



## Alternative Punishment in Criminal Legal System in Indonesia

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### Abstract

This research aims to find alternative punishment implementation strategies in the integrated justice system. The weak deterrent effect and latent problems have made the Indonesian criminal justice system ineffective. The author uses normative juridical research with a statutory law approach and also a comparative study with the Dutch criminal law system. Distributive justice becoming restorative justice has the potential to provide a sense of justice and legal certainty and support an effective justice system because, in addition to being able to reduce the level of inmates, it can also save the state budget in providing prison facilities and increase community acceptance of ex-convicts to return to being independent human beings.

**Keywords** *Alternative Sanctions, Criminal Law System, Paradigm, Restorative*

### INTRODUCTION

Indonesia is in a crisis of convicts due to over-criminalization where the number of imprisonment is more than fines or other sanctions (97%) (Luxiana, 2021); besides, that where almost all detention centers and prisons experience capacity overload, apart from being unhealthy also inhumane and even violating the purpose of punishment, namely coaching to become human free again -realize mistakes, improve themselves and learn – and society can accept them after serving their sentences. Overcapacity of more than 200% – the number of prisoners is 266,663, the normal capacity is 132,107 people, and the installed capacity is 134,556 (Herdian, 2021)

The urgency is that if it is not addressed immediately, the potential for community welfare will not be maximized because the allocation of the state budget will be more in the judiciary. For this reason, a criminal justice system policy is needed-institutional treatment - discretion, diversion, restorative justice, as well as probation or social work sentences. - community-based (community-based correction) aligned with the philosophy of social reintegration.

Legal renewal in criminal law requires synchronization and harmonization of regulations contained in the Penal Code for the Dutch East Indies - adapted to the dynamics of universal and modern development by changing the paradigm of classical retaliation (Acts-Criminal Law) towards an integrative paradigm (Criminal Law Perpetrators-Victims) which pays attention to the aspects of the act, the perpetrator, and the victim. Renewal in the criminal law system contained in the Criminal Code, which has recently undergone changes related to criminal law - prohibited acts (criminal act), criminal liability (criminal responsibility), and the formulation of sanctions in the form of punishment (punishment) and action (treatment) (BPHN 2023).

Punishment can easily be interpreted as a sanction. The penalties referred to here relate to the imposition of penalties and the basis for the imposition of penalties on persons, which is finally and convincingly established by a perpetual *res judicata* judicial judgment (by the power of

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attorney of the prison). She committed a punitive crime. Barda Nawawi Arief said the integrated policy to deal with criminals is based on the structural punishment system set out in the new Penal Code, with Indonesia's punishment system focused on criminal offences and criminal liability (Failin, 2017).

Regarding liability, Islamic philosophy states that criminals can recognize that their actions violate the law and that they can determine their will accordingly. (Kaiser and Furman, 2023). However, the prison system affects prison conditions and prison crowding. Moreover, the number of complaints regarding law enforcement officers' performance of their duties, especially in (non-professional) investigations, does not correspond to the level of prosecution upholding law and justice as defined in Article 2 of the Penal Code. 7(1)(j) and 16(1)(1) of the National Police Act No. 2 of 2002 Letter I (Samsudin & Pura, 2023).

Azhar's research states that the problems in the litigation system are still retaliatory, causing a buildup of cases, as well as being ineffective and efficient and neglecting the rights of victims. Therefore, the solution offered is the application of the concept of restorative justice- Solve crimes involving offenders, victims, families of offenders, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders and seek a just solution together (Biro Humas, 2022) - Introducing Indonesia's integrated criminal justice system as a last resort for principled enforcement is one of the right solutions. The Supreme Court (MA) can initiate and encourage all criminal justice sub-systems in an integral, consistent, and sustainable manner - through policies and value orientation (value-oriented approach) (Samsudin & Pura, 2023) - until the made-integrated criminal justice system is restorative. Which is implemented consistently (Azhar, 2019).

Meanwhile, in Mayans-Hermida's research, Beatriz E also said that punishment is the last resort - but for serious crimes, it is more appropriate to apply imprisonment (premium medicine). However, imprisonment hinders the active role of the perpetrator so that the victim feels neglected. For this reason, there is a need for solutions that involve perpetrators and victims. Restorative punishment in the United States, inherited from the Final Peace Agreement (FPA), is a negotiated dispute resolution method. This passage of the Peace and Justice Act of 2005 reduces prison sentences for demobilized militiamen involved in war crimes. Crime Humanitarian and genocide – provide alternatives to imprisonment (special measures consisting of restrictions on rights and freedoms in specific geographic areas related to activities, labour and other acts with a "restorative and restorative" content); sanctions (unique sanctions) (Mayans-hermida & Beatriz, 2022).

