


Reconstructing the Purpose of Sentencing: Rethinking the Effectiveness of Imprisonment in the Contemporary Legal System

Didik Purnomo^{1*}, Bagus Hendradi Kusuma²

^{1,2} Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia.

 : purnomo@mail.unnes.ac.id

Corresponding Author*



Abstract

Introduction: Indonesia's criminal justice system still places imprisonment as the primary sanction, although its effectiveness is increasingly questioned. The high occupancy rates in correctional facilities, the burden on the state budget, and weak social reintegration indicate a mismatch between the idealized goals of criminal punishment and the reality of practice. This situation calls for a reevaluation of the relevance of prison sentences within the framework of contemporary criminal law.

Purposes of the Research: This study aims to re-examine the effectiveness of prison sentences within the framework of Indonesian criminal law following the latest codification, by considering their suitability in relation to the objectives of modern sentencing. The focus is on formulating a prison sentence concept that is proportional, measurable, and oriented towards rehabilitation and social reintegration, making it relevant for the development of criminal law theory and national policy.

Methods of the Research: This research uses a normative legal method, focusing on a doctrinal study of statutory regulations, doctrines, and criminal law literature. The approaches used include legislative, conceptual, and comparative approaches to examine the effectiveness of imprisonment and its relevance within the framework of the 2023 Criminal Code, resulting in a systematic, measurable, and academic analysis.

Findings of the Research: This study highlights the opportunity to reorganize the orientation of criminal sanctions through the latest codification of criminal law. Imprisonment, no longer dominant, becomes a last resort for minor offenses. Normative analysis reveals the weaknesses of prison, encouraging alternative penalties. This study reconstructs the objectives of criminal sanctions, offering a concept that is more proportional, rehabilitative, and relevant to the needs of national law and policy.

Keywords: Imprisonment; Sentencing; Alternative Punishment.

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INTRODUCTION

The criminal justice system in Indonesia still places imprisonment as the most dominant form of sanction.¹ Official data shows that the capacity of correctional institutions far exceeds their intended capacity, with occupancy rates multiplying beyond the ideal capacity.² This situation poses serious problems, ranging from the health of prisoners and security to the suboptimal quality of rehabilitation.³ The phenomenon shows the tension between normative expectations of the penal function and the reality on the ground. Apart

¹ Mohammad Yofarrel, "Kriminalisasi Berlebihan (Overcriminalization) Sebagai Faktor Struktural Overcrowding Lapas Dalam Sistem Peradilan Pidana," *UNES Law Review* 8, no. 1 (2025): 151-62, <https://doi.org/10.31933/unesrev.v8i1.2504>.

² Ditjenpas, "Jumlah Penghuni Tahanan Dan Narapidana," <https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>, 2025.

³ S. M. Yasir Arafat et al., "Prison Mental Health in South - East Asia: A Narrative Review," *Brain and Behavior* 14, no. 8 (2024), <https://doi.org/10.1002/brb3.70004>.

from capacity issues, the state's budget burden for managing correctional institutions continues to increase every year.⁴ The high operational costs are not proportionate to the expected results, especially in terms of rehabilitation and social reintegration.⁵ Former prisoners often face stigma that prevents them from returning to a productive role in society.⁶ This situation shows that imprisonment is not fully capable of addressing complex social challenges.⁷ This condition affirms that a purely punitive approach has experienced functional failure, thereby demanding a policy transformation towards more constructive and humane sanctions diversification.

In the study of modern criminal law, punishment is not only understood as a means of retribution, but also as a mechanism for prevention, rehabilitation of the offender's behavior, and restoration of the victim.⁸ Criminal sentencing theories emphasize the need for a balance between the interests of the state, society, victims, and offenders.⁹ Various academic studies indicate that prison sentences often fail to meet these dimensions, leading to widespread criticism of their effectiveness.¹⁰ This condition underscores the need to reorient the penal system, from an approach that is purely punitive to an integrative approach that prioritizes the restoration of social balance and the rehabilitation of offenders.

