recodification of the law, namely an effort to reunite various criminal provisions that were previously regulated outside the Criminal Code, including criminal acts of corruption, into a single national criminal law system.<sup>9</sup> However, this change sparked debate regarding the regulation of minimum criminal sanctions for criminal acts of corruption. The provisions on corruption in the National Criminal Code changed the minimum prison sentence compared to the previous regulation. This difference raised concerns that the punishment policy for corruption crimes could potentially become less severe, especially when linked to the nature of corruption as a crime that has a broad impact and harms the public interest. On the one hand, this change is seen as part of a more proportional sentencing system that is oriented towards the objectives of sentencing, but on the other hand, there are concerns that it will weaken the deterrent effect on perpetrators. Based on this background, this paper examines the factors behind the changes to the minimum criminal sanctions for corruption in the National Criminal Code and analyzes these changes from the perspective of the objectives of criminal punishment in Indonesia.

## Method

This article uses normative legal research methods (*doctrinal research*) with a *statute approach* and a *conceptual approach*. According to Soerjono Soekanto and Sri Mamudji, normative legal research is conducted through the examination of library materials or focuses primarily on the study of secondary data. In line with this view, Abdulkadir Muhammad explains that normative legal research is

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<sup>9</sup> Zahrotus Suroya and Pudji Astuti, "Pengurangan Pidana Tindak Pidana Korupsi Sebagaimana Yang Diatur Dalam UU No. 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *NOVUM: Jurnal Hukum* 11, no. 04 (2024): 498–506, <https://doi.org/https://doi.org/10.2674/novum.v1i1.59744>.

research that examines law as a set of binding rules that serve as guidelines for behavior in society. These legal rules include written positive legal norms formed by legislative bodies, the results of codification, implementing regulations, and written legal norms arising from judicial practice and agreements between parties.<sup>10</sup> The legislative approach is used to examine the regulation of minimum criminal sanctions for specific acts of corruption in the Anti-Corruption Law and the National Criminal Code. Meanwhile, the conceptual approach is used to analyze these changes based on the perspective of the objectives of criminal punishment as formulated in Article 51 of the National Criminal Code.

## **Result and Discussion**

### **1. Background to Changes in Minimum Criminal Sanctions for Corruption in the National Criminal Code**

Carl von Savigny believed that law is a reflection of the will and personality of a nation that grows and develops alongside the history of its people. According to him, law grows from the spirit of the nation (*Volksgeist*) so that law cannot be separated from the social and historical context of a nation, because there is always a close relationship between law and the conditions of the society in which the law applies. Therefore, law is dynamic and can undergo changes in line with the development of society over time, and the legal system cannot be applied uniformly to all nations without considering the characteristics and needs of their societies.<sup>11</sup>

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<sup>10</sup> Ramlan, Tengku Erwinsyahbana, and Surya Perdana, *Metode Penelitian Hukum Dalam Pembuatan Karya Ilmiah* (Medan: Umsu Press, 2023).

<sup>11</sup> Theadora Rahmawati and Umi Supraptiningsih, *Pengantar Ilmu Hukum Dan Pengantar Hukum Indonesia* (Pamekasan: Duta Media Publishing, 2020).

The reform of criminal law is an inevitable necessity. For decades, Indonesia has still been using *the Wetboek van Strafrecht*, the Criminal Code inherited from the Dutch colonial legal system. Efforts to formulate a new Criminal Code that better reflects the values and developments of Indonesian society actually began in 1958 with the establishment of the "National Law Development Institute" as an institution responsible for legal planning and reform. The process of drafting the new Criminal Code was certainly not easy. After a lengthy process, the reform of criminal law finally reached an important milestone with the passing of Law Number 1 of 2023 concerning the Criminal Code on January 2, 2023, as the basis for the new national criminal law.<sup>12</sup>

One important thing to note in the National Criminal Code is the concept of recodification, which forms the basis for its drafting. Indonesian Deputy Minister of Law Eddy O.S. Hiariej explained that the increasingly complex development of criminal law has prompted Indonesia to adjust its criminal law system to be in line with the spirit of independence and state sovereignty. After Indonesia's independence, this adjustment process was marked by decodification, which is the separation of a number of criminal acts that were originally regulated in the Criminal Code into separate laws that are specific or sectoral in nature. An example of this decodification is the removal of crimes related to public office from the Criminal Code, which are now specifically regulated in the Anti-Corruption Law. The government and the Indonesian House of Representatives have agreed to return to the spirit of recodification, rather than simply codification. Recodification is understood as an effort to reincorporate various criminal acts that

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<sup>12</sup> Nafi Mubarak, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 27, no. 1 (2024): 15–31, <https://doi.org/https://doi.org/10.15642/alqanun.2024.27.1.15-31>.

were previously scattered across various sectoral laws into a single integrated criminal law system.<sup>13</sup>

The codification of corruption criminal provisions into the National Criminal Code does not eliminate the special nature of its handling, as the Anti-Corruption Law remains in force and the National Criminal Code only contains the basic offenses. The inclusion of these corruption provisions is intended to build an integrated criminal law system, in which, even though corruption is classified as a special criminal offense (*lex specialis*), its regulation still requires general norms as *a lex generalis* or *core crime* in order to link the provisions of the National Criminal Code with sectoral laws outside the Criminal Code.<sup>14</sup>

