National Accredited in Sinta 2 Decree No. 158/E/KPT/2021

SASI

Volume 28 Issue 4, Desember 2022: p. 532-543
P-ISSN: 1693-0061, E-ISSN: 2614-2961
: 10.47268/sasi.v28i4.1038

Ius Constituendum Criminal Law Sanction System with Double Track System Principle in the National RKUHP

Teng Junaidi Gunawan

Doctoral Program in Law of 17 Agustus 1945 University, Surabaya, Indonesia.
: tengjunaidig@gmail.com
Corresponding Author*

Submitted: 2022-07-22 *Revised: 2022-11-01* *Published: 2022-12-30*

Article Info

Keywords:
Ius Constituendum; Criminal Law Sanction System; Double Track System; the National RKUHP.

Abstract

Introduction: *As the ius constituendum of criminal law, the RKUHP introduces the concept of a double track system in its criminal system. The purpose of this double track system concept is to regulate 2 (two) types of sanctions, namely penal sanction (straf/punishment) and treatment sanction (maatregel/treatment).*
Purposes of the Research: *First, the ratio legis criminal law sanctions system with the principle of a double track system and factual policies in the National RKUHP. Second, the ideal model of the criminal law sanction system has the principle of a double track system in the National RKUHP.*
Methods of the Research: *The research method used in this research is normative legal research. Conduct a study of the Criminal Code and the National RKUHP as well as an analysis of the theory of punishment, especially on penal sanction and treatment sanction.*
Results of the Research: *The results of this study reveal that philosophically the emergence of the double track system concept is influenced by the development of the flow in criminal law, namely from the classical to the modern school, and the neo-classical school. Then the sentencing policy in the National RKUHP is not yet fully based on the principle of a double track system. So that we need an appropriate conception and in accordance with the basic idea of the actual double track system concept, one of which is by integrating additional forms of penal sanction into treatment sanction.*

1. INTRODUCTION

Criminal law policy through the means of criminal law is one of the intention to reduce crime, including in criminal policy. Efforts to reduce crime by means of criminal law in Indonesia are specifically by standardizing the Penal Code (hereinafter referred to as the Penal Code or "KUHP") through Law Number 1 of 1946 concerning Criminal Law Regulations (hereinafter referred to as the Criminal Law Regulation Act), in principle, namely through the Concordance Principle. by enacting *Het Wetboek van Strafrecht voor Nederlands-Indie* which was later changed its name to *Wetboek van Strafrecht* applies in Indonesia referred to as the Penal Code.[1]

[1] Satochid Kartanegara, *Hukum Pidana*, (Balai Lektur Mahasiswa, *t.t*). [8].

After Indonesia's independence, the intention of academics and the government to draft a Penal Code with a national spirit began with the National Law Seminar I (Indonesian: *Seminar Hukum Nasional I*) in 1963.[2] The recommendation for the seminar as referred is to profess for the codification of the Draft Law of the Republic of Indonesia concerning the 2019 Penal Code (hereinafter referred to as the Draft Penal Code or "RKUHP") to be completed soon. In order that in 1964 the Concept of Book I of the National RKUHP which was discussed by Moeljatno at the PERSAHI congress in Surabaya, where the paper presented by Moeljatno at that time, entitled "*Atas dasar atau asas-asas apakah hendaknya hukum pidana kita dibangun?*" ("On what basis or principles should our criminal law be built?") This concept developed continuously until 1977, so that the Concept Book II of the National RKUHP (which contained regulations regarding crimes) and Concept Book III (which contained regulations regarding violations) established.[3]

As the *ius constituendum* of criminal law, the RKUHP introduces the concept of a double track system in its criminal system. The purpose of this double track system concept is to regulate 2 (two) types of sanctions, namely penal sanction (*straf*/punishment) and treatment sanction (Dutch: *maatregel*) with equivalence. A perpetrator, may be sentenced to penal sanction (Dutch: *strafmodus*) in certain cases, can also be sentenced to treatment sanction, in order to provide protection to the people and realizing social order. The treatment sanction were known to have been established or regulated in several countries, including the Netherlands, Norway, Switzerland, Germany, and Italy. The treatment sanction also pointedly stipulates provisions regarding the double track system principle of punishment.