The normative expectation that prison sentences can provide a deterrent effect and rehabilitation turns out to be inconsistent with reality.¹¹ Instead of improving behavior, imprisonment often worsens the social conditions of inmates and increases the risk of reoffending.¹² This gap highlights the contradiction between the ideal theory of punishment and the practice taking place in Indonesia.¹³ Therefore, the reform of the penal system becomes a necessity to bridge the gap between the normative expectations of the law and the empirical reality that occurs in the field.

Academic studies in Indonesia still largely focus on the weaknesses of prison sentences without linking them to the new paradigm in Law Number 1 of 2023 concerning the Criminal Code, hereinafter referred to as the 2023 Criminal Code. The latest regulation has opened up room for alternative sanctions such as probation, community service, and reparations, which can address these weaknesses. This study reassesses the effectiveness of imprisonment and formulates a concept that is more proportional, measurable, and oriented toward rehabilitation and social reintegration. Its urgency lies in the reconstruction of the

⁴ Jeanne Hirschberger, "Imprisonment Is Expensive- Breaking down the Costs and Impacts Globally," <https://www.penalreform.org/blog/imprisonment-is-expensive-breaking-down-the-costs-and/>, July 2020.

⁵ Andri Setya Nugraha and Tanti Dian Ruhama, "Gagasan Dana Khusus Pemulihan Dalam Penegakan Hukum," *Bappenas Working Papers* 6, no. 1 (2023): 79-97, <https://doi.org/10.47266/bwp.v6i1.187>.

⁶ Kelly Moore, Jeffrey Stuewig, and June Tangney, "Jail Inmates' Perceived and Anticipated Stigma: Implications for Post-Release Functioning," *Self and Identity* 12, no. 5 (2013): 527-47, <https://doi.org/10.1080/15298868.2012.702425>.

⁷ Ejo Imandeka et al., "Exploring the World of Smart Prisons: Barriers, Trends, and Sustainable Solutions," ed. David C Mohr, *Human Behavior and Emerging Technologies* 2024, no. 1 (2024), <https://doi.org/10.1155/2024/6158154>.

⁸ Roby Satya Nugraha et al., "The Transformation of Indonesia's Criminal Law System: Comprehensive Comparison between the Old and New Penal Codes," *Reformasi Hukum* 29, no. 1 (2025): 1-21, <https://doi.org/10.46257/jrh.v29i1.1169>.

⁹ Syarif Saddam Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (2022): 176-88, <https://doi.org/10.33561/holrev.v6i2.4>.

¹⁰ Didik Purnomo, Prija Djatmika, and Nurini Aprilianda, "Pidana Penjara Untuk Anak Pelaku Tindak Pidana Terorisme Dalam Perspektif Perlindungan Anak," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 1 (2022): 8, <https://doi.org/10.17977/um019v7i1p8-18>.

¹¹ Husni Thamrin and Mari'e Mahfudz Harahap, "Kebijakan Pelaksanaan Pidana Penjara Bagi Pelaku Pencurian Guna Memberikan Efek Jera (Studi Kasus Di Lembaga Pemasarakatan Kelas 1 Medan)," *Amnesti: Jurnal Hukum* 7, no. 1 (2025): 128-48, <https://doi.org/10.37729/amnesti.v7i1.6181>.

¹² Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Jonson, "Imprisonment and Reoffending," *Crime and Justice* 38, no. 1 (2009): 115-200, <https://doi.org/10.1086/599202>.

¹³ Diah Pudjiastuti, Dey Ravena, and Chepi Ali Firman Zakaria, "Alternatives to Imprisonment as an Effort to Overcome Overcrowding in Correctional Institutions," *Jurnal Wawasan Yuridika* 9, no. 1 (2025): 39-53, <https://doi.org/10.25072/jwy.v9i1.4275>.

penal system to align with the development of modern criminal law and the sustainable development agenda. This study is expected to contribute academically as well as provide practical recommendations to ensure that imprisonment remains relevant and supports fair and sustainable social transformation.