Research from Aminu Abbas Abubakar states that the concept of punishment in Nigeria shows that the expected justice is more in the recovery of victims in the form of personal remedy and compensation, restitution and compensation after the change in the British Colonial-style legal system – Administrative Criminal Justice Law 2015 (ACJA, which aims to establish an efficient Criminal Court and victim compensation Efficiency can be seen from the results of court decisions in the form of compensation and the return of property rights from the perpetrator to the victim Nigeria's criminal system is a legacy of British colonialism where authorities arbitrarily arrest, try and punish perpetrators of crimes after the prosecution of the prosecutor based on the evidence provided by the victim, the penal system is inefficient and ineffective which has an impact on the overcapacity of the detention center with its various complexities – mental stress, physical injuries and psychological trauma which often lead to riots and suicides (Abubakar, 2023).

### **Issue Research**

The deterrent effect that is the goal of punishment has not been fully realized and has even created problems that have a domino effect. The penal system in resolving criminal cases has an impact on pies of case files from the court of first instance to the cassation level, which is homework, the completion of which takes a long time, whereas, from the judge's decision, the defendant will

become the responsibility of the correctional institution, whose conditions improve every year with limitations. Prison facilities and facilities that have a psychological impact and the eligibility of inmates who also have the potential to fail in forming conscious human beings because interactions that occur with fellow inmates make it similar to an institution for increasing proficiency in committing crimes - for example, with narcotics, users are united with dealers who end up Users change professions to become dealers after being released from prison. Besides that, the size of the state budget in providing new prison facilities is due to prison overcapacity and operational costs in the form of daily consumption of inmates. So that the state budget in justice will continue to increase in line with the increasing level of criminal cases. Based on the background above, the author aims to determine an effective and efficient strategy for implementing alternative sanctions in the criminal justice system in Indonesia.

## **LITERATURE REVIEW**

### **Alternative Punishment**

The imposition of special sanctions must fulfil the principle of proportionality, which is contextualized following the principle of last resort, as for perpetrators who can be given special sanctions based on considering the severity of the crime, the seriousness of the perpetrator to correct his mistakes, the first time he has committed the crime and the relative level of loss and the ability to repair and provide compensation to victims. However, the size of the level of loss relative to the victim and the community does not yet have standard rules besides compensation deterrent effect law is not economic - the victim must be given enough information to clarify this (Mayans-hermida & Beatriz, 2022).

Reflecting on the justice system in the Netherlands, England, and other developed countries for light cases, restorative settlement efforts are made outside the trial through the discretion of the public prosecutor as suit owner (Zunaidi & Najih, 2020). Under Article 140(2) of the Code of Criminal Procedure, i.e., suspending the prosecution for lack of evidence or criminal elements and for legal reasons (Riyanto, 2021).

Also, restorative justice punishment is the realization of the purpose of punishment (enforcement of criminal law) - preventing and overcoming crime through improving the perpetrator's behaviour to become a whole human being again. As well as to anticipate arbitrary actions outside the law (inhumane) and balance restoration (equilibrium) (Samsudin & Pura, 2023).

In Barda Nawawi Arief's view, criminal law reform is a way of reviewing and reforming (readjusting and reforming) criminal law according to Indonesian society's core socio-political, socio-philosophical and socio-cultural values and underlies the overall social, criminal and law enforcement policies in Indonesia. Barda Nawawi Arief emphasizes that criminal justice reform should be carried out with an approach linked to politics and values (a values-based approach) (Samsudin & Pura, 2023). Law enforcement through an integrated criminal system Mardjono Reksodiputro defines the criminal justice system as a system that applies in society to deal with crime problems in the sense of tackling crime within the limits of social tolerance (Rinaldi, 2022).

One of the reasons for the complexity of problems in prisons is the crowded prison conditions, which impact complex problems. Some countries in the world have begun to develop alternative punishment as a new model of punishment, one of which is for the first offender, which is considered the most appropriate alternative form of punishment (for crimes where the punishment is relatively light) -cost and benefits approach, where imprisonment will have a worse effect than other forms of sanctions. The objective of first offenders is to reduce the prison population so that coaching in prisons can run effectively (Rusman, 2017). Alternative punishments should have started to be implemented, especially for first offenders and crimes with short-term

sentences. This aims to reduce the prison population so that coaching can run effectively (Larasati, 2018) to realize legal ideals and legal functions that guarantee legal certainty and justice for the entire legal community (Ariska, 2019).