Although it has been pointedly stated that the National RKUHP comply to a double track system, there are still some problems in the naration of the double track system concept in the National RKUHP, such as the term additional punishment in the model of deprivation of certain rights, forfeiture of specific property, and publication of judicial verdict.

In addition, the other essential issue is the model of sanctions from appropriate treatment sanctions to drop in the formulation of the offense. The current problem in factual policy is the freedom of judges to choose the type of penal sanction (Dutch: *strafsoort*) and the freedom of judges to choose the severity of penal sanction (Dutch: *strafmaat*).[4] Although, the National RKUHP has included the Sentencing Guideline as referred to Article 55 of the National RKUHP and Article 56 of the National RKUHP, it has not also regulated the pattern of sentencing, in positive law.

As explained above, which will be a primary study in this legal research is the problems of the National RKUHP which have not described in detail the concept of the double track system. Furthermore, the discourse about treatment sanction is almost not found in criminal law book. Even though it exists, discussion has not been carried out in broad. Scientific activities in the form of seminars or upgrading course so far have never raised the issue of treatment sanctions as the theme of the discussion. As a result, the sanction which are actually very important in the context of criminal policy; which are rich

[2] Barda Nawawi Arief, *RKUHP Baru Sebuah Restrukturisasi/Rekonstruksi Sistem Hukum Pidana Indonesia*, (Universitas Diponegoro Semarang, 2007). p. 25.

[3] *Ibid*,. p. 26.

[4] T.J. Gunawan, *Konsep Pemidanaan Berbasis Nilai Kerugian Ekonomi; Menuju Hukum Pidana Yang Berkeadilan, Berkepastian, Memberi Daya Jera, Dan Mengikuti Perkembangan Ekonomi,* ed. Kencana (jakarta, 2018). p. 135.

of philosophical ideas, have not received adequate attention in academic studies.[5] Thus, it will be interesting if this discussion is analyzed comprehensively, because the National RKUHP is an *ius constituendum* for the Indonesian nation, in order to achieve crime prevention as legal reform (of criminal law).

Therefore, it is interesting to investigate and identify these problems by starting with an analysis of the *ratio legis* of criminal law sanctions system with in the spirit of double track system, then discussing the ideal model of a criminal law sanctions system in the spirit of double track system in the National RKUHP. So that, find an appropriate conception and in accordance with the basic idea of the actual double track system concept.

2. METHOD

The research method used in this research is normative legal research. In conducting a study of the Penal Code and the National RKUHP along with an analysis of the theory of punishment, especially on penal sanction and treatment sanctions.

3. RESULTS AND DISCUSSION

3.1 *Ratio Legis* Criminal Law Sanction System with Double Track System Principle and Factual Policy in RKUHP

Criminal law has 3 (three) main problems, particularly the problem of criminal acts, the problem of criminal liability, in conjuction with the problem of criminal and sentencing. This shows that the issue of sentencing in criminal law is one of the 3 (three) main problems of criminal law itself. In this research, the specific discussion is about crime and sentencing, especially regarding penal sanction. When observed in aspect of criminal law reform, the criminal law sanction system in various countries is undergoing conceptual development, particularly by introducing the concept of a double track system which is regulating 2 types of sanctions, namely penal sanction (Dutch: *straf*) and treatment sanction (Dutch: *maatregel*).

3.1.1 *Ratio Legis* Existence of Double Track System Concept

Departing from discussion about the idea of the rise of the basic idea of a double track system, in the existing literatures have no explicit assertion of the basic idea of a double track system. Simply, it can be said that the concept of the double track system was born due to the dissatisfaction of legal experts with the sanction system which still follow to a single track system (a single sanction system in the form of a type of penal sanction). The concept of a double track system is known as a dual-track system, which introduces penal sanction (Dutch: *straf*) and treatment sanctions (Dutch: *maatregel*). These models of penal sanction and treatment sanctions are also leaded by the philosophical foundations of the two different models of sanction.

If observed from the history of its emergence, the concept of a double track system was first proposed by Carl Stoos in 1893 for the Swiss Penal Code, where Carl Stoos named the concept as "*Zweisprachigkeit*" (two-way system) in German[6] which according to other legal experts is referred to as a double track system. Then the concept was also included in the Draft German Penal Code in 1925, 1927 and 1930, the Italian Penal Code in 1930, also the

[5] M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana Ide Dasar Double Track System & Implementasinya*, (Rajagrafindo Persada, 2007). p. 194.