METHODS OF THE RESEARCH

This research uses a normative legal method with a doctrinal study of the penal system in the 2023 Criminal Code.¹⁴ The analysis was conducted on legislation as the primary source, literature and expert opinions as secondary sources, and legal dictionaries and encyclopedias as tertiary sources. The approaches used include the legislative approach to examine criminal imprisonment provisions and their alternatives, the conceptual approach to understand the objectives of modern penal sanctions, and the analytical approach to assess the conformity of norms with practice. Data were collected through document studies and analyzed qualitatively, thus providing a comprehensive overview of the reconstruction of penal objectives and the position of imprisonment in contemporary law.

RESULTS AND DISCUSSION

A. Imprisonment in the Indonesian Criminal Law System

Imprisonment has long been placed as the main sanction in the Indonesian criminal law system.¹⁵ The practice of imprisonment creates a paradox between the normatively formulated objectives of punishment and the reality of its implementation.¹⁶ The purpose of punishment as developed in criminal law theory encompasses retributive, preventive, rehabilitative, and restorative dimensions.¹⁷ Overcrowding in correctional institutions, high budget burdens, stigma against former inmates, and weak social reintegration indicate that prisons create more structural problems than provide real solutions for justice and order.¹⁸ Because of that, the practice of imprisonment has not fully aligned with the ideals of modern criminal law.

Imprisonment has always been the primary option in Indonesian criminal law, yet this reliance actually creates a huge gap between the ideal expectations of the law and the harsh reality on the ground.¹⁹ The purpose of punishment has evolved from the Absolute Theory, which emphasizes retribution for moral satisfaction, to the Relative Theory, which focuses on prevention and the rehabilitation of the offender.²⁰ The execution of prison sentences often fails to realize that idealism.²¹ Instead of becoming a rehabilitation institution, prisons often transform into schools of crime due to intensive interactions among criminals.²² Structural issues such as overcrowding, the swelling national budget burden, and post-

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2006).

¹⁵ Dede Kania, "Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia," *Yustisia Jurnal Hukum* 3, no. 2 (2014), <https://doi.org/10.20961/yustisia.v3i2.11088>.

¹⁶ Thomas J. Miceli, *The Paradox of Punishment* (Cham: Springer International Publishing, 2019), <https://doi.org/10.1007/978-3-030-31695-2>.

¹⁷ Didik Purnomo, "Contradiction and Legal Transformation in the Shift of the Correctional System from Retributive to Social Reintegration in Indonesia," *Yustisia Tirtayasa* 5, no. 2 (2025): 138–65, <https://doi.org/http://dx.doi.org/10.51825/yta.v5i2.32432>.

¹⁸ Purnomo.

¹⁹ Satria Manda Adi Marwan, "Eksistensi Pidana Penjara Seumur Hidup Di Indonesia Ditinjau Dalam Perspektif Tujuan Hukum Pidana Modern," *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 1 (2021), <https://doi.org/10.18860/j-fsh.v13i1.12025>.

²⁰ Elena Maculan and Alicia Gil Gil, "The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts," *Oxford Journal of Legal Studies* 40, no. 1 (2020): 132–57, <https://doi.org/10.1093/ojls/gqz033>.

²¹ Murdoko Murdoko and Mohammad Syifa Amin Widigdo, "Alternatif Penghukuman Selain Penjara: Analisis Hermeneutika Kritis Dan Critical Legal Studies," *Jurnal Hukum Ius Quia Iustum* 30, no. 1 (2023): 91–113, <https://doi.org/10.20885/iustum.vol30.iss1.art5>.