Recodification in the National Criminal Code cannot be understood merely as the transfer of criminal provisions from sectoral laws into a single criminal law book. Recodification also requires adjustments to the overall criminal justice system, including efforts to establish uniformity in the patterns of criminal sanctions applicable in the Criminal Code. Within this framework, the regulation of criminal sanctions for corruption cannot be copied directly from the Anti-Corruption Law, but must be adjusted to the principles, objectives, and penal system adopted in the National Criminal Code. As a result, the adjustment of criminal sanctions, including provisions on minimum penalties, has become an integral part of the effort to recodify criminal law into the National Criminal Code. Special minimum penalties are essentially exceptional provisions and are only applied to certain criminal acts that cause significant harm to society. Barda Nawawi Arief explained that special minimum penalties are not intended to be

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<sup>13</sup> Humas dan Kerja Sama BPHN, "Wamenkumham: Rekodifikasi RUU KUHP Berisikan Ratusan UU Sektoral," BPHN, 2021, <https://bphn.go.id/berita-utama/wamenkumham-rekodifikasi-ruu-kuhp-berisikan-ratusan-uu-sektoral-6552>.

<sup>14</sup> Anita Zulfiani, Agung Nur Probohudono, and Khresna Bayu Sangka, "Pengaturan Tindak Pidana Korupsi Sebelum Dan Sesudah Berlakunya Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP, Dalam Upaya Menurunkan Angka Korupsi Pada Sektor Swasta," *UNES Law Review* 5, no. 4 (2023): 4303–24, <https://doi.org/https://doi.org/10.31933/unesrev.v5i4>.

applied generally, but selectively to criminal acts that have a high level of danger and social impact, such as corruption. The regulation of special minimum penalties aims to strengthen general prevention by providing a clear lower limit for the imposition of criminal penalties, which is expected to have a deterrent effect on perpetrators.<sup>15</sup>

In the process of recodifying corruption crimes into the National Criminal Code, the regulation on special minimum penalties was not adopted in its entirety as previously stipulated in the Anti-Corruption Law. The provisions on special minimum penalties in the National Criminal Code show a difference in the level of criminal penalties when compared to the provisions in the Anti-Corruption Law. These differences in regulations have raised various concerns, particularly regarding the effectiveness of specific minimum penalties in combating corruption. This is because corruption has long been understood as a crime that has a broad impact on society and state finances. The changes to the nature of specific minimum penalties in the National Criminal Code raise questions about the extent to which these regulations are still capable of providing a deterrent effect while also protecting the public. Therefore, changes to the minimum criminal sanctions for corruption can be understood through the philosophical, sociological, and juridical factors behind the formation of Law Number 1 of 2023 concerning the Criminal Code, as described below.<sup>16</sup>

### 1. Philosophical Factors

Philosophically, the integration of corruption crimes into the National Criminal Code is part of the reform of Indonesian criminal

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<sup>15</sup> Muhammad Zawil Ilham, Liza Agnesta Krisna, and Andi Rachmad, "Analisis Perbandingan Perubahan Sanksi Tindak Pidana Korupsi Antara Undang-Undang Nomor 1 Tahun 2023 Dengan Undang-Undang Nomor 20 Tahun 2001," *Meukuta Alam: Jurnal Ilmiah Mahasiswa* 6, no. 1 (2024): 48–61, <https://doi.org/https://doi.org/10.33059/majim.v6i1.10894>.

<sup>16</sup> Haikal Rizky Hakim, "Problematika Perubahan Sanksi Pidana Minimum Dalam Tindak Pidana Korupsi Pasca Diterbitkannya Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (Perspektif Teori Utilitarianisme)" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2025).

law, which aims to build an independent national legal system that no longer relies on the legacy of colonial law. The previous Criminal Code was a product of Dutch law, which was philosophically based on the interests of the colonial government, so its rationale was not entirely in line with the values and objectives of the Indonesian state. Criminal law needs to be adjusted to Pancasila and the 1945 Constitution of the Republic of Indonesia, especially as reflected in the Preamble to the 1945 Constitution, which emphasizes the protection and welfare of society.<sup>17</sup>

In line with this direction of reform, the National Criminal Code reflects a paradigm shift in punishment from a retributive model toward a relative approach that emphasizes the usefulness of punishment, crime prevention, protection of society, and rehabilitation of offenders so that they can function socially again. This paradigm shift changes the perspective in the formulation of criminal sanctions, including the regulation of specific minimum penalties, which have tended to be rigid and emphasize retribution. Within the framework of the objectives of punishment as stipulated in Article 51 of the National Criminal Code, punishment is not only aimed at deterrence, but also at preventing crime, reintegrating convicts into society, resolving conflicts, and restoring balance and order in society. The change to the specific minimum penalties for corruption offenses in the National Criminal Code is philosophically intended to provide more proportional space for judges in imposing penalties, so that the sanctions imposed are not merely repressive,

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<sup>17</sup> Zahrotus Suroya and Pudji Astuti, "Reduction Of Criminal Penalties for Corruption Criminal Acts as Regulated in Law No . 1 of 2023 Concerning the Criminal Code," *NOVUM: Jurnal Hukum* 11, no. 4 (2024): 601–13, <https://doi.org/https://doi.org/10.2674/novum.v1i1.59744>.

but are in line with the objectives of the protection of society, substantive justice, and the benefits of law.<sup>18</sup>

