



Alternatives to Imprisonment: Toward Humanistic and Effective Criminal Justice Reform

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Abstract. The increasing reliance on imprisonment has raised concerns regarding prison overcrowding, the limited effectiveness of short-term incarceration, and the need to strengthen human rights and rehabilitation within criminal justice systems. This study examines the philosophical foundations of sentencing and judicial discretion, the development of alternative sanctions and the double track system, and the objectives of punishment from national and international perspectives. Employing a doctrinal legal method with statutory and conceptual approaches, the study analyzes primary and secondary legal materials through qualitative legal analysis. The findings indicate a shift toward a more balanced sentencing framework that integrates rehabilitation, social reintegration, restorative justice, proportionality, and social protection. Non-custodial measures, including fines, supervision, community service, rehabilitation, and restorative justice, provide mechanisms for reducing unnecessary reliance on imprisonment while maintaining offender accountability. International standards, particularly the Tokyo Rules, reinforce the principle of individualized and proportionate use of non-custodial measures. The study argues that effective sentencing reform requires not merely expanding alternatives to imprisonment but integrating them within a coherent philosophy of punishment, judicial discretion, institutional capacity, and human dignity.

Keywords: Alternatives to Imprisonment, Indonesian Criminal Code Reform, Non-Custodial Sanctions, Sentencing Philosophy, Sentencing Reform.

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Abstrak. *Meningkatnya ketergantungan pada pemidanaan berupa penjara telah menimbulkan kekhawatiran terkait kepadatan berlebih di lembaga pemasyarakatan, terbatasnya efektivitas masa hukuman penjara yang singkat, serta perlunya penguatan hak asasi manusia dan rehabilitasi dalam sistem peradilan pidana. Studi ini mengkaji landasan filosofis penjatuban pidana dan diskresi hakim, perkembangan sanksi alternatif serta sistem jalur ganda (double track system), dan tujuan pemidanaan dari perspektif nasional maupun internasional. Dengan menggunakan metode penelitian hukum doktrinal serta pendekatan perundang-undangan dan konseptual, studi ini menganalisis bahan hukum primer dan sekunder melalui analisis hukum kualitatif. Temuan studi menunjukkan adanya pergeseran menuju kerangka penjatuban pidana yang lebih seimbang, yang mengintegrasikan rehabilitasi, reintegrasi sosial, keadilan restoratif, proporsionalitas, dan perlindungan sosial. Tindakan non-penjara termasuk denda, pengawasan, kerja sosial, rehabilitasi, dan keadilan restoratif menyediakan mekanisme untuk mengurangi ketergantungan yang tidak perlu pada hukuman penjara sembari tetap menjaga akuntabilitas pelaku. Standar internasional, khususnya Tokyo Rules, memperkuat prinsip penerapan tindakan non-penjara yang bersifat individual dan proporsional. Studi ini berargumen bahwa reformasi penjatuban pidana yang efektif tidak hanya menuntut perluasan alternatif hukuman penjara, tetapi juga integrasi alternatif-alternatif tersebut ke dalam filosofi pemidanaan, diskresi hakim, kapasitas kelembagaan, dan martabat manusia yang koheren.*

Kata kunci: *Alternatif Hukuman Penjara, Reformasi KUHP Indonesia, Sanksi Non-Penjara, Filosofi Penjatuban Pidana, Reformasi Penjatuban Pidana.*

1. Introduction

The development of criminal law policy in Indonesia has increasingly emphasized the need to reform sentencing practices that rely heavily on imprisonment. Traditionally, imprisonment has been the dominant sanction within the Indonesian criminal justice system, reflecting a retributive orientation that focuses on deprivation of liberty as the primary response to criminal conduct.¹ However, contemporary criminal law developments encourage a more humane and civilized sentencing philosophy that balances social protection, offender rehabilitation, and community welfare. In this context, criminal policy should not merely focus on punishment but also on how sanctions can effectively achieve the broader objectives of criminal justice, namely social defense and social welfare. As noted in criminal law policy studies, sentencing must be implemented in a manner that is rational, proportionate, and capable of promoting offender reintegration into society.²