²² Nagin, Cullen, and Jonson, "Imprisonment and Reoffending."

detention stigmatization actually sever the social bonds of offenders, which ultimately triggers recidivism.²³ This confirms criminological criticism that an approach that is too prison-centric often creates new social problems rather than resolving existing legal conflicts.²⁴ The momentum of change occurred through Law Number 1 of 2023 (Criminal Code 2023), which marks a paradigmatic shift from the Daadstrafrecht criminal law, which is solely act/objective-oriented and a legacy of colonial rule, to Daad-daderstrafrecht, balancing the act with the subjective condition of the offender in a nationalistic and humanistic spirit. To clarify the shift in sentencing orientation in the Criminal Code 2023, Table 1 is presented. A Comparative Synthesis of Prison Regulations that summarizes the main differences between the old provisions and the new provisions systematically.

Table 1. Comparative Synthesis of Prison Penalty Regulations

Comparison	Criminal Code 1946 (WvS)	Criminal Code 2023
Philosophy	Focus on punishing crimes with physical penalties to make the perpetrators repent.	Focus on restoring the situation by rehabilitating offenders, helping victims, and protecting the community.
Imprisonment	Often becomes the primary choice automatically imposed by judges.	It becomes the last resort because the judge must prioritize other punishments first.
Time	The time is rigid and limited to a maximum of 15 to 20 years.	Flexible time of 15 to 20 years with clearer rules for sentence reduction.
Exception	The rules are strict and apply equally to everyone.	More humane by providing special exceptions for children, seniors over 75 years old, and first-time offenders.

Source: Criminal Code 2023

The reconstruction of this system is not merely a technical revision but a philosophical transformation that places imprisonment not as an absolute obligation, but as a measured choice.²⁵ Through the implementation of the 2023 Criminal Code Double Track System, it reinforces the alignment between criminal sanctions and maatregel measures.²⁶ This provides legitimacy for judges to not impose corporal punishment but rather measures of care or rehabilitation.²⁷ This approach is essential for individuals with special conditions, such as drug addicts or those with mental disorders, where a psychological medical approach is far more effective than imprisonment. The diversification of sanctions through the introduction of alternative punishments such as Probation and Community Service is a strategic decarceration step to reduce the use of imprisonment.²⁸ This policy is based on

²³ C. Clare Strange et al., "Jail Utilization and Court Sentencing: Does Jail Overcrowding Influence State Court Sentencing Decisions?," *Justice Quarterly* 41, no. 5 (2024): 672–98, <https://doi.org/10.1080/07418825.2023.2290006>.

²⁴ Freya Anderson and Ronald Kramer, "Problematising the Will to Intervene: Discourses on Alternative Solutions to Prison," *Critical Criminology* 33, no. 3 (2025): 533–48, <https://doi.org/10.1007/s10612-025-09838-z>.

²⁵ Purnomo, "Contradiction and Legal Transformation in the Shift of the Correctional System from Retributive to Social Reintegration in Indonesia."

²⁶ Yaris Adhial Fajrin, Ach Faisol Triwijaya, and Moh Aziz Ma'ruf, "Double Track System Bagi Pelaku Tindak Pidana Berlatar Belakang Homoseksualitas (Gagasan Dalam Pembaruan Hukum Pidana)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, no. 2 (2020): 167–90, <https://doi.org/10.22212/jnh.v11i2.1608>.

²⁷ Mardiman, Vieta Imelda Cornelis, and Noenik Soekorini, "Pertimbangan Hakim Dalam Menentukan Korban Penyalahgunaan Narkotika Dalam Penjatuhan Pidana Atau Rehabilitasi Berdasarkan Undang-Undang Narkotika," *PACIVIC: Jurnal Pendidikan Pancasila Dan Kewarganegaraan* 5, no. 1 (2025): 136–52, <https://doi.org/10.36456/p.v5i1.10241>.

