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Degradation of the Stigma of Prison as a Criminal School Through Supervised Sentence as an Alternative to Imprisonment

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Abstract

With the development of penal theory, the retributive approach to punishment is increasingly seen as misaligned with the needs of society. As a result, there is a recognized need for legal provisions that reflect societal values and emphasize punishment goals that strengthen the community. Prison sentences often lead to issues such as overcrowded facilities and a failure to meet punishment goals. Additionally, many convicts tend to become recidivists after completing their sentences in correctional institutions, reinforcing the stigma of prisons as "criminal schools." The issues to be examined include: a) how are conditional sentences regulated in Law Number 1 of 1946?; and b) how is the policy of supervision sentences as an alternative to imprisonment in degrading the stigma of prison as a criminal school? The research was conducted using a normative method, with a legislative approach. The legal materials used include both primary and secondary legal materials, which were analyzed using deductive analysis techniques. Under the old Penal Code, conditional sentences did not involve immediate imprisonment; instead, the convicted person was given the opportunity to prove their ability to live as a good citizen during a specified probation period. In contrast, the National Penal Code

introduces alternatives to prison sentences, such as supervision sentences. These supervision sentences in the National Penal Code serve as an extension of conditional sentences, placing greater emphasis on more intensive and structured supervision. The placement of convicts outside correctional institutions is considered the primary penal system, with the imposition of supervised sentences based on general and specific requirements. In future implementation, an ideal model for the execution of this supervisory sentence is required.

Keywords
Criminal Code; Sentencing; Supervision Penalty.

Introduction

Indonesia inherited the implementation of material criminal law from the Dutch, specifically the Wetboek van Strafrecht (WvS), which is known as the Penal Code (hereinafter referred to as the Penal Code. Its enforcement is based on the principle of concordance, which serves as a basis for adjustment or equivalence underlying the enforcement of European law in Indonesia during that time.[1] This provision is outlined in Article 1 of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia, as follows:

> "All existing laws and regulations shall remain in effect until new ones are established in accordance with this Constitution."

The aforementioned transitional rules serve as the basis for the enforcement of colonial legislation with the aim of preventing legal vacuums. The current Penal Code in effect is a material criminal law inherited from the colonial era, enacted through Law Number 1 of 1946 concerning Regulations on Criminal Law. The spirit of punishment

[1] St. Ika Noerwulan Fraja, Nadiya Ayu Rizky Saraswati, and Ury Ayu Masitoh, "Perbandingan Penerapan Hukuman Mati Di Indonesia Dan Belanda," *DIVERSI : Jurnal Hukum* 7, no. 1 (April 30, 2021): 50–75, doi:10.32503/diversi.v7i1.1117.

reflected in the Penal Code inherited from the colonial era is aimed at retribution.[2] This is evident in the primary offenses outlined in each article, which focus on the deprivation of an individual's liberty, essentially resulting in imprisonment. The essence contained in that absolute theory is that crime must be punished with sanctions that inflict suffering on the perpetrator.

The punitive measure that inflicted suffering for offenders during the colonial era involved imprisonment, commonly referred to as "colonial prisons," which aimed to subjugate the indigenous population. For the colonial government, prisons served not merely as places of detention but tools of social control. Indigenous people deemed to have violated colonial laws or involved in political resistance were frequently imprisoned. In contrast, with the advent of Indonesia's independence, the prison system underwent a transformation toward the concept of social rehabilitation.[3] The concept of prison begins to shift from a place of physical punishment to an institution focused on moral rehabilitation and skill development for inmates. However, the Indonesian correctional system faces significant challenges, one of which is overcrowding. Many prisons in Indonesia accommodate inmates well beyond their intended capacity, leading to inhumane conditions.

Overcrowding in prisons and punitive sanctions for offenders, along with the development of penal theory, have rendered the retributive purpose of punishment misaligned with societal needs. Consequently, there is a pressing need for legal provisions that reflect societal values and foster a rehabilitative goal for punishment that builds society. From a sociological perspective, legal reform, aims to establish legal norms that can reflect the cultural values of a nation. This legal reform seeks to ensure

[2] 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 (May 28, 2021): 217–27, doi:10.14710/jphi.v3i2.217-227.

[3] Muhammad Ramadhan and Dwi oktafia ariyanti, "TUJUAN PEMIDANAAN DALAM KEBIJAKAN PADA PEMBAHARUAN HUKUM PIDANA INDONESIA," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 5, no. 1 (March 30, 2023): 1–6, doi:10.52005/rechten.v5i1.114.

that the substance of legal products emerges from a cultural criminal justice system, which encompasses the attitudes and values that influence the functioning of system. The development of law in accordance with the societal values represents as a concrete step in reorienting and reformulating criminal law. In Indonesia, restorative justice is prioritized to support the penal system within the framework of upholding legal norms and protecting society.

Restorative justice cannot be achieved through the imposition of criminal sanctions that deprive offenders of their liberty, particularly through imprisonment, which remains the most frequently imposed type of punishment by judges, even though there are other principal punishments as referred to in Article 10 of the Penal Code. This is evident in the data presented by the Ministry of Law and Human Rights as of 2023, which states that the number of inmates in correctional institutions is 273,846 people, while the capacity for correctional facilities is 143,530 people.[4] Along with the development of penal theory, that not only focuses on retribution but shifts towards the restoration of the state of both the victim and the perpetrator of the crime. This transformation will advocate for a more humane treatment of offenders while still prioritizing victim protection through alternative measures that align with the cultural values of the nation. The exploration alternatives to imprisonment seeks to minimize the negative impacts arising from the punishment for deprivation of liberty, especially from the perspective of the offender.