One of the alternative forms of punishment based on penal mediation, which adopts the form of dispute resolution in civil law, is expected Offender Victim Mediation (VOM). It is hoped that through a consensus deliberation procedure carried out by customary institutions and law enforcers' discretion. As the new Criminal Code carries the concept of restorative justice and effective and efficient justice, which is expected to restore the position of the accused to becoming a conscious and deterrent human being, as stated by Sahetapy and H.L.A Hart that law cannot be separated from the sociological aspects of society because the best law is not only in the form of orders and threats but also carries aspects of morality or justice. Besides that, with Jeremy Bentham's utilitarian approach, the law must emphasize the principle of expediency. Economic analysis of law (economic analysis of law) has the basic concept of rational choice that prioritizes gains and losses. Humans, as homo economists, always consider allocating resources to maximize added value or value, both material and non-material, efficiently and benefits and avoidance for maximum risk (Sudiyana & Suswoto, 2018).

### **Criminal Legal System**

The politics of criminal law is a countermeasure for breaking criminal law norms carried out by authorized apparatus in the criminal law system to enforce laws so that crimes can be dealt with fairly (Putra, 2022). The criminal justice system adheres to a system of functional differentiation consisting of sub-systems that stand alone but are an integral part of the criminal justice system, the sub-systems start from investigation, prosecution, trial, and correctional (Sudiyana & Suswoto, 2018).

### **RESEARCH METHOD**

The authors use prescriptive legal research forms with a legal regulatory approach and perform descriptive analyzes of various legal sources relevant to sentencing. Theo Huijber's juridical normative is the foundation of obligatory rules based on statutory provisions that examine the *das sein* and should the enforceability of a law (Sudiyana & Suswoto, 2018). Besides that, the author examines the application of criminal sanctions based on legal economic analysis – the evolution of law and economics that merges into one – which seeks to identify the impact of the rule of law on behaviour that can provide a deterrent effect and rationale based on the welfare economic framework adopted to assess the desired results in a general way of social (basic costs and benefits) (Rifki, 2020).

Economic analysis is used as a problem-solving approach related to the application of just criminal sanctions with legal certainty and efficiency in sentencing. So that it is hoped that the state can see the economic side behind which policies in sentencing are more efficient by allocating owned resources because the more sanctions given to perpetrators through the litigation system, the more resources the state must devote to law enforcement.

### **FINDINGS AND DISCUSSION**

#### **Research Analysis**

The deterrent effect that is the goal of punishment has not been fully realized and has even created problems that have a domino effect. The penal system in resolving criminal cases has an impact on piles of case files from the court of first instance to the cassation level, which is homework, the completion of which takes a long time, whereas, from the judge's decision, the

defendant will become the responsibility of the correctional institution, whose conditions improve every year with limitations. Prison facilities and facilities that have a psychological impact and the eligibility of inmates who also have the potential to fail in forming conscious human beings because interactions that occur with fellow inmates make it similar to an institution for increasing proficiency in committing crimes - for example, with narcotics, users are united with dealers who end up Users change professions to become dealers after being released from prison. Besides that, the size of the state budget in providing new prison facilities is due to prison overcapacity and operational costs in the form of daily consumption of inmates. So that the state budget for justice will continue to increase in line with the increasing level of criminal cases.

Progressive criminal law can be read as a penal law reform that allows people to discover how justice is upheld. This means that not only the court has the authority to hear and decide on a criminal case (Rizal, 2021).

Another alternative punishment is suspension of detention through supervision, where the type of supervision punishment (probational period) is not only in the interests of the perpetrators of criminal acts but also in the interests of society – as protection for perpetrators and society as modern punishment (Farizi, 2016).

With an economic analysis approach to law in sentencing, it is assumed that the state budget level will decrease, and even the state can benefit from substitute sanctions in the form of fines without neglecting the aspects of justice and crime prevention. As is the case in the Netherlands, the crime rate in the Netherlands is not non-existent or smaller compared to other countries. However, the use of alternative sanctions makes the prison occupancy rate minimal. It can even be rented out to Belgium to make it a source of state financial income - where in the Netherlands it carries the concept that crimes committed If the sentence is less than six years. The prosecutor can offer a stipulation of compensation for the fine paid to the state treasury by eliminating the criminal act for the defendant.