[6] Jan Remmelink, *Hukum Pidana – Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia, Terjemahan Tristam Pascal Moeliono* (Jakarta: Gramedia Pustaka Utama, 2014).

SASI, 28(4) 2022: 532-543
P-ISSN: 1693-0061, E-ISSN: 2614-2961

German Penal Code in 1933 and the Swiss Penal Code in 1937. This system was greatly praised and has had a great influence in continental Europe and South America, and to some extent influenced British law.[7] Likewise, the Norwegian Penal Code in 1961 has introduced the concept of a double track system, which is known as penal sanction and sanction in the model of special measures.

In the Netherlands, between 1925 and 1928, treatment sanction were introduced which were given to judges in the Netherlands, specifically apply penal sanction and treatment sanction, particularly in the model of capitulation to a hospital for people whose minds were abnormal, and in 1929 they were given to judges in the Netherlands to determine treatment that constitute detention (*bewaring*) for…*beroepsmisdadigers*.[8] However, the concept of this treatment sanction has not been implemented or stated in the WvS that occured in the Netherlands on January 1, 1918, because the sanction system that existed in the WvS at that time still recognized the concept of sanctions contained in the *Strafwetbook* arranged in 1881 in the Netherlands.[9]

After undergoing several renewals, the provisions for treatment sanctions in the Dutch Penal Code were arranged separately in Chapter II A regarding treatment. This chapter was inserted into the *Nederland WvS* based on Law on May 22, 1958, *Staatblaad* 296 and amended by Law on March 31, 1983, where there are some articles that were amended until 1994.[10] This renewal of the sanctions system also affects the development or renewal of penal sanction in Indonesia, particularly by constructing and/or introducing the concept of a double track system explicitly through the National RKUHP, because the current Penal Code still follow to the old sanction concept, particularly the single track system (applying one type of sanction (Dutch: *strafsoort*) namely "penal sanction" with several forms of penal sanction)).

Most criminal law experts describe the differences between "penal sanction" and "treatment sanctions". E. Utrecht distinguishes those two sanctions, particularly: the penal sanction aims to provide preferential suffering (Dutch: *bijzonder leed*) to the offender so that he suffers the consequences of his evil deed, while the purpose of treatment sanctions is more custodial and didactic, which is more cordial. E. Utrecht further cites Pompe's views on treatment sanction,[11] which:

> *"maatregel is een sanctie, waaraan het karakter van vergelding ontvreekt, en die geheel is gericht op speciale preventie. De maatregel wordt beveiligingsmaatregel genoemd, omdat hij dient tot vevei liging der samenleving tegen min of meer gevaarlijke per sonen, m.a.w. tegen personen, van wie te vrezen is, dat zij strafbare feiten zullen begaan. Hij heet kortweg maatregel, imdat hij, integenstelling tot de straf, die een vergeldende "maatregel", een vergeldende sanctie, is, slechts beveili gend en niet vergeldend is"*

---

[7] H C Fragoso, 'The 'Dual-Track' System of Sanctions in Continental Criminal Law,' (1968) Vol. 12, No. 1, *International Journal of Offender Therapy*. p. 37.

[8] E. Utrecht, *Ringkasan Sari Kuliah Hukum Pidana II* (Without publisher, without year). p. 278.

[9] *Ibid*. p. 277.

[10] The chapter as meant above is consisting of two parts, First Chapter about Confiscation and Deprivation of the Unlawfully Obtained Gains (Chapter 36a-f), and Second Chapter about Committal to Psychiatric Hospital and Placement on Analisa Entrustment Order (Chapter 37-38i). See and read: M. Sholehuddin, *Op. Cit.*, [209 - 221]., and see Ahmad Bahiej, 'Perbandingan Jenis Pidana dan Tindakan dalam KUHP Norwegia, Belanda, Indonesia, dan RKUHP Indonesia,' (2008) Vol. 7, No. 4, *SOSIO-RELIGIA*. p. 12.

[11] E.Utrecht, *Op.Cit*., p. 360.