Imprisonment as a punishment for the deprivation of liberty stems from an individualistic perspective that has been accommodated in the Penal Code (Wetboek van Strafrecht or WvS) since its implementation in Indonesia. From a philosophical point of view, the crime of deprivation of liberty has contradictory aspects, including the purpose of the prison as a

[4] Directorate General of Corrections, "Jumlah Penghuni Lembaga Pemasyarakatan (Lapas), Rumah Tahanan Negara (Rutan), Lembaga Pembinaan Khusus Anak (LPKA), Lembaga Pemasyarakatan Perempuan (LPP)," August 19, 2024, https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni.

means of guaranteeing the security of the detainees and providing opportunities for the prisoner to be rehabilitated.[5] Such a situation then gives rise to the stigma in society that correctional institutions are seen as schools of crime, commonly referred to as "Prison as a Criminal School," and fosters the perception of the inmates' inability to reintegrate into society after their release from prison.[6]

The tendency to view correctional institutions as schools of crime, or "prison as a criminal school," arises from the high rate of recidivism in Indonesia. In the year 2020, the recidivism rate was 18.12% of the total prisoners in Indonesia. This data indicates that the recidivism figures in Indonesia are still within the global ratio range, which is 14-45%.[7] The situation denotes a negative impact on the effectiveness of prison sentences in deterring offenders from committing crimes. Non-custodial sentencing alternatives in the Penal Code have been regulated in Article 14 letters a to f regarding conditional sentences. Conditional sentences outlined in the provisions of the Penal Code require the specific implementation of conditional sentences. This includes sentencing to imprisonment for less than one year, detention that does not serve as a substitute for fines, and fines that cannot be paid by the convicted person, which can alternatively be converted into conditional sentences. The consequence of imposing such a criminal sentence is that the convicted individual is subject to the judge's ruling, but its execution is postponed under certain conditions or requirements. As previously explained, this form of conditional punishment, is commonly referred to in practical terms as probation.[8]

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5 Zainab Ompu Jainah, *Kapita Selekta Hukum Pidana* (Tangerang: Tira Smart, 2018).

6 Anna Piil Damm and Cédric Gorinas, "Prison as a Criminal School: Peer Effects and Criminal Learning behind Bars," *The Journal of Law and Economics* 63, no. 1 (February 2020): 149–80, doi:10.1086/706820.

7 Ahmad Arif, "Pemenjaraan: Antara Memulihkan Atau Menciptakan Residivis," 2020, https://www.ditjenpas.go.id/pemenjaraan-antara-memulihkan-atau-menciptakan-residivis.

8 Oheo Kaimuddin Haris et al., "Penjatuhan Sanksi Pidana Percobaan Dalam Perkara Tindak Pidana Korupsi (Putusan Pengadilan Nomor 48/Pid.Sus.TPK/2021/PN.Kdi)," *Halu Oleo Legal Research* 5, no. 2 (2023): 428–42, doi:https://doi.org/10.33772/holresch.v5i2.293.

Conditional sentencing or probation in the Penal Code is an alternative norm in the execution of a prison sentence. This is because probation is not considered the main punishment as referred to in Article 10 of the Penal Code. According to Barda Nawawi Arief,[9] the provisions governing probation are viewed less effective in addressing the rigidity of the imperative penal system, which is often inseparable from probation as a mode of punishment (strafmodus) rather than a distinct type of punishment (strafsoort). Therefore, legal reform seeks to establish a new paradigm in national criminal law policy that accommodates sentencing with the objectives of punishment and the direction of new sentencing theories.

The theory of punishment that shifts from retribution towards restorative justice is reflected in the reformulation of the Penal Code as regulated in Law Number 1 of 2023 on the Penal Code (hereinafter referred to as the National Penal Code). This new code provides a policy direction towards more humane punishment for offenders while still considering the interests of the victims. The National Penal Code no longer prioritizes retribution as the main goal of punishment. This shift is evident from the existence of supervision penalties and community service penalties, which have become the main penalties in the National Penal Code and simultaneously serve as alternatives to imprisonment of which specific provisions and conditions have been restricted in the National Penal Code. The National Penal Code thus accommodates a transition in the direction of sentencing from the retributive justice of the previous Criminal Penal to a restorative justice framework that balances two aspects of protection for both victims and offenders.

The goals of punishment are outlined in Article 51 of the National Penal Code, which includes the following: preventing criminal acts by

[9] Afifah Firdaus and Indra Yugha Koswara, "Pembaharuan Hukum Pidana Di Indonesia: Analisis Tentang Pidana Pengawasan Dan Asas Keseimbangan," *LEX RENAISSANCE* 9, no. 1 (2024): 1–22, doi:https://doi.org/10.20885/JLR.vol9.iss1.art1.

upholding legal to protect and promote the welfare of society; reintegrating convicted individuals into society through guidance and rehabilitation by helping them become good and productive citizens; resolving conflicts arising from criminal acts, restoring balance, and bringing about a sense of security and peace in the community; and encouraging feelings of remorse and alleviating guilt in the convicted individuals. These goals are framed within the context of victims protection and the restoration of disrupted societal values.

As previously stated, the National Penal Code's definition of punishment runs contradicts the essence of incarceration. P.A.F. Lamintang stated that imprisonment deprives the defendant of their right to freedom.[10] Criticism regarding prison sentences arises because this type of punishment removes freedom and leads to various negative consequences associated with the imposition of imprisonment. The crime of deprivation of liberty can be understood as a form of punishment imposed on an individual confined in a location that results in the loss of their freedom. Criticism of imprisonment also comes from the UN, based on the Congress report from 1975 in Geneva regarding the Prevention of Crime and the Treatment of Offenders. Additionally, in its development, criticism has emerged calling for the abolition of prison sentences, as stated in the International Conference on Prison Abolition. (ICOPA).[11] The widespread rejections of prison sentences have led to a crisis in viewing imprisonment as a deprivation of a person's freedom. However, many countries continue to incorporate imprisonment within their penal systems.

[10] Ahmad Fajri, "Pidana Kerja Sosial Dalam Membatasi Kelebihan Penghuni Di Lembaga Pemasyarakatan," *Jurnal Lex Renaissance* 4, no. 1 (January 1, 2019): 46–64, doi:10.20885/JLR.vol4.iss1.art3.

[11] Billy Agustio, Ino Susanti, and Tian Terina, "PERSPEKTIF ALTERNATIF PEMBERIAN PIDANA KERJA SOSIAL BAGI ANAK DITINJAU DARI TUJUAN PEMIDANAAN (Studi Pengadilan Negeri Kelas IA Tanjungkarang)," *Viva Themis Jurnal Ilmu Hukum* 4, no. 2 (October 30, 2021): 145–59, doi:10.24967/vt.v4i2.1728.