## CONCLUSIONS

The author argues that changing the sentencing paradigm with alternative sentencing sanctions can increase state resources' efficiency in handling criminal cases. It is assumed that the application of restorative justice as the implementation of alternative sanctions can provide added value in the settlement of criminal cases where prison capacity can be controlled and resource utilization the state in the form of a budget that is needed in the process of inquiry, investigation, prosecution, and justice and correctional institutions can run efficiently without ignoring the goal of fostering inmates to become fully independent human beings and return to society.

## REFERENCES

- Abubakar, A. A.(2023). Decolonizingthe Concept of Penalsanction Under the Nigerian Criminal Law. *American Journal of Society and Law*, 2(2), 1–5. <https://doi.org/10.54536/ajsl.v2i2.1475>.
- Ariska, D.I. (2019). Pembaharuan Hukum Sistem Peradilan Pidana Dalam RUU KUHAP. *Yustisia*, 5 (1), 78–89. <https://doi.org/10.31943/yustitia.v5i1.60>.
- Azhar, A. F. (2019). Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Di Indonesia. *Mahkamah: Jurnal Kajian Hukum Islam*, 4(2), 134–43. <https://doi.org/10.24235/mahkamah.v4i2.4936>
- Biro Humas. (2022). *Dorong Implementasi Perjanjian MLA, Menkumham Temui Menteri Kehakiman Dan Kepolisian Konfederasi Swiss - Web*. Kemenkumham.Go.Id, Accessed November 8, 2022.
- BPHN. (2023). RUU KUHP: Upaya Pembangunan Hukum Melalui Rekodifikasi Hukum Pidana Nasional, 2023.
- Failin. (2017). Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia.”

- JCH (Jurnal Cendekia Hukum)*, 3(1), 14. <https://doi.org/10.33760/jch.v3i1.6>.
- Herdian, L. (2021). *Dampak Dan Penyebab Over Kapasitas Lapas Di Indonesia*. Pontas.Id.
- Larasati, N. U. (2018). Efek Prisonisasi Dan Urgensi Pemberian Pidana Alternatif Bagi First Offender. *Deviance Jurnal Kriminologi*, 2, 51–64.
- Mayans-hermida, B. E. & Hola, B. (2022). Punishing Atrocity Crimes in Transitional Adequacy of Alternative Criminal Sanctions Using the Case of Colombia. *Oxford Journal of Legal Studies*, 43(1), 1-31. <https://doi.org/10.1093/ojls/gqac022>.
- Rifki, M. (2020). Kebijakan Hukum Pidana Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Sebagai Upaya Penanggulangan Tindak Pidana Perikanan Disusun. *Kementrian Kelauan Dan Perikanan*.
- Rinaldi, F. (2022). Proses Bekerjanya Sistem Peradilan Pidana Dalam Memberikan Kepastian Hukum Dan Keadilan. *Respublica*, 179–88.
- Rizal, M. C. (2021). Membaca Hukum Pidana Progresif. *Opini Hukum Dan Hak Asasi Manusia* 15: 1–5. <http://repositori.lshp.or.id/index.php/opini/article/view/26>.
- Rusman. (2017). Penegakan Hukum Pidana Profesional Berpihak Pada Fakta Hukum Dan Keadilan. *Hukum Mimbar Hukum Justitia*, 3(2), 234–48.
- Samsudin, M. & Pura, M. H. (2023). Kebijakan Kriminalisasi Pada Tindak Pidana Perzinahan Dalam Rancangan Undang-Undang Hukum Pidana Berdasarkan Pembaharuan Hukum Pidana. *Legal Spirit*, 7(1), 13–22. <https://doi.org/10.31328/ls.v7i1.4500>.
- Sudiyana and Suswoto. (2018). Kajian Kritis Terhadap Teori Positivisme Hukum Dalam Mencari Keadilan Substantif. *Qistie*, 11(1), 107–136. <https://doi.org/10.31942/jqi.v11i1.2225>.
- Riyanto, T. A. (2021). Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia. *Lex Renaissance*, 6(3), 481–492. <https://doi.org/10.20885/JLR.vol6.iss3.art4>
- Zunaidi, A. H. & Najih, M. (2020). Analisis Perbandingan Kebijakan Penyelesaian Perkara Pidana Di Luar Persidangan Di Belanda, Inggris, Dan Indonesia. *Audito Comparative Law Journal (ACLJ)*, 1(1), 1–15. <https://doi.org/10.22219/audito.v1i1.12781>.