## 2. Sociological Factors

Corruption remains one of the main threats to governance in Indonesia, as reflected in the high number of corruption cases that are structured, systematic, and massive in nature. Corruption is not only prevalent in government circles, but has also spread to the public service, bureaucracy, and investment sectors, causing increasing concern among the public. Corruption involves perpetrators from various professional backgrounds and social strata. This shows that perpetrators of corruption are heterogeneous and not limited to certain groups.<sup>19</sup> Corruption has a major impact on social life, as can be seen in the decline in public trust in public officials and law enforcement agencies. Cumulatively, individual acts of corruption contribute to the disruption of the public and private sectors, increased poverty and income inequality, rising crime rates, and a loss of public trust in leaders and the social system, leading to a decline in public political participation.<sup>20</sup>

This sociological reality is one of the considerations behind the changes to the minimum penalties in the National Criminal Code, as overly rigid penalties are no longer considered capable of responding to the complexity of the perpetrators and the social impact of corruption. It is necessary to formulate sanctions that strike a balance between the interests of the public, the state, and individuals, while still providing protection for both the perpetrators

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<sup>18</sup> Lena Claudia Angwarmasse, "Implikasi KUHP Baru Terhadap Sistem Pemidanaan Di Indonesia," *Judge: Jurnal Hukum* 6, no. 05 (2025): 1660–68, <https://doi.org/https://doi.org/10.54209/judge.v6i05.1984>.

<sup>19</sup> Dailen Vandy Anselmus Sigar, "Tinjauan Hukum Terhadap Tindak Pidana Korupsi Terstruktur, Sistematis Dan Masif (TSM) Dalam Lembaga Pemerintahan Di Indonesia," *LEX PRIVATUM* 15, no. 5 (2025).

<sup>20</sup> KPK, "Rusaknya Kehidupan Sosial Karena Korupsi," ACLC KPK, 2023, <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230818-rusaknya-kehidupan-sosial-karena-korupsi>.

and victims of crime. The updating of criminal penalties also seeks to balance legal certainty with a sense of justice, written law with the living law in society, and national values with universal principles. Of course, it must be ensured that all these elements do not conflict with human rights, which go hand in hand with human obligations.<sup>21</sup>

With the shift in the criminal law paradigm towards *daad-dader-victim-strafrecht* or the model of balancing interests, criminal law views crime, perpetrators, and victims as a whole in the law enforcement process. Hence, approaches such as criminal individualism are recognized in criminal law. Criminal individualization is placed within the framework of the "idea of balance," where this concept is an integrative and functional approach to formulating the objectives and guidelines for punishment, so that the punishment imposed is tailored to the character and personality of the perpetrator of the crime.<sup>22</sup> In essence, the imposition of criminal sanctions must take into account the characteristics and personal circumstances of the perpetrator, given that each perpetrator has a different background and circumstances, so that punishment cannot be standardized. This principle is a characteristic of the modern school of thought in criminal law, which is contrary to the classical school of thought, because the classical school places more emphasis on criminal acts and deterrence (*daadstrafrecht*). In response to this reality, the National Criminal Code adopts an individualized approach to punishment as outlined in the sentencing guidelines. This is because the essence of the sentencing guidelines lies in the necessity to

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<sup>21</sup> Badan Pembinaan Hukum Nasional, "Draft Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana ( KUHP )," *Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia* (Jakarta, 2015).

<sup>22</sup> Marfuatul Latifah and Prianter Jaya Hairi, "Pengaturan Pedoman Pemidanaan KUHP Baru Dan Implikasinya Pada Putusan Hakim," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 15, no. 2 (2025): 25–51, <https://doi.org/10.22212/jnh.v15i2.4573>.

consider the nature and personal circumstances of the perpetrator, which implies that judges have the discretion to impose the most appropriate punishment in order to achieve law and justice. In essence, criminal individualism serves as a benchmark for judges in their efforts to achieve substantive justice.<sup>23</sup>

### 3. Legal Factors

Legally, special minimum penalties were previously only recognized in special criminal laws outside the Criminal Code, including the Anti-Corruption Law. However, in practice, the provisions on special minimum penalties still have a number of weaknesses. The formulation of minimum penalties in several articles shows inconsistencies between one article and another. There are provisions that stipulate the same maximum penalty, but different minimum penalties, as well as articles that have the same minimum penalty but different maximum penalties. In the Anti-Corruption Law, Article 2 paragraph (1) and Article 3 both stipulate a maximum penalty of 20 years imprisonment, but the minimum penalties are different, namely Article 2 paragraph (1) stipulates a minimum penalty of 4 years imprisonment, while Article 3 stipulates a minimum penalty of 1 year imprisonment. In addition, the range between the minimum and maximum penalties is too wide. In Article 3 of the Anti-Corruption Law, the minimum penalty is set at only 1 year imprisonment, while the maximum penalty can be life imprisonment or 20 years imprisonment.<sup>24</sup>

As a result of the inconsistency in the formulation of the articles and the wide range between the minimum and maximum

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<sup>23</sup> Pradikta Andi Alvat, "Individualisasi Pidana Dalam KUHP Baru," MARINews, 2025, <https://marinews.mahkamahagung.go.id/artikel/individualisasi-pidana-dalam-kuhp-baru-0e8>.