Imprisonment remains a component of the penal system in Indonesia, including under the National Penal Code. However, the key distinction from the previous Penal Code is the introduction of alternatives to serving prison sentences. The alternatives, as outlined in the National Penal Code, include supervisory penalties regulated in Articles 75 to 77, and community service penalties outlined in Article 85. The reformulation that has been embodied in the changes to the National Penal Code by incorporating supervisory penalties and community service as primary penalties that simultaneously serve as alternatives to imprisonment, aligns with the objectives of punishment as stated in Article 51 of the National Penal Code. This change represents a shift toward a more humane paradigm of punishment.[12] This paper will focus on examining and explaining how supervised probation plays a role in preventing the recurrence of criminal acts through the prevention of criminal stigma in correctional institutions, which is expected to be more effective in achieving the goals of sentencing, including prevention, deterrence, and rehabilitation. The issues to be examined in this paper include: a) how are conditional sentences regulated in Law Number 1 of 1946? and b) how the policy of supervision as an alternative to imprisonment in degrading the stigma of prison as a criminal school? Based on the above background, the author is interested in further examining the norms of supervision sentences in degrading the stigma of prison as a criminal school with the title "DEGRADATION OF THE STIGMA OF PRISON AS A CRIMINAL SCHOOL THROUGH SUPERVISION SENTENCE AS AN ALTERNATIVE TO IMPRISONMENT".

[12] Muhammad Ramadhan and Dwi Oktafia Ariyanti, "TUJUAN PEMIDANAAN DALAM KEBIJAKAN PADA PEMBAHARUAN HUKUM PIDANA INDONESIA."

Method

This research is conducted using normative research. The issues in this study will be examined using penal theory and analyzed using relevant legislation, as outlined below. Peter Mahmud Marzuki defines normative research as a process aimed at discovering legal rules, legal principles, and legal doctrines in order to address legal issues encountered.[13] Library materials will serve as primary data for analysis. Furthermore, in normative research, law is often conceptualized as a rule or norm that guides human behavior deemed appropriate. The approach used in this research is the statute approach, which involves examining all laws and regulations related to conditional criminal norms in the old Penal Code and supervisory criminal norms in the National Penal Code as the main penal system.[14] The normative research method was chosen to analyze the supervisory criminal norm as an alternative to imprisonment in the National Penal Code compared to the conditional criminal norm found in the old Penal Code, in order to realize the goals of punishment as outlined in the National Penal Code. The legislation includes the Penal Code and Law Number 1 of 2023, also known the National Penal Code. The legal materials for this research consist of both primary and secondary legal materials. The secondary legal materials include books, journals, reports, and other documents that support the research. The data analysis method employed in this research applies a deductive technique, which can be defined as a data analysis method that starts from general data to draw specific conclusions. Several stages in the deductive research process include formulating hypotheses, designing the research study, collecting data, analyzing data, and drawing conclusions.

[13] Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "METODOLOGI NORMATIF DAN EMPIRIS DALAM PERSPEKTIF ILMU HUKUM," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1–20, doi:10.51749/jphi.v2i1.14.

[14] Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 1, 2020): 20–33, doi:10.14710/gk.2020.7504.

Result and Discussion

A. Conditional Sentences in the Provisions of Law Number 1 of 1946

The basis for asserting that criminal law is applicable throughout the Republic of Indonesia's territory is Law Number 1 of 1946 on Criminal Law. The Penal Code, which consists of three books, includes Book One on General Provisions, Book Two on Crimes, and Book Three on Offenses. While containing general normative provisions, the Penal Code also qualifies actions that can incur penalties for crimes or violations committed. The types of penalties are governed by Article 10 of the Penal Code. These include primary penalties such as death penalty, imprisonment, confinement, fines, and closure penalties, as well as additional penalties like the restriction of certain rights, the seizure of particular objects, and the publication of the judge's ruling.[15] The purpose of punishment in the Penal Code is not explicitly defined in any normative provision; thus, the purpose of punishment has only been based on the doctrines of experts. Muladi, in his book "Theories and Criminal Policy," states that the concrete goals of punishment are integrative, with the objectives being:[16] a) general and specific prevention; b) protection of society; c) maintaining social solidarity; and d) balancing/equilibrium.

The purpose of punishment, as outlined above, is conveyed by Muladi with a focus on a case-by-case basis. Muladi then elaborated further:[17]

> "Muladi finally proposed a notion of punishment objectives, which he called integrative punishment goals (humanity within

[15] *Ibid.*

[16] Syarif Saddam Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (September 28, 2022): 176–88, doi:10.33561/holrev.v6i2.4.

[17] Lilik Mulyadi, "Pergerseran Perspektif Dan Praktik Dari Mahkamah Agung Republik Indonesia Mengenai Putusan Pemidanaan," 2021, https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/pergeseran_perspektif_dan_praktik_dari_mahkamah_agung_mengenai_putusan_pemidanaan.pdf.

> the Pancasila system), based on the examination of the three theories of criminal punishment. The foundational premise of this integrated theory of punishment purposes is that criminal activity damages both people and society by upsetting the harmony, balance, and congruity of communal life. Punishment is intended to make up for the harm that illegal activities have caused".

Law enforcement officials then subjectively adhere to the expert-proposed criminal prosecution aims. It is anticipated that criminal law would have a deterrent impact on criminals by taking into account the various forms of punishment and the goals of criminal sentencing mentioned above. This is evident in the punitive system that the court imposes while imposing an incarceration term. The use of incarceration as the form of punishment for the majority of offenses covered by the Penal Code reflects the spirit of vengeance included in the Dutch colonial heritage Penal Code. Probation is not recognized by the Penal Code because it would be confused with attempted offenses, which are covered under Article 53 of the Penal Code. As a result, the Penal Code refers to the alternative method of serving jail time as a "conditional sentence".