The urgency of discussing alternatives to imprisonment is reinforced by Indonesia's correctional conditions. In June 2024, the Minister of Law and Human Rights reported that correctional institutions had a capacity of 140,424 inmates, while the actual population reached 265,346 an overcrowding rate of 89 percent.³ This illustrates the overreliance on imprisonment and the need for alternative sentencing beyond custodial sanctions. Such conditions strengthen arguments that imprisonment should not remain the automatic response to crime and that non-custodial sanctions deserve greater attention.⁴

From a normative perspective, sentencing reform gained stronger legal foundations through Law Number 1 of 2023 concerning the Criminal Code.⁵

¹ Manik Sulistiya and Sodikin Sodikin, "Reconstruction of the principle of justice in the Indonesian criminal justice system: A restorative perspective and regulatory reform," *Journal of Lex et Justitia* 1, no. 1 (2025): 72. See also, Fitri Sulis Setiyowati, and Hery Chariansyah, "Analysis of Supervision Punishment in the National Criminal Code as an Instrument of Modern Sentencing in Indonesia," *Jurnal Kewarganegaraan* 10, no. 1 (2026): 146.

² Arief Barda Nawawi, *Bunga rampai kebijakan hukum pidana* (Jakarta: Prenada Media, 2016), 26.

³ Detik News, "Yasonna Sebut Lapas Overcrowded 89%: Kapasitas 140 Ribu, Total Napi 265 Ribu," 2024, Retrieved in 14 May 2026 from <https://news.detik.com/berita/d-7387578/yasonna-sebut-lapas-overcrowded-89-kapasitas-140-ribu-total-napi-265-ribu>. See also, AM Endah Sri Astuti, "Bringing justice for transgender people: reforming rehabilitation policies in Indonesia's correctional system," *Clío. Revista de Historia, Ciencias Humanas y Pensamiento Crítico* 4, no. 11 (2025): 2803.

⁴ Elsi Elvina, "Kebijakan Formulasi Sanksi Pidana Penjara Terbatas Dalam Rkuhp Ditinjau Dari Sistem Pemidanaan di Indonesia," (PhD diss., Universitas Islam Riau, 2021), 2021.

⁵ Mardana Rifta Oktaviana et al., "The Evolution of Criminal Punishment Theory: From Retributive Theory to a Restorative Approach in The Indonesian Criminal Justice System," *International Journal of Social Sciences, Language, and Education* 1, no. 2 (2026): 56.

Unlike the previous Code, the new one explicitly formulates sentencing objectives and guidelines. Articles 51–54 emphasize prevention, rehabilitation, conflict resolution, restoration of social balance, and respect for human dignity.⁶ The legislation also introduces supervision, community service, and fines as alternatives to imprisonment, marking a shift from a retributive approach toward a more balanced and rehabilitative philosophy. Thus, Law Number 1 of 2023 serves as the principal framework for developing a more humanistic criminal justice system in Indonesia.⁷

Alternative imprisonment is not limited to replacing prison sentences but also encompasses broader non-custodial measures, including community service, fines, probation, rehabilitation programs, diversion, mediation, and other community-based interventions.⁸ The concept is closely associated with decarceration, deinstitutionalization, and the development of a criminal justice system that prioritizes reintegration rather than exclusion. Penal Reform International similarly recognizes alternatives to imprisonment as sanctions intended to repair relationships among offenders, victims, and society while simultaneously safeguarding public interests and supporting offender rehabilitation.⁹

Research on alternatives to imprisonment in Indonesia has been expanding. Studies on community service have primarily highlighted its potential to alleviate prison overcrowding, its status within the new Criminal Code, and the institutional readiness for its implementation.¹⁰ Other research regarding rehabilitation has focused more on specific groups, particularly juveniles and narcotics offenders, as

⁶ Amalia Mia et al., *Kitab undang undang hukum pidana tahun 2023* (Jambi: PT. Sonpedia Publishing Indonesia., 2023), 32.

⁷ Sulistiya, and Sodikin, “Reconstruction of the principle of justice,” 72. See also, Tjokorda Istri Diah Candra Permatasari and Asry Alkazahfa, “Navigating Victim Compensation Funds in Indonesian Criminal Justice System: An Analysis of Institutional Integration and Fragmentation,” *Brawijaya Law Journal* 13, no. 1 (2026): 121.