<sup>24</sup> Metya Mutiara Cahyani, "Upaya Meminimalkan Adanya Disparitas Dalam Penjatuhan Putusan Pidana Dalam Perkara Tindak Pidana Korupsi Di Indonesia," *Delicti: Jurnal Hukum Pidana Dan Kriminologi* 2, no. 1 (2024): 67-74, <https://doi.org/https://doi.org/10.25077/delicti.v.2.i.1.p.67-74.2024>.

penalties, the application of specific minimum penalties in corruption cases has not been effective in reducing disparities in judges' decisions. Disparities in judges' decisions are understood as differences or inconsistencies in decisions on cases involving crimes of equal severity. This condition arises when there is a substantial difference between one judge's decision and another judge's decision in the same case, even though all of them refer to similar legal provisions. This disparity in sentencing is closely related to the discretion that judges have in imposing penalties on defendants who commit similar crimes. In this regard, Sudarto emphasized that judges' discretion in determining penalties should not be used excessively to the point of causing striking differences in verdicts, as this can cause discomfort (*onbehagelijk*) among the public.<sup>25</sup>

The wording of Articles 2 and 3 of the Anti-Corruption Law, which is very broad, does not clearly distinguish between perpetrators of corruption involving small and large losses, or between perpetrators who hold strategic positions in the state and low-ranking civil servants who are in certain socio-economic conditions. Although the Anti-Corruption Law specifies minimum and maximum penalties, the provisions regarding sentencing patterns are not described in detail. In law enforcement practice, judges have the authority to impose penalties within the minimum and maximum limits specified by law. Judges use this range of penalties to consider the values of the living law in society as grounds for reducing penalties.<sup>26</sup> As a result, discretion without clear sentencing guidelines has the potential to lead to variations in verdicts between cases with similar characteristics. This shows that

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<sup>25</sup> Januaria Yustina Uis Loim, Rudepel Petrus Leo, and Daud Dima Tallo, "Disparitas Putusan Hakim Dalam Kasus Kekerasan Seksual Terhadap Anak," *COMSERVA* 3, no. 1 (2023): 369–85, <https://doi.org/10.59141/comserva.v3i1.775>.

<sup>26</sup> Muhammad Azil Maskur, "Integrasi The Living Law Dalam Pertimbangan Putusan Hakim Pada Kasus Tindak Pidana Korupsi," *Pandecta Research Law Journal* 11, no. 1 (2016): 18–30, <https://doi.org/http://dx.doi.org/10.15294/pandecta.v11i1.4068>.

judges have very broad discretion in handing down verdicts, so that the existence of specific minimum penalties in the Anti-Corruption Law has not been fully effective in directing consistent sentencing. Therefore, sentencing guidelines in the Criminal Code are needed to reduce disparities in sentencing, even though they cannot be completely eliminated.

## **2. Changes to the Minimum Criminal Sanctions for Corruption Crimes in the National Criminal Code Based on the Perspective of the Purpose of Sentencing**

The purpose of punishment is to provide direction in imposing criminal sanctions so that they are not merely interpreted as retribution against perpetrators of criminal acts. Punishment is positioned as a means of protecting society and preventing crime. In addition, criminal punishment is also aimed at restoring social balance and encouraging the perpetrator of the crime to reform their behavior. The purpose of criminal punishment occupies a fundamental position in the criminal justice system because it provides direction and a basis for the formulation and application of criminal sanctions. Any changes in the regulation of criminal sanctions must be understood within the framework of the purpose of criminal punishment that the legislators wish to achieve.

Based on this framework, the recodification of corruption crimes into the National Criminal Code is part of the criminal law reform agenda that aims to reorganize the regulation of criminal acts into a unified national criminal law system. Previously, provisions on corruption were regulated specifically in the Anti-Corruption Law as *lex specialis* outside the Criminal Code. In its development, regulations on corruption were then also accommodated in the National Criminal Code through a number of articles, namely Article 67, Article 209 paragraphs (1) and

(2), Article 372, Article 374, Article 421, Article 422, Article 602, Article 603, Article 604, Article 605 paragraphs (1) and (2), Article 606 paragraphs (1) and (2), and Article 612.<sup>27</sup>

Based on these provisions, this article focuses on the specific minimum criminal penalties for corruption offenses. Therefore, of all the articles regulating corruption crimes, the object of this study is limited to Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, which contain changes to minimum penalties, in order to see the differences in the formulation of specific minimum penalties between the Anti-Corruption Law and the National Criminal Code.

**TABLE 1.** Comparison of Articles on Special Minimum Penalties for Corruption Crimes in the Anti-Corruption Law and the National Criminal Code

Anti-Corruption Law (Law 31/1999 as amended by Law 20/2001)	National Criminal Code
Article 2 paragraph (1) "Any person who unlawfully enriches himself or herself or another person or a corporation in a manner that may harm the state finances or the state economy shall be punished with life imprisonment or <b>imprisonment for a minimum of 4 (four) years</b> and a maximum of 20 (twenty) years and <b>a fine of at least Rp200,000,000.00 (two hundred million rupiah)</b> and a maximum fine of Rp1,000,000,000.00 (one billion rupiah)." 	Article 603 "Any person who unlawfully enriches themselves, another person, or a corporation to the detriment of the state finances or the state economy shall be punished with life imprisonment or <b>imprisonment for a minimum of 2 (two) years</b> and a maximum of 20 (twenty) years and <b>a fine of at least category II or IDR 10,000,000.00 (ten million rupiah)</b> and a maximum fine of Category VI or Rp200,000,000.00 (two hundred million rupiah)." 