²⁸ Widodo Widodo, *Sistem Pemidanaan Dalam Cyber Crime: Alternatif Ancaman Pidana Kerja Sosial Dan Pidana Pengawasan Bagi Pelaku Cyber Crime* (Yogyakarta: Laksbang Mediatama, 2009).

arguments of efficiency and effectiveness: 1) Economical: Reducing the state's fiscal burden for prison operations; 2) Sociological: Preventing prisonization and keeping offenders within their social environment; 3) Victimology: Providing space for Restorative Justice, where the restoration of the victim's losses is prioritized over punishing the perpetrator.

The strict sentencing guidelines in Articles 51-54 of the 2023 Criminal Code require judges to explore the values behind the act. A judge must not merely be a mouthpiece for the law, but should consider motives, inner attitudes, life history, and the effects of sentencing on the offender's future. This guideline emphasizes that imprisonment should not be imposed if the objectives of sentencing can be achieved through other, lighter means. Thus, the law no longer operates in a mechanical-formal manner but moves towards substantive justice that humanizes the offender without neglecting the interests of public order.

Overall, imprisonment in the contemporary Indonesian criminal justice system is undergoing a fundamental transition. While it remains upheld as the primary punishment for serious crimes, its function has been significantly reduced and modified. Through the 2023 Criminal Code, the orientation of punishment is shifting away from a purely retributive paradigm toward a corrective, rehabilitative, and reintegrative system. Prisons are now placed proportionally as an *ultima ratio*, a last resort when restorative justice instruments and alternative sanctions are no longer sufficient. This reform is expected to deliver substantive justice that balances the interests of public order with the rehabilitation of offenders as responsible citizens.

B. Sentencing Orientation in the 2023 Criminal Code

Criminal sanctions, particularly community service and supervision, are designed to make offenders aware of their mistakes without revoking their membership in society.²⁹ This is a dialectical synthesis between Utilitarian Theory and Restorative Theory.³⁰ The effectiveness of punishment is no longer measured by the duration of suffering behind bars but by how quickly the offender can be restored to functioning as a law-abiding citizen. This approach also emphasizes that the ultimate goal of criminal law is social reintegration, not segregation, which in fact has the potential to perpetuate the cycle of crime.³¹ Article 51 of the 2023 Criminal Code progressively promotes a humanistic penal purpose, but its implementation is hampered by contradictions in Article 82 of the 2023 Criminal Code regarding imprisonment as a substitute for fines. This rule risks creating discrimination or poverty punishments where offenders who cannot afford to pay fines are forced to serve prison sentences, while those who can afford it can avoid them.³² This inconsistency clearly undermines the spirit of justice because prison once again becomes the solution for economic incapability, whereas it should only be used as a last resort.

Criticism of the phenomenon of The Poverty Penalty highlights the deep injustice in the prison sentence in lieu of fines mechanism, which sociologically creates sharp class biases.³³ This system creates substantive discrimination where wealthy offenders have the privilege

²⁹ Togat et al., "Community Service Sentencing: Its Urgency in and Contribution to Future Criminal Law in Indonesia," *Journal of Law, Policy and Globalization* 140 (2024), <https://doi.org/10.7176/JLPG/140-01>.

³⁰ Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010).

³¹ Purnomo, "Contradiction and Legal Transformation in the Shift of the Correctional System from Retributive to Social Reintegration in Indonesia."

³² Nicole Bögelein, "'Money Rules': Exploring Offenders' Perceptions of the Fine as Punishment," *The British Journal of Criminology* 58, no. 4 (2018): 805-23, <https://doi.org/10.1093/bjc/azx044>.

³³ Jean Galbraith et al., "Poverty Penalties as Human Rights Problems," *American Journal of International Law* 117, no. 3 (2023): 397-440, <https://doi.org/10.1017/ajil.2023.25>.

to buy their freedom by paying fines, while poor offenders are forced to serve prison sentences merely because of their economic inability.³⁴ This reality fundamentally undermines the principle of equality before the law because corporal punishment ultimately no longer becomes a consequence of criminal acts but rather a consequence of the perpetrator's poverty.