Translation: When observed from punishment's perspective, the treatment sanction not a retributive sanction, such as a penal sanction, but the treatment is merely purposed at special prevention or is an treatment to protect and/or restore.

Constructively and comprehensively, it can be understood that the *ratio legis* from the creation of the double track system concept is based on a rationale as follows:

a) Philosophically, the emergence of the double track system concept is influenced by the development of the school in criminal law, particularly from the classical school to the modern school, and the neo-classical school. In the classical criminal system, in principle, it only follows to a single track system (a single sanction system in the model of sentencing) [12], which then moves on to the modern and neo-classical schools with the model of sanction which not only impose penal sanction, but also introduce treatment sanctions;
b) If observed from the sentencing's perspective, as explained above, the criminal saction is purposed to provide preferential suffering (*bijzonder leed*) to the offender, so that he suffers the consequences of his evil deed, while the purpose of treatment sanction is more custodial and didactic, which is more cordial. So that, the implementation of the double track system concept is as equivalence between those two sanctions, means that equivalence is placing between penal sanction and treatment sanction in an equivalent position;

Dissatisfaction on criminal policy by using ineffective penal sanction. There must be other types of sanction (Dutch: *strafsoort*) and other models of sanction (Dutch: *strafmodus*) which are more effective in crime prevention efforts *(criminal policy*), particularly in matter of regulating treatment sanction (*maatregel*/treatment) with a more opened system (open system).

3.1.2 Factual Policy of Penal sanction and Treatment Sanction in the RKUHP

The basic idea of a double track system means the basic idea of a sanctions system as the basis for policies and the imposition of sanctions in criminal law.[13] As mentioned above, that the National RKUHP has introduced the concept of a double track system, particularly by admitting provisions for the types of "Penal sanction" and "Treatment Sanction" with factual policy as follows: *First*, regarding "Penal sanction" in the National RKUHP, regulated at Article 64 of National RKUHP, particularly, penal sanction consisting of: a. Basic punishment; b. Additional punishment; and c. Special punishment for certain crimes as regulated in the Act which are described in Table 1 below:

Table 1. Differences in Types of Penal sanction in the KUHP and the RKUHP

Types of Sanction	KUHP	RKUHP	Remark of Changes in the RKUHP
Basic Punishment	Death Penalty	Imprisonment	Imprisonment as much as possible is refrained .

[12] Sholehuddin, *Op. Cit.* p. 24.
[13] *Ibid*.

SASI, 28(4) 2022: 532-543
P-ISSN: 1693-0061, E-ISSN: 2614-2961

	Imprisonment	Enshelterment [14]	The punishment imposed with the intention of honorable means is the execution of a preferential imprisonment.
	Light imprisonment	Surveillance	The new type of sentencing.
	Fines	Fines	In RKUHP there are 6 categories of fines.
	Enshelterment	Social work	The new type of sentencing.
Additional Punishment	Deprivation of certain rights	Deprivation of certain rights	Essentially, the same as Article 35 of the Penal Code (KUHP), but in the RKUHP the rights of Corporation obtained are added.
	Forfeiture of specific property	Forfeiture of specific property and/or claim	Regulate more detail when compared to the Penal Code (KUHP). In the RKUHP, there are 5 kinds of classification of property that can be forfeited, while the Penal Code (KUHP) there are only 3 kinds.
	Publication of judicial verdict	Publication of judicial verdict	Essentially, the same as the provisions of Article 43 of the Penal Code (KUHP), but there are provisions regarding the payment of publication by the convicted.
		Compensation payment	New additional punishment: Understanding the suffering of victims of crime.
		Revocation certain permission	New additional punishment: Additional punishment in the form of deprivation of certain permission are imposed on perpetrator and accessory who commit crimes related

[14] Wikipedia, "Law of Indonesia", accessed July 21, 2022, https://en.wikipedia.org/wiki/Law_of_Indonesia

		to the permission they have.
	Fulfillment of local customary obligations	New additional punishment: punishment which is prioritized if it requires the provisions of Article 1 Paragraph (3) concerning the principle of legality.
Preferential Punishment	Death Penalty	Preferential punishment is death penalty which is always imposed alternatively.