<sup>27</sup> Zulfiani, Probahudono, and Sangka, "Pengaturan Tindak Pidana Korupsi Sebelum Dan Sesudah Berlakunya Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP, Dalam Upaya Menurunkan Angka Korupsi Pada Sektor Swasta."

Anti-Corruption Law (Law 31/1999 as amended by Law 20/2001)	National Criminal Code
<p>Article 3            "Any person who, for the purpose of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity, or means available to him or her due to his or her position or status in a manner that could harm the state finances or the state economy, shall be punished with life imprisonment or <b>a minimum of 1 (one) year</b> and a maximum of 20 (twenty) years and/or <b>a fine of at least Rp50,000,000.00 (fifty million rupiah)</b> and a maximum of Rp1,000,000,000.00 (one billion rupiah)."</p>	<p>Article 604            "Any person who, for the purpose of benefiting themselves, others, or a corporation, abuses their authority, opportunity, or means available to them due to their position or status, thereby causing harm to the state finances or the state economy, shall be punished with life imprisonment or <b>imprisonment for a minimum of 2 (two) years</b> and a maximum of 20 (twenty) years and <b>a fine of at least category II or IDR 10,000,000.00 (ten million rupiah)</b> and at most category VI or IDR 200,000,000.00 (two hundred million rupiah)."</p>

Based on a comparison of these provisions, the changes lie in the reduction of the minimum prison sentence and the amount of the fine for the crime of corruption. Article 2 paragraph (1) of the Anti-Corruption Law, which previously stipulated a minimum sentence of 4 years imprisonment and a minimum fine of IDR 200,000,000.00, has been reduced in the National Criminal Code through Article 603 to a minimum sentence of 2 years imprisonment with a minimum fine of category II or IDR 10,000,000.00. Similarly, Article 3 of the Anti-Corruption Law, which previously stipulated a minimum sentence of 1 year imprisonment and a minimum fine of IDR 50,000,000.00, has been standardized in Article 604 of the National Criminal Code to a minimum sentence of 2 years imprisonment and a minimum fine of category II. The amount of fines classified into several categories can be

found in Article 79 Chapter III Part One of the National Criminal Code.<sup>28 29</sup>

Law enforcement practices in corruption cases show that law enforcement officials most often apply Article 2 paragraph (1) and Article 3. Based on data from Indonesia Corruption Watch (ICW) from 2017 to 2023, approximately 8,538 defendants have been found guilty, resulting in state losses of around Rp274 trillion based on these two articles. In view of this, the reduction in the minimum penalty may have a deterrent effect on perpetrators of corruption.<sup>30</sup> This situation raises questions about the extent to which changes to the minimum penalty in the National Criminal Code are still in line with the objectives of punishment. Concerns about the weakening of the deterrent effect as a result of the reduction in the minimum penalty are related to the objectives of punishment.

Every system has a purpose, and so does the criminal justice system. The formulation of the purpose of punishment serves as a guideline for judges in handing down verdicts, so that the imposition of punishment is in line with the objectives to be achieved. In the study of criminal law, there are several theories regarding the purpose of punishment, namely the absolute (retributive) theory, the relative (utilitarian) theory, and the combined (integrative) theory. The retributive theory views punishment as a form of retribution for the wrongdoing committed by the perpetrator. Punishment is imposed solely because the perpetrator is deemed deserving of punishment for their wrongdoing. This view is in line with Hegel's opinion that punishment is an inevitable logical

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<sup>28</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>29</sup> Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 20 Tahun 2001.

<sup>30</sup> Indonesia Corruption Watch, "Catatan 100 Hari Prabowo-Gibran Dan Proyeksi Pemberantasan Korupsi 2025: Kartel Politik Dan Disorientasi Hukum Ancam Pemberantasan Korupsi," 2025, [https://antikorupsi.org/sites/default/files/dokumen/OUTLOOK\\_ICW\\_Pemberantasan\\_Korupsi\\_2025\\_dan\\_Catatan\\_100\\_Hari\\_Prabowo-Gibran.pdf](https://antikorupsi.org/sites/default/files/dokumen/OUTLOOK_ICW_Pemberantasan_Korupsi_2025_dan_Catatan_100_Hari_Prabowo-Gibran.pdf).

consequence of crime. In contrast to the retributive theory, the relative theory views punishment not as a means of retribution, but as an effort to achieve the goals of protecting society and social welfare. Leonard argues that the purpose of punishment in relative theory is to prevent and reduce crime rates by influencing and changing the behavior of perpetrators and others who are potentially capable of committing crimes. Meanwhile, the combined theory integrates the elements of retribution and protection of public order as the basis for imposing punishment. According to this theory, punishment is not only a reaction to the offender's wrongdoing but also a means of maintaining law and order while reforming the offender's personality so that they can function properly in society again.<sup>31</sup>

Under the former Criminal Code, the aims of punishment were not clearly articulated, so that in practice the aspect of the purpose of punishment was often neglected because it did not have a clear normative basis. In fact, the purpose of punishment occupies an important position in the criminal law system because it is the basis for the imposition and implementation of criminal sanctions. The prevailing understanding has emphasized punishment based on the existence of fault in a criminal act, as recognized in the principle of culpability. However, with the development of criminal law, this principle is no longer considered adequate. Criminal law today demands balance, given that the purpose of law is not only oriented towards legal certainty, but also towards achieving justice and benefit. The direction of the objectives of punishment is currently shifting towards "humanizing" the perpetrator in the form of punishment (*treatment*), rather than merely retribution.<sup>32</sup> To realize the integration

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<sup>31</sup> Muhammad Idris Nasution, Muhammad Ali, and Fauziah Lubis, "Pembaruan Sistem Pidana Di Indonesia: Kajian Literatur Atas KUHP Baru," *Judge: Jurnal Hukum* 5, no. 01 (2024): 16–23, <https://doi.org/doi.org/10.54209/judge.v5i02.xxx>.