The use of short-term imprisonment as a substitute for fines actually creates a problematic situation. Its duration is too short to rehabilitate offenders, yet long enough for them to socialize and learn new crimes from other inmates.³⁵ Instead of repenting, the offender is at risk of becoming more evil due to the negative influence of the prison environment. Therefore, judges should prioritize supervisory sentences or community service to prevent the offender from being exposed to that criminal culture. This step is important to ensure that the punishment truly serves to reform the individual, rather than creating new, more skilled criminals.

The harmonization of the 2023 Criminal Code with international standards, the UN Tokyo Rules, becomes increasingly relevant when viewed through the lens of Law and Economic Analysis.³⁶ In a cost-benefit analysis, imprisonment is proven to be the sanction with the highest economic cost because it burdens the state with operational, consumption, and infrastructure maintenance expenses.³⁷ On the contrary, alternative sanctions such as community service and fines actually provide added value. With this mechanism, offenders remain productive and make a real contribution to society without draining the state budget. This positions the 2023 Criminal Code as a public policy instrument that is not only legally just but also rational and economically efficient.

In addition to budget efficiency aspects, the spirit of reforming the 2023 Criminal Code is also in line with the global agenda of the Sustainable Development Goals (SDGs) point 16. A system that relies too heavily on prison sentences becomes ineffective due to excessive capacity.³⁸ Therefore, by implementing various types of sanctions, Indonesia also supports the global development goals (SDGs 16) regarding access to justice. Prisons are no longer positioned as places to dump problems but are returned to their original function as secure facilities for serious criminals who threaten public safety.

The 2023 Criminal Code brings a new spirit of criminal law that is more moderate. Making imprisonment a last resort is a way to make punishments more reasonable, not to eliminate sanctions. However, this good regulation will not be effective without a change in the culture of law enforcers. Judges and prosecutors are required not to merely read the text of the law rigidly, but must dare to make decisions that truly resolve problems in society. If judges continue to be fixated on the dogmatics of imprisonment and ignore recovery alternatives, then Article 51 of the 2023 Criminal Code will only end up as an exalted dead text normatively, yet empty sociologically. Law without moral courage is merely a utopia on paper that fails to deliver real justice for people.

³⁴ Petrus Meirio Mamoh, "Paradoks Pidana Denda Dan Kurungan Pengganti Dalam Tindak Pidana Korupsi," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4, no. 3 (2025): 370–83, <https://doi.org/10.55606/jurish.v4i3.5820>.

³⁵ Hilde T. Wermink et al., "Estimating Effects of Short-Term Imprisonment on Crime Using Random Judge Assignments," *Justice Quarterly* 41, no. 3 (2024): 317–46, <https://doi.org/10.1080/07418825.2023.2193618>.

³⁶ Maria Ulfah, "Pidana Kerja Sosial, Tokyo Rules, Serta Tantangannya Di Masa Mendatang," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (2021): 517, <https://doi.org/10.24843/JMHU.2021.v10.i03.p07>.

³⁷ Choky Ramadhan, "Reformasi Penegakan Hukum Kekerasan Seksual," <https://law.ui.ac.id/choky-ramadhan-kompas-cetak-reformasi-penegakan-hukum-kekerasan-seksual/>, July 2016.

³⁸ Didik Purnomo, "Indonesian Prison System: An Analysis of Constitutive Penology Amidst the Crisis of Overcapacity Based on Islamic Law," *Justitia Law Review* 1, no. 1 (2025): 23–36.