Source: ELSAM (2005).[15]

The analysis of the sanctions system in the context of this research is about the regulation of penal sanction and treatment sanction in the National RKUHP. The provisions for penal sanction in the National RKUHP stipulate that penal sanction consist of the basic punihsment, additional punishment, and special punishment for certain crimes as regulated in the Act.[16] The types of crimes are: *First*, the basic punishment consists of imprisonment, enshelterment, superveillance, fines, and social work[17]. Furthermore, the National RKUHP also states that the punishment sequence determines the severity of the crime.

In addition to the types of sanctions (Dutch: *strafsoort*), particularly penal sanctions with several criminal forms as referred to above, the National RKUHP also regulates "types of treatment". In this case, the judge can impose sanction on those who commit criminal acts, and a description of the sanctions for this treatment sanction is described in the following table:

Tabel 2. Types of Treatment Sanction in RKUHP

In Terms of	The Model of Treatment	Article
Treatment that can be imposed collectively with the basic punishment	a. Counseling; b. Rehabilitation; c. Compliance training; d. Treatment in an institution; and/or e. Restoration of crime effect.	Article 103 Paragraph (1)
Treatment for perpetrator who suffer mental disability and/or intellectual disability	a. Rehabilitation; b. Capitulation to someone; c. Treatment in an institution; d. Capitulation to government; and/or e. Medical care in insane asylum.	Article 103 Paragraph (2)

[15] Zainal Abidin, *Pemidanaan, Pidana, dan Tindakan Dalam Rancangan KUHP 2005*, (ELSAM - Lembaga Studi dan Advokasi Masyarakat, 2005). p. 20.

[16] *Vide*: Article 64 of the National RKUHP.

[17] *Vide*: Article 65 Paragraph (1) of the National RKUHP.

Treatment that imposed for every child	a. Appeasement to parents/custody; b. Capitulation to someone; c. Medical care in insane asylum; d. Treatment in institutions that carry out affairs in the field of social welfare; e. Obligation to attend formal education and/or training held by the government or private entities; f. Revocation of driving license; and/or g. Restoration of crime effect.	Article 113
Treatment that imposed to corporation	a. Takeover corporation ; b. Funding on job training; c. Placement under surveillance; and/or d. Corporate Placement under *curatele*.	Article 123

Source: processed by the author (2022).

As explained in the table above, the types of treatment sanctions are in the models of (1) Treatment that can be imposed collectively with the basic punishment; (2) Treatment for perpetrator who suffer mental disability and/or intellectual disability; (3) Treatment that imposed for every child; and (4) Treatment that imposed to corporation.

3.2 The Ideal Model of the Criminal Law Sanction System with the Double Track System Principle in the National RKUHP.

When analyzed further, the National RKUHP is an *ius constituendum* (law that is aspired or imagined) for the Indonesian people in sentencing, follow to a *double-track system*, particularly, in addition to the types of penal sanction (*straf*), this National RKUHP also regulates the types of treatment sanction (*maatregel*), as described and explained above. In this case, the judge can impose treatment on those who commit criminal acts, but are not or are not able to account for their evil deed because the perpetrator suffers from a mental disability and/or intellectual disability.

As stated by M. Sholehuddin, among legislators, the understanding of treatment sanction concerning the basic idea, the function, and thepurpose is inadequate. Even the position of treatment sanction within the framework of the double track system is poorly understood. As a result, the product of legislative policy in the form of criminal legislation is often not systematic, especially regarding the regulation of the sanctions system.[18]

Concerning, so far in the product of legislative policy in the form of criminal legislation, the type of treatment sanction is still placed as a complementary sanction (because it is still influenced by the old orientation that places and/or relies on the concept of a single track system). As a step to criminal law reform, the current National RKUHP as described above has regulated the provisions for treatment sanction and is used as an autonomous sanction. Conceptually, surely, this is appropriate and in accordance with the meaning of the concept of the double track system as a whole. So that judges can willingly choose which sanctions are the most appropriate and proportional for each perpretator and/or misdemeanor violation. Therefore, to find out the characteristics of the concept of treatment sanction, it can be seen in Table 3. below:

Table 3. Characteristics of the Treatment Sanction Concept

[18] M. Sholehuddin, *Op. Cit.*, p. 195.