<sup>32</sup> Muhammad Ramadhan and Dwi Oktafia Ariyanti, "Tujuan Pidana Dalam Kebijakan Pada Pembaharuan Hukum Pidana Indonesia," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 5, no. 1 (2023): 1–6.

of the punishment system, the National Criminal Code then formulated the objectives of punishment, which are explicitly stated in its provisions.

Marpaung argues that the National Criminal Code adopts a concept of punishment that is the result of the development and refinement of three theories of punishment, namely the absolute or retributive theory, the relative or utilitarian theory, and the combined theory. According to this view, each theory has its limitations, so that the reform of the criminal punishment system is aimed at providing more optimal protection for victims while restoring the balance of values that has been disrupted in society. The objectives of criminal law and punishment in the National Criminal Code are now formulated by balancing two main interests, namely the protection of society, both for victims and for perpetrators of criminal acts.<sup>33</sup>

The direction of criminal law reform as reflected in Law No. 1 of 2023 can be seen in Chapter III concerning Punishment and Guidelines for Punishment. Through Article 51, the law formulates the objectives of criminal law that currently apply, which include:<sup>34</sup>

- a. *"preventing the commission of criminal acts by enforcing legal norms for the protection and welfare of society;"*
- b. *"rehabilitating convicts through guidance and counseling so that they become good and useful members of society;"*
- c. *"resolving conflicts arising from criminal acts, restoring balance, and bringing about a sense of security and peace in society; and"*
- d. *"fostering remorse and relieving guilt in convicts."*

The four points of the articulation of the objectives of punishment as explicitly stated in the National Criminal Code confirm the direction of punishment that is oriented towards the prevention of criminal acts by

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<sup>33</sup> Nasution, Ali, and Lubis, "Pembaruan Sistem Pidana Di Indonesia: Kajian Literatur Atas KUHP Baru."

<sup>34</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana

protecting and nurturing the community, rehabilitating convicts so that they can return to society, and restoring balance and a sense of security in social life. This affirmation is reinforced by Article 52 of the Criminal Code, which states that "*Criminal punishment is not intended to demean human dignity*," thereby explicitly rejecting the view of punishment as retribution. The objectives of punishment as formulated in the National Criminal Code reflect the application of relative theory, which views punishment as a means of protecting the interests of society. This theory was developed by Karl O. Christiansen, among others, who emphasized that punishment should not be viewed solely as retaliation for the offender's wrongdoing, but is directed at achieving certain goals that benefit society. Therefore, the relative theory is also known as the theory of purpose or *utilitarian theory*. This theory has a general preventive function which aims to have a deterrent effect on society so that they do not commit crimes. By imposing punishment on criminals, it is hoped that others will feel fear, thereby preventing similar crimes from occurring.<sup>35</sup>

Based on this formulation, the purposes of punishment under the National Criminal Code are essentially directed at two main interests, namely the protection of society (*social defense*) and the rehabilitation of offenders. The formulation of the objectives of punishment in the National Criminal Code also shows a tendency to adopt a neo-classical approach, which is characterized by the existence of minimum and maximum penalties, recognition of circumstances that mitigate punishment, and the imposition of penalties based on the objective circumstances of the act and the need for individual rehabilitation of the perpetrator.<sup>36</sup> Corruption crimes, as crimes that have a broad impact on

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<sup>35</sup> Syarif Saddam Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (2022): 176–88, <https://doi.org/https://doi.org/10.33561/holrev.v6i2.4>.

<sup>36</sup> Lukman Hakim, *Penerapan Dan Implementasi "Tujuan Pemidanaan" Dalam Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP) Dan Rancangan Kitab Undang-Undang Hukum Acara Pidana (RKUHP)* (Yogyakarta: Deepublish, 2020).

public interests and state finances, require criminal sanctions that are capable of responding to the level of loss and social impact caused. The protection of society requires the regulation of sanctions that are capable of preventing corruption and providing guarantees for the interests of the state, while the rehabilitation of perpetrators requires that punishment not be solely repressive, but also provide room for improvement.

**a. The Purpose of Punishment as Social Defense**

The purpose of criminal punishment in the reform of criminal law is essentially aimed at, among other things, protecting society (*social defense*). Criminal punishment is no longer understood solely as a reaction to violations of the law, but rather as a policy instrument to control crime in order to achieve social welfare and order. Criminal punishment is expected to function to prevent criminal acts, respond to the social impact caused, and restore the condition of society that has been disrupted by crime. The orientation of criminal punishment as protection of society places public interest as the main focus.<sup>37</sup> As a form of realizing the need for community protection, the National Criminal Code regulates the determination of minimum and maximum penalties for certain offenses. These offenses are criminal acts that are considered dangerous and disturbing to the community, one of which is the crime of corruption.