Law enforcement officials often subjectively adhere to the criminal prosecution aims proposed by experts. It is expected that criminal law will deter criminals by considering the various forms of punishment and the goals of criminal sentencing mentioned earlier. This expectation is evident in the punitive system that courts apply when imposing incarceration terms. The use of incarceration as the primary form of punishment for most offenses covered by the Penal Code reflects the spirit of vengeance rooted in the Dutch colonial heritage of the Penal Code. Probation is not recognized by the Penal Code, as it may be confused with attempted offenses, which are addressed under Article 53. Consequently, the Penal Code refers to the alternative method of serving

jail time as a "conditional sentence."

Conditional sentencing can be defined as an alternative to imprisonment imposed by a judge on an individual in a ruling with general conditions established, such as the requirement that the convicted refrains from committing any criminal acts during the specified probation period as well as, specific conditions, such as considering the individual's good behavior while serving the sentence.[18] Conditional sentences imposed by a judge if the punishment is no more than one year or if it involves a detention sentence, excluding substitute detention. The judge's ruling can also specify that the punishment does not need to be served.[19]

Under conditional sentencing, the convicted person is not required to serve the imposed sentence unless they violate the established general or specific provisions. Prof. Muladi argues that conditional sentencing is a form of punishment in which the convicted person does not need to serve the sentence unless they violate the general or specific conditions set forth in the ruling during the probation period.[20] The general and specific conditions attached to conditional sentences also categorize them as contractual sentences. In terms of enforcement, conditional sentences, involve postponing the execution of the imposed penalty. This implementation reflects the spirit of providing an alternative to prison sentences, allowing the convicted individual the opportunity during the probation period to improve themselves and to commit firmly to not committing any further offenses or violate the stipulated conditions.

In reality, judges have not always imposed probationary terms for

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[18] Adul Halim Kaongo, "Pengawasan Vonis Pidana Bersyarat Sebagai Alternatif Pemidanaan," *DINAMIKA HUKUM* 13, no. 3 (2022): 1–25, https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/view/8455.

[19] Cindy Nataline Cristina, "Adakah Perbedaan Antara Pidana Bersyarat Dan Pidana Percobaan," 2024, https://www.hukumonline.com/klinik/a/adakah-perbedaan-antara-pidana-bersyarat-dan-pidana-percobaan-lt54e4d15b78188/.

[20] Gina Sabrina and Fazal Akmal Musyarri, "URGENSI PENERAPAN PIDANA PENGAWASAN DALAM UNDANG-UNDANG NOMOR 1 TAHUN 2023 TENTANG KUHP," *Jurnal Yudisial* 16, no. 1 (December 24, 2023): 65–82, doi:10.29123/jy.v16i1.586.

all identical offenses or those with the same substantial core that satisfy the requirements listed in Article 14 letters a to f of the Penal Code. According to Article 14a, conditional sentences can only be imposed if the defendant is sentenced to a maximum of one year or a term of incarceration, excluding substitute detention. The judge's ruling, it may also be specified that the sentence need not be served, unless there is a subsequent ruling from the judge determining otherwise. This can occur if the convict commits another offense before the specified probation period expires or fails to meet any special conditions stipulated in that order during the probation period.

The judge also has the authority as mentioned above, except in cases concerning state income and leasing when imposing a fine. However, it must be evident to the judge that the fine or confiscation that may also be ordered would severely burden the convict. In applying this article, crimes and violations related to narcotics are only considered matters concerning state revenue if it is determined that the provisions of Article 30, paragraph 2, do not apply when imposing a fine. Furthermore, if the judge does not determine otherwise, the order regarding the principal penalty also applies to additional penalties. An order is not given unless the judge, after careful investigation, is convinced that adequate supervision can be established to ensure that the convicted person will not commit further crimes and that any specific conditions, if stipulated, will be met.

Based on the description above, it can be concluded that conditional sentencing, viewed from the perspective of the purpose of punishment, is focused the resocialization of the offender rather than retribution for the actions committed. Therefore, the purpose of imposing sanctions is not merely to penalize someone for committing a crime, but to prevent individuals from committing a crime in the first place. Conditional sentencing, as a postponement of prison execution regulated in the Penal Code, aims to prevent the negative influence that the adverse effects of

imprisonment can have on the convicted individual. This approach has faced strong criticism for being ineffective in achieving the systematic goals of criminal punishment. The urgency of implementing alternative prison sentences in degrading the stigma of prison as a criminal school, rather than relying on the implementation of traditional prison sentences, which will have a more detrimental impact, will be discussed further in the next subsection.

According to Article 14c of the Penal Code, the judge may impose specific conditions requiring the convicted person to compensate for all or part of the losses incurred by their criminal act within a period shorter than the probationary period, in addition to the established general requirements that the convicted person will not commit any further crimes during the probation period. Furthermore, other specific conditions regarding the behavior of the convicted person may also be imposed, which must be fulfilled during the probation period or during part of the established probation period. Given that criminal law is an ultimum remedium, it is essential to consider the balance between the victim, society, and the offender when imposing prison sentences as a form of punishment for convicted individuals.[21] This means that imprisonment is imposed only when other efforts to resolve the case have been pursued but have not yielded the expected outcome.

According to Article 14d of the Penal Code, the prosecutor or other authorized officials responsible for executing the verdict are tasked with providing monitoring throughout the administration of conditional sentences. This responsibility aligns with the Code of Penal Procedure's Article 270, which states that the prosecutor serves as the executor of court rulings that are legally binding indefinitely. Subsequently, the judge may issue an order requiring institutions that are legal entities and based in Indonesia, or the leader of a shelter located there, or certain officials, to provide assistance or support to the convicted individual in fulfilling specific requirements.

Regarding the specific conditions previously set by the judge, Article 14e states

[21] Afifah Firdaus and Indra Yugha Koswara, "Pembaharuan Hukum Pidana Di Indonesia: Analisis Tentang Pidana Pengawasan Dan Asas Keseimbangan."

that, the judge who decides the case at the first level may, upon the request of the convicted person, change the specific conditions established for serving the probation period. Additionally, the judge may also order someone other than the originally designated person to provide assistance to the convicted individual and may extend the probation period once, for a maximum of half of the longest time allowed for probation.