Basic Idea	Origin from: The philosophy of determinism = sentencing is emphasizing human and educational values, in line with the nature of treatment sanction which emphasizes that there should be no reproach to the acts violated by the perpetrator.
Theoretical Basis	Teleological = the purpose of sentencing is didactic to change the behavior of criminal and other people who tend to commit crimes.
Purpose	Education, social, prevention, recovery of certain circumstances, non-reproach.
Legal Subject(s)	1. Not only imposed on people who are not legally capable and mentally disturbed (Classical Understanding), but also on people who are legally capable, physically and mentally healthy. 2. Corporation without any condition.
Models	Rehabilitation, Surveillance, Termination of activity, Compensation, Announcement of judge's verdict, Deprivation of certain rights, Forfeiture of specific property, Black list, Liquidation of legal entities, certain organizations or professions, etc. (Open System-Dynamic).
Specification(s)	Not physical torture or deprivation of liberty, but restoration of physical, mental, and certain conditions, both public and private.

Source: M. Sholehuddin (2007).

If examine in further, the factual policies regarding penal sanction and treatment sanction regulated in the National RKUHP, they have not fully implement the concept of a double track system. Because, even though it has been independently and explicitly regulated regarding treatment sanctions (*maatregel*/treatment), when analyzed from the perspective of the theory and philosophy of sentencing, there are still many models of sanction that should be included in treatment sanction (*maatregel*), but are included in penal sanctions (*straf*/punishment) and there is still the term "additional punishment".

It should be noted that the purpose of sentencing regarding treatment sanction and types of additional punishment is basically protect the interests or security of the people, as is the case in the Netherlands. In the practical context, this additional punishment in the model of deprivation of certain rights is rarely used in the Netherlands. As mentioned by J.M. van Bemmelen, that in 1977 this such additional punishment was never imposed.[19] Supposing that the additional punishment and treatment sanction, there is still antinomy or overlapping on its type. One example is the deprivation of certain rights and the deprivation of certain permissions in additional punishment by revocation of driving licenses which are regulated in the treatment sanction. Concerning that Indonesia, at first had similarities with

[19] J.M. van Bemmelen, *On Strafrecht 2; Het Penitentiaire recht*, Terjemahan oleh Hasnan, (Binacipta, 1991). [116]., dalam *Ibid*., p. 215.

the Netherlands, the revocation of a driving license was classified as the type of additional punishment according to Law Number 14 of 1992 regarding Road Traffic and Transportation. However, in the National RKUHP, the revocation of the driving license is included in the model of treatment sanction,[20] in addition, it regulates provisions for the deprivation of certain rights and revocation of certain permission.

In addition to deprivation of certain rights and revocation of certain permision, furthermore regarding forfeiture of specific property, publication of judicial verdict, and Compensation as mentioned in Article 66 Paragraph (1) in the National RKUHP regarding Additional Punishment and can be seen also in Table 2, in principle, based on its models as described in Table 3, it should be included or become the part of the model of treatment sanctions. As in the Dutch Penal Code in the First Chapter, mentioned that there are three models of treatment sanctions, namely: (1) forfeiture of specific property (Article 36b); (2) The obligation to pay a sum of money to the state to deprive the benefit obtained against the law (Article 36e); and (3) the obligation to pay a sum of money to the state for the benefit of the victim (Article 36f).

The lack of clarity on the penal sanctions system, especially regarding penal sanction and treatment sanction, besides being able to result in confusion or inconsistency in legislative products, can also result in inconsistency of sentencing. Therefore, in order to realize the ideal model of a criminal law sanction system with the principle of a double track system, prevent the legal antinomy and/or confusion along with overlap between models of sanctions from the type of penal sanction, namely additional punishment with other forms of sanctions from the type of treatment sanction, then additional punishment should be integrated into treatment sanction, given that the forms of additional punishment are more open (open system) and more oriented to the basic ideas of treatment sanction. Because definitively, this action sanction is a sanction in criminal law that is anticipatory rather than reactive to criminal acts based on determinism philosophy in various forms of dynamic sanctions (open system) and specifications of non-physical suffering or deprivation of liberty, in order to restore certain conditions for perpetrators and victims, both individuals, public and civil legal entities.[21]

In addition to the integration of the model of additional punishment into the model of treatment sanction, in the formulation of the crime, cumulative-alternative punishment patterns can be made, between the model of penal sanctions and the model of treatment sanction. In other words, treatment sanction is not only regulated in the general provisions chapter, but also regulated explicitly in the formulation of crime. Also, changing the pattern of sentencing in the formulation of crime in the current National RKUHP only includes the model of penal sanction.