The minimum penalty for corruption offenses, which has undergone changes in the formulation of the National Criminal Code, shows a shift in approach in realizing public protection, where the focus of protection is no longer solely on the severity of imprisonment, but also on the overall effectiveness of punishment.

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<sup>37</sup> Noveria Devy Irmawanti and Barda Nawawi Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 217–27, <https://doi.org/https://doi.org/10.14710/jphi.v3i2.217-227>.

The change in the minimum penalty provides room for more proportional punishment, allowing judges to consider the nature of the offense and its impact more carefully. This approach is in line with the public interest protection objective of the Criminal Code because it opens up opportunities for the application of sanctions that directly contribute to restoring state losses through mechanisms such as fines, compensation, and asset confiscation, which in practice are more beneficial to the public than simply imprisoning the perpetrator. Thus, the change in the specific minimum penalties in the National Criminal Code may be interpreted as an attempt to balance the interests of protecting society with the need for proportional, targeted punishment that is in line with the aims of punishment.

Article 51 letter c of the Criminal Code states that the purpose of punishment is to "*resolve conflicts arising from criminal acts, restore balance, and bring about a sense of security and peace in society.*" This purpose positions punishment as an instrument to respond to the social impact of crime, not merely as a means of punishing perpetrators. However, changes to specific minimum penalties have the potential to create the perception that the state is relaxing its stance on crimes that have been widely regarded as detrimental to the public interest and state finances. This perception could affect the level of public trust in law enforcement and lead to a decline in the sense of security within society.

An action or policy is considered effective if it generates greater benefits for society than the suffering it causes. Conversely, if a policy has predominantly negative effects, then it cannot be justified.<sup>38</sup> The reduction of the minimum criminal penalty for corruption offenses from four years to two years imprisonment, as

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<sup>38</sup> Endang Pratiwi, Theo Negoro, and Hassanain Haykal, "Jeremy Bentham's Utilitarianism Theory: Legal Purpose or Methods of Legal Products Examination," *Jurnal Konstitusi* 19, no. 2 (2022): 269–93.

stipulated in Articles 603 and 604 of the National Criminal Code, has the potential to cause more dominant *suffering* than *the* potential happiness that society will obtain in the future.<sup>39</sup>

The principle of effectiveness requires that criminal sanctions be able to provide social benefits, one of which is through the creation of a deterrent effect. The reduction in the minimum criminal penalty seems to indicate that the punishment imposed is no longer considered severe enough to have a deterrent effect. This change is feared to be perceived as a form of leniency that provides room for perpetrators to avoid more severe criminal penalties compared to the previous special minimum criminal provisions. If this perception develops in society, then the objective of criminal punishment to prevent corruption as an extraordinary crime may not be optimally achieved. Although criminal punishment is no longer oriented solely towards retribution, the existence of a deterrent effect cannot be completely eliminated. Moreover, in corruption crimes categorized as extraordinary crimes, the application of criminal sanctions must be more severe and not equated with conventional crimes, so that the benefits of criminal punishment for society can still be optimally achieved.

The objective of criminal punishment to bring about a feeling of safety and social peace cannot be achieved solely through determining the severity or leniency of minimum prison sentences. Rather, public security is determined by the consistency of law enforcement, the fairness of court rulings, and the ability of the criminal justice system to operate effectively in restoring the social and economic impacts caused by criminal acts of corruption. Therefore, changes to the minimum penalty provisions in the National Criminal Code can only fulfill the objectives of criminal

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<sup>39</sup> Hakim, "Problematika Perubahan Sanksi Pidana Minimum Dalam Tindak Pidana Korupsi Pasca Diterbitkannya Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (Perspektif Teori Utilitarianisme)."

punishment if they are accompanied by the strengthening of mechanisms for recovering state losses, the optimal application of additional sanctions, and consistency in sentencing. Without the support of these elements, changes to specific minimum penalties have the potential to fail to make a real contribution to creating a feeling of safety and social peace as intended in the objectives of criminal punishment.

**b. The purpose of punishment as guidance for perpetrators of criminal acts**

The primary aim of punishment is to rehabilitate offenders so they become compliant with the law who are able to play a productive role in society. Rehabilitation theory focuses on the process of restoring individuals through education and social reintegration efforts. This approach is based on a humanistic view that aims to improve the behavior of lawbreakers. In contrast to idealistic ideas, rehabilitation theory views humans as fundamentally capable of change when given the right encouragement and support. The rehabilitation model emphasizes that criminal sanctions should be directed at addressing the factors that drive a person to commit a crime.<sup>40</sup>

The purpose of punishment as a means of rehabilitation for offenders means that punishment is not merely a means of punishment, but a process to encourage the improvement of the attitude and behavior of convicts so that they can return to living in accordance with legal and social norms. Within this framework, punishment allows for changes or adjustments to be made based on the individual's development and the achievement of the objectives of punishment. The National Criminal Code recognizes the

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<sup>40</sup> Nur Kemala Putri et al., "Pengaruh Teori Rehabilitasi Terhadap Kebijakan Pemidanaan Di Indonesia: Tinjauan Pustaka," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 2 (2024): 210–24, <https://doi.org/https://doi.org/10.71153/jimmi.v1i2.135>.

possibility of adjusting the punishment of prisoners who have been legally convicted, as long as it does not aggravate the original verdict and is done with consideration of the positive progress achieved during the rehabilitation process.