The execution of a probationary sentence, if accompanied by the commission of another criminal act by the convicted person, will result in the imposition of a definitive sentence. Unless the probation period has expired, a new order to carry out the sentence cannot be issued. The points are defined limitatively in Article 14f. The application of conditional sentences, as described, can provide the following benefits:[22] a) on one hand, the conditional sentence should enhance individual freedom, while on the other hand, it must maintain legal order and effectively protect society from further legal violations; b) the conditional sentence should improve public perception of the philosophy of rehabilitation by maintaining a continuous relationship between inmates and society in a normal manner; c) the conditional sentence seeks to avoid and mitigate the negative consequences of deprivation of liberty, which often hinders the reintegration of inmates into society; d) the conditional sentence reduces the costs that society must incur to finance an effective correctional system; e) the conditional sentence is expected to limit the losses resulting from the application of deprivation of liberty, especially for those whose lives depend on the offender; and f) the conditional sentence is expected to fulfill the integrative goals of punishment, serving as a means of prevention (both general and specific), protecting society, maintaining social solidarity, and providing restitution.

The alternative model for implementing prison sentences, as previously outlined, is an alternative form that emphasizes self-

[22] Bagus Sujatmiko and Milda Istiqomah, "Mendorong Penerapan Pidana Bersyarat Pasca Keputusan Direktur Jenderal Badan Peradilan Umum Nomor 1691/DJU/SK/PS.00/12/2020 Sebagai Alternatif Keadilan Restoratif," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 46–62, https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/download/787/526.

improvement by the convicted individual. In imposing conditional sentences, the judge in their ruling must ensure that the general and specific conditions set forth by the Penal Code are met.[23] Efforts to prevent and address crime through the selection and application of penal measures are integral to criminal policy and, more broadly, are part of social policy, which includes social welfare policy and social defense policy.[24] Therefore, balancing criminal policy with community welfare and public protection is essential for achieving a more humane penal objective.

B. The Policy of Criminal Supervision Regulation as an Alternative to Imprisonment in the National Penal Code in Degrading the Stigma of Prison as a Criminal School

Many groups have criticized imprisonment as one of the primary punishments outlined in the Penal Code. This criticism is closely linked to the implementation of prison sentences, which involve the deprivation of liberty, and stems from the retributive purpose of punishment. With the ongoing development of the prison system, its mechanism are increasingly considered ineffective, compounded by inhumane practices and is also supported by a high recidivism rate.[25] While the use of imprisonment as a type of punishment remains unavoidable and continues to be the primary form of sanction in legislation, there is a pressing need for the realization of alternative forms of imprisonment.

The shift in the National Penal Code from retributive to rehabilitative justice has transformed the imposition of penalties from exacting revenge on the offenders to focusing on the recovery of both the

[23] Republic of Indonesia, *Kitab Undang-Undang Hukum Pidana (KUHP)* (Jakarta: State Secretariat, 1946), https://www.hukumonline.com/pusatdata/detail/lt4c7b7fd88a8c3/wetboek-van-strafrecht-%28wvs%29-kitab-undang-undang-hukum-pidana-%28kuhp%29/.

[24] Hanafi Amrani, *Politik Pembaruan Hukum Pidana* (Yogyakarta: UII Press, 2019).

[25] S. Samsu and H. M. Yasin, "Optimalisasi Pelaksanaan Pembinaan Residivis Narapidana Narkotika Pada Lembaga Pemasyarakatan," *Al-Ishlah: Jurnal Ilmiah Hukum* 24, no. 1 (May 26, 2021): 18–38, doi:10.56087/aijih.v24i1.60.

victim and the offenders. According to Thomas Kuhn, a paradigm shift is a new concept, method, or framework of thinking that replaces the old one when it becomes irrelevant or unable to address emerging issues.[26] Such shifts are natural occurrences, as no aspect of a paradigm is absolute. New paradigms continually emerge and are often viewed as conflicting with older paradigms due to the inherently 'consensual' nature of paradigms themselves.

According to Umbreit, "restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime." James Dignan in Understanding Victims and Restorative Justice, notes that Albert Eglash first used the term "restorative justice" to distinguish between three types of criminal justice: distributive justice, retributive justice, and restorative justice. Eglash argues that retributive justice, aims to punish the offender for the crime they committed.[27] The rehabilitation of the offenders is the aim of distributive justice, however. In contrast, restorative justice is based on the idea of restitution, involving both the victim and the offender in a process designed to secure the victim's compensation and facilitate the offender's rehabilitation.

The National Penal Code has undergone a paradigm shift with a manifestation from retributive justice to rehabilitative justice. This new approach prioritizes the aspect of rehabilitation for both the perpetrator and the victim, as evidenced by the adoption of supervisory penalties and community service penalties in the core criminal norms in addition to imprisonment. Alternative forms of imprisonment can be defined as methods of executing that do not involve placing an individual in an

[26] Irmawanti and Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana."

[27] Roni Bahari, Natangsa Surbakti, and Muchamad Iksan, "Resolution of Theft Cases Using Restorative Justice Approaches in Court," *Al-Ishlah: Jurnal Ilmiah Hukum* 27, no. 2 (June 9, 2024): 113–34, doi:10.56087/aijih.v27i2.461.

institution or detention facility. Penal Reform International asserts that:[28]

> "Alternatives to incarceration include a variety of penalties designed to mend the connection between the victim, the offender, and the larger community while taking into account the victim's interests, the criminal's rehabilitation requirements, and the safety of society. Alternative strategies include community service, mediation, diversion, and financial and administrative penalties".

The most common response to crime and deviance in society is punishment, which is one type of censure applied by government authority. A country can impose penalties on its citizens who commit acts that are prohibited by laws and regulations. Punishment is =directed solely at individuals who are mentally competent and capable of taking responsibility for their action.[29] Those who are unable to take responsibility is considered blameless; therefore, it is impossible to impose a criminal sentence on them, though other actions may be taken.