4. CONCLUSION

Regarding the *ratio legis*, the criminal law sanction system has the principle of a double track system, philosophically the emergence of the double track system concept is influenced by the development of schools in criminal law, specifically from classical to modern schools, and neo-classical schools. In the classical criminal system, in principle, it only follows to a single track system (a single sanction system in the form of a criminal type), which then moves on to modern and neo-classical schools with the type of sanctions that apply not only penal sanction but also introduces treatment sanctions, and when observed

[20] *Ibid*., p. 216.
[21] *Ibid*., p. 210.

from the perspective the purpose of sentencing, as previously explained, the penal sanction aims to provide preferential suffering (Dutch: *bijzonder leed*) to the offender, so that he suffers the consequences of his evil deed, while the purpose of treatment sanction is more custodial and didactic, which is more cordial. So that the implementation of the double track system concept is as equivalent between the two sanctions, means that equivalence is placing between penal sanction and treatment sanction in an equivalent position, as well as dissatisfaction with criminal policies using ineffective penal sanction. There must be other types of sanctions (*strafsoort*) and other models of sanctions (*strafmodus*) that are more effective in crime prevention efforts (*criminal policy*), namely the normative type of treatment sanction (*maatregel*) with a more open system of sanctions. The ideal model for establishing sentencing in the National RKUHP has the principle of a double track system, particularly integrating models of sanctions in additional punishment into treatment sanction, as well as making a pattern of punishment in the National RKUHP with a cumulative alternative formulation between penal sanction and treatment sanction in each formulation of crime. Based on the result of this research and analysis and conclusion as described above, it can be recommended as follows: The factual policy on criminal law sanctions in the regulation of the National Penal Code (KUHP) and the National RKUHP as a starting point for the reformation of regulation in National RKUHP with the principle of a double track system. Additional punishment should be integrated to treatment sanction, considering that the models of additional punishment are more open and more oriented to the basic ideas of treatment sanction.

REFERENCES

Journal Article

Bahiej, Ahmad. "Perbandingan Jenis Pidana Dan Tindakan Dalam KUHP Norwegia, Belanda, Indonesia, Dan RUU KUHP Indonesia." *SOSIO-RELIGIA* 7, no. 4 (2008).

Fragoso, H C. "The 'Dual-Track' System of Sanctions in Continental Criminal Law." *International Journal of Offender Therapy* 12, no. 1 (1968): 37–40.

Book

Abidin, Zainal. *PEMIDANAAN, PIDANA, DAN TINDAKAN Dalam Rancangan KUHP 2005*. Jakarta: ELSAM - Lembaga Studi dan Advokasi Masyarakat, 2005.

Arief, Barda Nawawi. *RUU KUHP Baru Sebuah Restrukturisasi/Rekonstruksi Sistem Hukum Pidana Indonesia*. Semarang: Universitas Diponegoro Semarang, 2007.

Gunawan, T.J. *Konsep Pemidanaan Berbasis Nilai Kerugian Ekonomi; Menuju Hukum Pidana Yang Berkeadilan, Berkepastian, Memberi Daya Jera, Dan Mengikuti Perkembangan Ekonomi*,. Edited by Kencana. Jakarta, 2018.

Kartanegara, Satochid. *Hukum Pidana*. Balai Lektur Mahasiswa, n.d.

Remmelink, Jan. *Hukum Pidana – Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia*, Terjemahan Tristam Pascal Moeliono. Jakarta: Gramedia Pustaka Utama, 2014.

Sholehuddin, M. Sistem Sanksi Dalam Hukum Pidana Ide Dasar Double Track System & Implementasinya. Jakarta: Rajagrafindo Persada, 2007.

Utrecht, E. *Ringkasan Sari Kuliah Hukum Pidana II*. Third Publication. Bandung: Penerbitan Universitas, 1965

Thesis, Web Page, and Others

Wikipedia, "Law of Indonesia", https://en.wikipedia.org/wiki/Law_of_Indonesia