Normatively, changes to the minimum penalties for corruption offenses in the National Criminal Code reflect a sentencing approach that emphasizes the rehabilitation of offenders. Sentencing is positioned not merely as a means of punishment, but as a process to encourage behavioral improvement and social reintegration of convicts. This approach provides room for individualization of punishment, adjustment of sanctions based on the offender's progress, and assessment of the progress made during rehabilitation. These changes are in line with the objective of punishment, which views offenders as subjects who can be rehabilitated, rather than merely objects of punishment.

However, facts on the ground show that the goal of punishment oriented towards rehabilitating perpetrators of corruption is still faced with structural problems in the correctional system. There is a crisis of integrity among correctional human resources, which is exacerbated by the sharp economic inequality between correctional officers and prisoners convicted of *white-collar crimes*. The difference in financial power and socio-political networks creates a reverse power relationship, where prisoners have the ability to "control" officers through bribery and gratuities. Not to mention special treatment such as "exclusive cells" that are modified with luxurious facilities for corruption convicts such as Setya Novanto and Nazaruddin. This condition gives rise to practices of special treatment and a permissive culture that reduces the meaning of guidance, so that correctional institutions fail to function as rehabilitation spaces and instead reinforce the justice gap. In addition, the psychological aspect of corruption perpetrators tends

to normalize their actions through various mechanisms of justification (*denial of responsibility*). They reject the label of being criminals and position themselves as victims of circumstances or political conflicts.<sup>41</sup>

Normatively, the National Criminal Code upholds the principle of punishment oriented towards the humanization of prisoners through the principle of non-discrimination. However, in practice, the application of this principle is carried out without considering the differences in power and influence possessed by perpetrators of corruption. The rehabilitation patterns for ordinary criminals and corruptors who have embezzled billions of rupiah should not be the same, as this would result in inappropriate rehabilitation policies. While ordinary criminals can be rehabilitated through job skills training, perpetrators of corruption need rehabilitation that is more focused on improving their attitudes and morals, fostering a sense of social responsibility, and restricting their access to the means or opportunities that could enable them to repeat similar crimes.

Based on these considerations, changes to the minimum criminal penalties intended to provide opportunities for the rehabilitation of perpetrators of corruption crimes may not achieve their normative objectives if they are implemented without taking into account the specific characteristics of corruption crimes and the profiles of their perpetrators. Standardizing rehabilitation patterns formally risks widening the gap between what is envisioned by criminal law reform (*das sollen*) and the reality of its implementation in the field (*das sein*). Based on conditions in the field, it can be seen that the structural and cultural problems of rehabilitating prisoners convicted of corruption in the correctional

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<sup>41</sup> Shabina Al Fitri et al., "Tinjauan Yuridis Terhadap Peran Lembaga Masyarakat Dalam Pembinaan Narapidana Korupsi," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 1177–87, <https://doi.org/https://doi.org/10.61104/alz.v4i1.3217>.

system are still very strong. The current rehabilitation system has not been able to address the specific characteristics of corruption offenders, so that the objectives of rehabilitation have not been effectively achieved. Under these circumstances, changes to the minimum sentence have not had a significant impact on improving the behavior of corruption offenders. Without comprehensive improvements to the rehabilitation system, changes to the minimum sentence have the potential to be merely normative changes that do little to help combat corruption.

## Conclusion

1. The change in minimum criminal sanctions for corruption offenses after the enactment of the National Criminal Code was driven by a number of factors, including philosophical, sociological, and juridical considerations. Philosophically, this change reflects a paradigm shift in the National Criminal Code from a retributive approach to one that is more oriented towards utility, prevention, community protection, and rehabilitation of offenders, thereby providing scope for judges to impose substantively just penalties. Sociologically, the widespread social impact of corruption and the diverse characteristics of perpetrators indicate that rigid and uniform punishment is no longer adequate, necessitating a more flexible approach to punishment through the principle of individualization of punishment. Meanwhile, from a legal perspective, the amendment was driven by inconsistencies in the wording of articles and the imbalance between the minimum and maximum penalties in the previous regulations, which were ineffective in reducing disparities in judges' decisions.
2. The purpose of punishment in the National Criminal Code is basically directed at two main interests, namely the protection of

society (*social defense*) and the rehabilitation of criminals. As an effort to protect society, changes to the minimum penalties for specific crimes of corruption are intended to achieve proportional punishment that is in line with the objectives of punishment. However, there are concerns that changes to the minimum penalties for specific crimes will be perceived as a form of leniency that weakens the deterrent effect. This perception could affect public confidence in law enforcement and have an impact on reducing the sense of security in society. The changes to the minimum penalties in the National Criminal Code can only achieve the objectives of punishment if they are accompanied by the recovery of state losses, the application of additional sanctions, and consistency in verdicts. In terms of rehabilitating offenders, the penalties in the National Criminal Code treat offenders as subjects who can be reformed through an individualized approach to punishment. However, conditions on the ground show that the rehabilitation system for prisoners convicted of corruption still faces structural and cultural problems, so it has not been able to address the specific characteristics of the perpetrators. Therefore, changes to specific minimum penalties risk not achieving their normative objectives if they are not followed by improvements to the rehabilitation system.

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