Remmelink stated that criminal sanctions do not have an independent purpose that must be pursued and discovered, rather, they should be viewed as something that correlates and is interconnected with legal norms.[30] Similarly, Lamintang argued that punishment is essentially just a form of suffering or merely a tool, asserting that it is not an objective and cannot possibly possess a true purpose. Criminal sanctions are intended to protect legal norms, serving only as a preventive measure as long as those norms remain unviolated. However, when a violation

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[28] Genoveva Alicia K.S. Maya et al., *Alternatives to Imprisonment: Provision, Implementation, and Projection of Alternatives to Imprisonment in Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2019), https://icjr.or.id/wp-content/uploads/2020/03/Alternatives-to-Imprisonment_Indonesia.pdf.

[29] Sherlina Mandagi and Jeanitas A. Kermite, "Pemidanaan Percobaan Kejahatan Dalam Delik Aduan," *LEX CRIMEN* X, no. 10 (2021): 35–44, https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/38569.

[30] Joko Sriwidodo, *Kajian Hukum Pidana Indonesia: Teori Dan Praktek* (Yogyakarta: Kepel Press, 2019).

occurs, the effectiveness of criminal sanctions shifts, becoming repressive in nature.

Andi Hamzah distinguishes the purposes of punishment as a means of rehabilitation, restriction, retribution, and deterrence.[31] The theory of rehabilitation as explained by Terance states that the theory of rehabilitation is based on the main principle that punishment is given to correct and change the offender.[32] The essence of this theory is to reintegrate individuals into a constructive social environment through the consolidation of care, education, and training. The theory of restriction seeks to limit an individual's physical space to prevent them from committing crimes or engaging in harmful actions. Meanwhile, the theory of retribution as a general theory recognizes the principle of *lex talionis*, which requires that punishment be imposed on the offenders equivalent to the crime committed. Finally, the theory of deterrence is based on the rational conception of humans as beings who fundamentally seek to maximize pleasure and avoid suffering.

The theories above illustrate the state's objective to address every crime through its criminal law regime. Criminal punishment refers to the measures or actions imposed by the state specifically, the court in response to a crime. Punishment is deliberately administered to the convicted in order to provide them with an unpleasant experience, aimed at motivating them to act better in similar situations in the future. It may also serve as retribution, helping victims cope with the harm caused by the crime. For this punishment to be carried out effectively, however, the severity of the penalty must be imposed proportionally, taking into account the seriousness of the crime committed. Excessively light or harsh penalties risk being ineffective in motivating people to refrain from committing crimes in the future.

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[31] Irmawanti and Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana."

[32] Sherlina Mandagi and Jeanitas A. Kermite, "Pemidanaan Percobaan Kejahatan Dalam Delik Aduan."

Non-prison punishments are sometimes referred to as alternatives to incarceration, non-custodial measures, non-custodial penalties, prison alternatives, or alternative sanctions. Non-custodial sentences refer to a concept designed to avoid the imposition of prison sentences at various stages in the criminal justice system. Non-imprisonment punishment is "a punishment option that is considered on a continuum to fall between traditional probation supervision and traditional incarceration," according to the US Department of Justice".[33] Meanwhile, the Tokyo Rules use the term "non-custodial measures".[34] This term refers to a decision made by the relevant authorities in the stages of the criminal justice process, requiring an individual suspected or convicted of committing a crime to fulfill certain obligations without imprisonment. The concept of non-custodial punishment is expanded to provide options that allow for the duplication of traditional guarantees for some convicts who have been sentenced to prison.

The concept of non-custodial punishment has emerged due to the many changes in perception among experts regarding crime and its accountability. Another influence that arises from this concept is due to a doubt regarding the prison's ability to rehabilitate convicts. Before the emergence of the concept of non-custodial punishment, proponents of the classical school believed that imprisonment was the most appropriate method to punish someone.[35] A number of experts disagree with the approach and argue that imprisonment has negative characteristics and consequences, necessitating a new concept to avoid these negative impacts, namely non-custodial forms of punishment. The concept of non-custodial sentences are designed to facilitate, rather than hinder, the

[33] Turnip Mega Marta, Mahendra, and Rika Erawaty, "Penanganan Terbaik Pada Kelebihan Kapasitas Lembaga Pemasyarakatan Di Beberapa Negara," *RISALAH HUKUM* 19, no. 1 (2023): 1–18, https://e-journal.fh.unmul.ac.id/index.php/risalah/article/view/1015.

[34] Maria Ulfah, "Pidana Kerja Sosial, Tokyo Rules, Serta Tantangannya Di Masa Mendatang," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (September 30, 2021): 517–35, doi:10.24843/JMHU.2021.v10.i03.p07.

[35] Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan."

reintegration of offenders into society, whereas imprisonment often complicates reintegration efforts upon release.

Alternatives to imprisonment or non-custodial sentences are considered suitable for offenders with certain characteristics. These characteristics help determine the most appropriate and fitting form of punishment. For example, recidivists who are highly unlikely to reoffend, regret their actions, and hold a stable position within society may be eligible for alternative sentences. Those who meet the general and specific requirements for the imposition of supervisory punishment may be subjected to an alternative execution of prison sentences while still adhering to the objectives of the National Penal Code.

Alternative implementations of imprisonment or non-custodial penalties are considered suitable for offenders with certain characteristics. These specific characteristics help determine the most fitting punishment for the existing conditions. For example, non-custodial sentences may be appropriate for recidivists who are unlikely to reoffend, genuinely regret their actions, and hold a stable social standing. Non-custodial sentences function in two main ways.[36] The first character is about prevention to protect society; and the second one is repression, which can be understood as punishing the perpetrators of crime. The main goal to be achieved with this non-custodial punishment is to combat crime without imposing restrictions on an individual's freedom.

As an alternative to incarceration, non-custodial penalties—specifically, community service and monitoring penalties—have been allowed under Law Number 1 of 2023 on the National Penal Code (henceforth referred to as the National Penal Code). As previously discussed, supervision penalties and community service penalties in the National Penal Code are considered primary types of punishment, which

[36] Firmansyah and Riska Amalia Armin, "Sanksi/Pidana Kerja Sosial: Telaah Double Track System (Mono-Dualistik/Daad-Daader Strarftrecht)," *Madani Law Review* 5, no. 2 (2021): 53–74, doi:https://doi.org/10.31850/malrev.v5i2.1436.

do not stand alone but rather serve as alternative forms of implementing imprisonment.[37] Articles 75 to 77 of the National Penal Code include the rules governing surveillance penalties.