C. Reconstruction of Sentencing Objectives and Implications for Criminal Policy

The 2023 Criminal Code marks a fundamental shift from a rigid punishment approach based on the severity of the act committed to Criminal Individualization, where penalties are tailored to the characteristics of the offender, reflecting the adoption of the principles of the Neo-Classical School and the New Community Protection Movement.³⁹ This change recognizes the importance of the principle of legality while emphasizing flexibility in criminal liability, taking into account the perpetrator's mens rea and social conditions, and focusing on community protection and rehabilitation efforts to create more humane justice and a safer society.⁴⁰ Criminal law no longer functions as a blind instrument of revenge but as a tool of social engineering that balances the firmness of norms with the human aspect.

The paradigm shift towards Criminal Individualization fundamentally changes the role of judges, from merely enforcers of the law to social architects with broad discretion, who are required to choose the most beneficial sanctions.⁴¹ Prisons are no longer the primary option but serve as a means of incapacitation for high-risk offenders, while low-risk offenders are diverted to rehabilitative programs.⁴² This philosophical change also demands a transformation of criminal policies that are structural and technocratic in nature to support a criminal justice system that is fairer, more effective, and rehabilitation-oriented.

The shift in human resource allocation related to the ultimum remedium policy essentially forces the state to change its investment direction. So far, the law enforcement budget seems to have been almost entirely spent on financing concrete and bars, from the physical construction of prisons to the living costs of inmates.⁴³ Now, these resource flows must be massively redirected to develop human potential, particularly to strengthen the capacity of the Community Correctional Center (Bapas).⁴⁴ This shift is based on a new awareness that the success of criminal supervision and social work is no longer determined by the thickness of prison walls, but entirely depends on the sharpness of analysis and the professionalism of Community Guidance Officers (PK) in the field.

The Application of The Principle of Parsimony, this principle teaches a simple ethical standard: the state should not impose a punishment heavier than necessary.⁴⁵ The 2023 Criminal Code fully adopts this logic. This means that if the goal of rehabilitation can already be achieved through supervisory penalties, then imposing imprisonment is considered a waste of authority as well as a waste of budget. This underscores a new rationalization that effective law is not the harshest, but the most appropriate and efficient.

This policy is designed to address the phenomenon of Prisonization, where prisons often become places for inmates to learn to become more professional criminals.⁴⁶ The solution is

³⁹ Nugraha et al., "The Transformation of Indonesia's Criminal Law System: Comprehensive Comparison between the Old and New Penal Codes."

⁴⁰ Ali Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform," *Jambe Law Journal* 8, no. 1 (2025): 255–85, <https://doi.org/10.22437/home.v8i1.502>.

⁴¹ Rinin Narulita, Cahya Wulandari, and Rodiyah Rodiyah, "Implementation of the Idea of Criminal Individualization for Children Who Commit the Crime of Sexual Intercourse," *International Journal of Research and Innovation in Social Science* VIII, no. XII (2025): 3461–64, <https://doi.org/10.47772/IJRISS.2024.8120289>.

⁴² Damon M. Petrich et al., "Custodial Sanctions and Reoffending: A Meta-Analytic Review," *Crime and Justice* 50, no. 1 (2021): 353–424, <https://doi.org/10.1086/715100>.

⁴³ Nik Martin, "Menghasilkan Uang Dari Penjara," DW.COM, 2025.

⁴⁴ Yanuar Adi, "Kunjungi Lapas Brebes Hakim Wasmat Apresiasi Program Pembinaan," <https://www.rri.co.id/purwokerto/daerah/1456155/kunjungi-lapas-brebes-hakim-wasmat-apresiasi-program-pembinaan>, April 2025.

⁴⁵ Richard L. Lippke, "Retributive Parsimony," *Res Publica* 15, no. 4 (2009): 377–95, <https://doi.org/10.1007/s11158-009-9101-7>.

⁴⁶ Glenn D. Walters, "Changes in Criminal Thinking and Identity in Novice and Experienced Inmates," *Criminal Justice and Behavior* 30, no. 4 (2003): 399–421, <https://doi.org/10.1177/0093854803253137>.

to implement community-based rehabilitation. Through probation or social work, offenders are not removed from their social environment but are guided to reintegrate positively. This approach is based on the logic that the best way to maintain order is not by isolating offenders (segregation), but by strengthening their emotional ties to the community so that they feel ashamed and are reluctant to repeat their crimes.