The explanation of Article 75 of the National Penal Code describes that surveillance punishment is one type of primary punishment, but it is actually a method of executing imprisonment and is therefore not specifically threatened in the formulation of a criminal act. According to the Penal Code, established by Law Number I of 1946 on Criminal Law Regulations, supervised punishment serves as a form of rehabilitation conducted outside of institutions or prisons and is equivalent to conditional incarceration. This punishment an alternative to imprisonment and is not designed for serious crimes.

Article 75 states that the Defendant may be subjected to supervision if the crime committed is punishable by imprisonment for a maximum of 5 (five) years. The imposition of supervision shall not exceed the maximum imprisonment penalty threatened, which is no more than 3 (three) years. Furthermore, Article 76, stated that the imposition of surveillance penalties on individuals who commit crimes punishable by imprisonment is entirely at the discretion of the judge, taking into account the circumstances and actions of the convicted individual. This type of punishment is imposed on individuals who commit a crime for the first time. In the imposition of criminal penalties, general and specific conditions are provided as referred to in Article 76, paragraph (2) and paragraph (3). The general requirement established is that the convicted person must not commit another crime. Meanwhile, the specific requirements are as follows: a) the convicted person must compensate for all or part of the losses arising from the crime committed within a certain period shorter than the supervision sentence; and b) the convicted person must do or refrain from doing something without diminishing the

[37] Republic of Indonesia, "Law Number 1 of 2023 on the Criminal Code" (Jakarta: State Secretariat, 2023).

freedom of religion, the freedom to adhere to beliefs, and/or the freedom of politics.

The general conditions established, as mentioned above, indicate that if violated by the convicted person, the individual must serve a prison sentence that does not exceed the maximum penalty for the original crime.[38] Meanwhile, the consequence for the convicted individual in the event of violating the specific conditions set without valid reasons is that the prosecutor, based on the considerations of the community supervisor, proposes to the judge that the convicted person serve a prison sentence or extend the supervision period determined by the judge, which shall not exceed the supervision penalty imposed. Article 77 clearly states that if a convict commits a crime while serving a supervisory sentence and is subsequently sentenced to a punishment other than the death penalty or imprisonment, the supervisory sentence will still be enforced. However, if the convict is sentenced to imprisonment during the supervisory period, the enforcement of the supervisory sentence is postponed and will take place only after the convict has served the prison sentence.

If compared to the implementation of prison sentences, especially for crimes with short sentences, supervision sentences can address the issue of overcrowding in correctional facilities. This is followed by a note that the implementation of supervisory penalties is carried out with a well-thought-out concept, from the execution of the penalty to its supervision. The labeling borne by perpetrators of certain crimes that are not serious offenses, and who are sentenced to prison, will have a greater impact when the convicted individuals return to society. Therefore, the concept of the ideal implementation of supervisory criminal sanctions becomes urgent to succeed in significant steps towards restorative justice, considering that the implementing regulations of Law Number 1 of 2023 on the Penal Code have not yet been established.

The concept of restorative justice, which is founded on the balance

[38] *Ibid.*

between the victim, the offender, and society, is emphasized in an alternate model for the execution of jail terms in the form of monitoring. One thing that needs to be highlighted regarding the imposition of prison sentences aimed at deterring offenders is that, according to Prof. Barda Nawawi Arief, the opposite has been stated. According to Prof. Barda, jail terms are not particularly successful in reducing crime when they are tied to the accomplishment of punitive goals.[39] The idea of alternative jail terms was born out of the desire to lower recidivism rates among criminals and the negative perception of correctional facilities, which have been dubbed "prison as a criminal school". This means that offenders who occupy a correctional facility do not regret their actions; instead, it becomes a place to gain knowledge and skills related to each crime committed by the perpetrators of criminal acts.

Supervised probation, as a program that enables restorative justice, supervised probation has the potential to achieve victim recovery when judges include conditions for victim recovery by the offender in their verdicts. In addition, due to its non-custodial nature, this mechanism represents a shift from retributive and incapacitative criminal resolutions towards an approach that reintegrates offenders into society. This mechanism can also prevent recidivism and reduce prison overcrowding. In implementing Supervised Sentences, it is necessary to pay attention to:[40] 1) the distinction between criminal acts and supervised sentences; 2) the execution of supervised sentence decisions; and 3) the supervision (supervision and assistance) of the implementation of supervised sentences.

The concept of supervisory punishment can be understood as an alternative to prison sentences, which often have negative impacts on

[39] Muhammad Rustamaji, "Biomijuridika: Pemikiran Ilmu Hukum Pidana Berketuhanan Dari Barda Nawawi Arief," *Undang: Jurnal Hukum* 2, no. 1 (October 28, 2019): 193–223, doi:10.22437/ujh.2.1.193-223.

[40] Afifah Firdaus and Indra Yugha Koswara, "Pembaharuan Hukum Pidana Di Indonesia: Analisis Tentang Pidana Pengawasan Dan Asas Keseimbangan."

offenders and contribute to the stigma of prisons as "criminal schools." Research conducted by Abdul Rahim at the Class IIA Penitentiary in Jember, it was stated that there is no difference in placement and rehabilitation between recidivist inmates and non-recidivist inmates. This lack of distinction allows for the transfer of knowledge among inmates who have committed various types of crimes. Therefore, the introduction of supervisory penalties can help minimize such issues. The direction of supervisory criminal regulations as stipulated in Articles 75 to 77 is in line with the shifting objectives of criminal punishment. The following is another formulation of the goal of punishment found in Article 51 of the National Penal Code:[41] a) to deter crime by upholding the law for the sake of society's safety and well-being; b) to reintegrate criminals into society by guiding and rehabilitating them into decent and contributing members of society; c) to settle disputes resulting from criminal activity, restore equilibrium, and create a sense of security and tranquility in the community; and d) to encourage regret and lessen guilt in the offender.

The formulation of supervisory punishment outlined above illustrates that it is a type of penalty that serves as the primary punishment, is non-custodial or an alternative to imprisonment, and is applied to less serious offenses. This description can certainly serve as a guideline for judges when applying supervisory criminal penalties to offenders. According to Alan Coffey, there are two key components that must be considered to ensure the effective implementation of this supervisory criminal punishment: 1) a screening diagnostic method to select chose who will profit from probation, those who need a more restrained correctional program will not be placed on probation; and 2) a good supervision program which can effectively assist in the

[41] Nursyamsudin Nursyamsudin and Samud Samud, "SISTEM PERADILAN PIDANA TERPADU (INTEGRETED CRIMINAL JUSTICE SYSTEM) MENURUT KUHAP," *Mahkamah : Jurnal Kajian Hukum Islam* 7, no. 1 (June 1, 2022): 149–60, doi:10.24235/mahkamah.v7i1.10413.

rehabilitation of the criminal law violation.

Beginning with the regulation of supervised sentences in Indonesia, it is important to note that similar provisions exist in England, specifically outlined in Chapter 2 (1) of the Powers of Criminal Courts Act 1973. This regulation states that, considering the existing circumstances—such as the nature of the crime and the character of the offender—the court may exercise discretion to place the offender under probation as an alternative to imprisonment. This order requires the offender to be supervised by a probation officer for a period of not less than one year and not more than three years. However, the fundamental norms of these regulations are not significantly different from those in Indonesia. In comparison, the definition of supervisory punishment in the National Penal Code is more stringent. This is because the National Penal Code specifically addresses both general and particular circumstances, including the offender's duty to make amends for the harm caused by their offense.

An alternative to imprisonment or non-custodial sentences, in the form of supervision, will be the answer to the issue as previously described. However, in practice, it is essential to focus on the implementation of this supervisory punishment, beginning with ensuring the availability of resources for supervision and fostering coordination between law enforcement and rehabilitation programs. A new issue that can arise in the realm of criminal surveillance practices is public acceptance and trust in the surveillance model. Therefore, the implementation of this supervisory punishment must be perceived as a non-transactional policy.

The concept of surveillance punishment must be approached thoughtfully. If this form of punishment is genuinely intended as an alternative to imprisonment, it is crucial to carefully consider whether ongoing surveillance after a convict has served their sentence in prison might lead to counterproductive outcomes, conflicting with the intended

purpose of surveillance punishment. Without careful monitoring, this approach could actually increase the risk of imprisonment for individuals, even those convicted of minor offenses.

A change from a retributive to a restorative paradigm of sentencing is brought about by the National Penal Code's supervisory punishment system, which serves as the primary penalty.[42] This is because the basic criminal system includes alternative forms of prison sentence implementation, namely, supervision sentences and community service sentences. This provision indicates that even if an individual is sentenced to imprisonment by a judge, the sentence can be executed through alternative forms. Such changes will impact the criminal justice system in terms of legal structure, legal substance, and legal culture.

The legal structure will be influenced by the aspects of implementation and supervision of the criminal oversight process.[43] Supervisory punishment, once imposed by the judge (court subsystem) on an individual, will then be executed by the prosecutor's office subsystem. The implementation of supervisory punishment by the prosecutor's office subsystem will affect the mechanism of how supervisory punishment operates and the supervision provisions during the period of supervisory punishment, whether the correctional institution still has a role in the implementation of supervisory punishment. Meanwhile, the legislative body, comprising the President and the House of Representatives, serves as a central component of the criminal justice system, focusing on the standpoint of legal substance. This substance is developed as a response to issues within the legal structure, establishing norms for implementing and supervising oversight penalties. From the perspective of criminal law culture, supervision aims to reintegrate offenders into society, encouraging lawful and orderly

[42] Muhammad Ramadhan and Dwi oktafia ariyanti, "Tujuan Pemidanaan Dalam Kebijakan Pada Pembaharuan Hukum Pidana Indonesia."
[43] Joko Sriwidodo, *PERKEMBANGAN SISTEM PERADILAN PIDANA DI INDONESIA* (Yogyakarta: Penerbit Kepel Press, 2020).

behavior without the need for detention.

This method can be chosen, for example, the convict is given a condition by the Court to not be in certain areas. In reference to the system used in the Netherlands, electronic monitoring can be implemented as a condition of probation. For instance, the Court may impose restrictions on the convict, such as prohibiting them from entering certain areas. Electronic monitoring can also be useful for tracking the convict's location if they fail to fulfill obligations like attending scheduled meetings with their supervisor. However, it is important to consider that electronic surveillance cannot be applied immediately to all supervised convicts. Additionally, coordination among key implementers—Judges, Prosecutors, and the Ministry of Law and Human Rights—is essential to ensure that copies of decisions or notifications regarding the imposition of supervisory criminal sanctions are promptly communicated within the relevant court jurisdiction. In order to ensure that the implementation of this punitive system aligns with its intended goals, an ideal model is needed for the application of supervisory criminal sanctions.

Conclusion

Conditional punishments are recognized under the previous Indonesian Penal Code. The idea of monitored sentences in the National Penal Code is comparable to the idea of conditional sentences in the previous Penal Code. The imposition of conditional sentences and supervisory sentences both have general and specific conditions that must be met. The difference is that conditional sentences are a form of suspension of prison sentences. As an alternative to imprisonment time, monitored sentences are one of the primary punitive regimes outlined in the National Penal Code. The National Penal Code's monitoring criminal norm gives judges a fresh viewpoint when it comes to enforcing punishments that support the goals of the law.

The National Penal Code acknowledges the idea of non-custodial punishments as an alternative to incarceration, such as community service, fines, and monitoring terms. Supervision as a form of punishment is considered one of the main types of sanctions; however, it essentially serves as an alternative to prison punishment rather than being specified within the formulation of a criminal offense. The supervisory criminal policy is part of the envisioned criminal law reform, aiming to shift the paradigm of punishment from retribution to rehabilitation. This approach emphasizes enhancing the supervisory sanction system through ongoing evaluations and by incorporating feedback from law enforcement. The author proposes the formation of an ideal model for implementing supervisory penalties, which includes mechanisms for imposing, executing, and overseeing such penalties within the Indonesian criminal justice system to enhance public trust.

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