The solution is to implement community-based rehabilitation. Through probation or social work, offenders are not removed from their social environment but are guided to reintegrate positively. This approach is based on the logic that the best way to maintain order is not by isolating offenders (segregation), but by strengthening their emotional ties to the community so that they feel ashamed and are reluctant to commit crimes again.⁴⁷ As a result, the victims only become witnesses while their losses are never truly restored.⁴⁸ The 2023 Penal Code addresses this by opening the way for Restorative Justice.⁴⁹ In this new system, the offender's efforts to compensate the victim's losses become a key mitigating factor that can reduce the punishment or even replace imprisonment. It restores the balance of justice, no longer focusing on how severely the offender is punished, but on how well the victim's situation is restored.

The reconstruction of sentencing objectives in the 2023 Criminal Code should not be misinterpreted as an attempt to soften the law.⁵⁰ On the contrary, this is a step of rationalization to make the judicial system work more logically and efficiently. This policy proves that the effectiveness of the law is not determined by how harsh the imposed sanctions are, but by how appropriate the sanctions are in changing the behavior of offenders and restoring victims. Thus, Indonesia is now moving away from the colonial law character based on revenge towards a more constructive and humane modern legal model.

CONCLUSION

The reconstruction of the objectives of punishment in Law Number 1 of 2023 marks a fundamental shift from the colonial retributive paradigm, which has proven ineffective in addressing the overcrowding crisis, towards a more humanistic integrative approach. This transformation changes the philosophy of punishment to the *Daad-daderstrafrecht*, balancing the act and the perpetrator, where imprisonment is applied restrictively as an ultimate remedy. This is emphasized in Article 54 of the 2023 Criminal Code, which obliges judges to consider the impact of punishment on the future of the offender before passing a sentence. Operationally, this change is supported by Article 51 of the 2023 Criminal Code, which sets the purpose of criminal sanctions to resolve conflicts and restore balance, and is reinforced by the mechanism of sanction diversification through Supervisory Penalties under Article 76 of the 2023 Criminal Code and Community Service under Article 85 of the 2023 Criminal Code. These alternative instruments allow the rehabilitation function to operate without severing the social ties of offenders, while also preventing the adverse effects of prisonization. Thus, the 2023 Criminal Code not only rationalizes the criminal

⁴⁷ Christine M. Englebrecht, "The Struggle for 'Ownership of Conflict': An Exploration of Victim Participation and Voice in the Criminal Justice System," *Criminal Justice Review* 36, no. 2 (2011): 129–51, <https://doi.org/10.1177/0734016811399419>.

⁴⁸ Didik Purnomo, "Justice Dilemma: Prison for Child Offenders or Recovery for Victims of Sexual Violence in Jepara?," *Semarang State University Undergraduate Law and Society Review* 5, no. 2 (2025): 940–68, <https://doi.org/https://doi.org/10.15294/lsr.v5i2.28425>.

⁴⁹ Agus Widjanto, I Gde Pantja Astawa, and Muhammad Rulyandi, "Decolonising Restorative Justice in Indonesia: A Comparative Study across Customary Law Traditions," *Legality: Jurnal Ilmiah Hukum* 33, no. 2 (2025): 470–92, <https://doi.org/10.22219/ljih.v33i2.40481>.

⁵⁰ Marfuatul Latifah and Prianter Jaya Hairi, "Pengaturan Pedoman Pemidanaan KUHP Baru Dan Implikasinya Pada Putusan Hakim," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 15, no. 2 (2025), <https://doi.org/10.22212/jnh.v15i2.4573>.

justice system to be more efficient but also aligns national law with global standards (SDGs) to realize restorative justice, not merely retribution.

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