⁸ Youness Nafid et al., “The Role of Criminal Alternatives as a Future Challenge in Achieving Security,” *International Journal of Criminal Justice Sciences* 19, no. 1 (2024): 554. See also, Adi Syahputra Sirait et al., “Community Service Order Punishment: Alternatives in The Criminal Law System from Maqāṣid al-Sharī‘ah Perspective,” *Nurani: jurnal kajian syari'ah dan masyarakat* 24, no. 2 (2024): 296.

⁹ Cornwell David J. et al., *Civilising criminal justice: an international restorative agenda for penal reform* (Sheffield Gables: Waterside Press, 2013), 13. See also, CSA Teddy Lesmana, “Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pidana Dalam Perspektif Pembaharuan Sistem Peradilan Pidana Indonesia,” *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 1 (2019): 12.

¹⁰ Orin Gusta Andini and Devita Kartika Putri, “Ahead of enforcing community service under Indonesia’s 2023 Criminal Code: Insights from the Netherlands experience,” *Jurnal Hukum Novelty* 17, no. 2 (2026): 27. See also, Asiyah Jamilah and Hari Sutra Disemadi, “Community service order: Prison overcrowding prevention policy,” *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (2020): 28; Purnomo Didik et al., “Community service order in Indonesia: Between alternatives and transformation in the reconstruction of the penal system,” *Indonesian Journal of Criminal Law Studies* 6, no. 4 (2026): 57.

well as programs such as literacy initiatives and rehabilitation grounded in local wisdom.¹¹ Meanwhile, studies concerning open prisons and community-based corrections have emphasized social reintegration and the reform of the correctional system.¹² Previous scholarship on fines and monetary sanctions has examined them as alternatives to incarceration, as well as their relationship to sentencing disparities and prison overcrowding.¹³

A similar trend is evident in research on restorative justice. Studies have addressed diversion within the juvenile justice system, case resolution by the public prosecutor's office, victim restoration, domestic violence, and restorative justice practices based on customary law and Islamic law.¹⁴ Several studies also highlight

¹¹ Ade Adhari et al., "Rehabilitation through Reading: Evaluating Prisoners' Right to Literacy as a Tool to Reduce Recidivism," *Indonesian Journal of Criminal Law Studies* 2, no. 7 (2025): 23. See also, Riza Chatias Pratama et al., "Developing a Family-Based Rehabilitation Model for Juvenile Victims of Narcotics Abuse in Indonesia: Strengthening Child-Centered Justice through Legal Reform," *El-Usrah: Jurnal Hukum Keluarga* 9, no. 2 (2026): 769; Raimond Anolifa Duha, and Adawiyah Nasution, "Pertimbangan Hakim Terhadap Putusan Pengadilan Dalam Kasus Tindak Pidana Narkotika (Studi Putusan Nomor 14/Pid. Sus/2022/PN Sbh)," *JIMU: Jurnal Ilmiah Multidisipliner* 3, no. 02 (2025): 1677; Mulyadi Alrianto Tajuddin et al., "The Underutilized Rehabilitation Policy: Why Local Wisdom Matters in Developing Narcotics Prisoners," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 4, no. 1 (2026): 67.

¹² Hamja, "Community-Based Correction (CBC): Efforts to Achieve a Balance Between Rehabilitation and Social Justice," *Jurnal Pembangunan Hukum Indonesia* 7, no. 1 (2025): 138. See also, Yoghi Arief Susanto et al., "Social reintegration of inmates through open prisons: challenges and rehabilitation strategies in achieving the goals of punishment," *Clío. Revista de Historia, Ciencias Humanas y Pensamiento Crítico* 4, no. 12 (2026): 2128.

¹³ Oaihimore Idemudia Edetalehn et al., "The Innovative concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System," *NIU Journal of Humanities* 8, no. 2 (2023): 2128. See also, Susanto et al., "Social reintegration of inmates," 2128; Muhammad Sholehuddin and Teng Junaidi Gunawan, "Sentencing Inequality and Social Stratification in Indonesia's 2023 Penal Code A Pre-Implementation Analysis," *Asian Journal of Human Services* 30, no. 4 (2026): 3005; Yoserwan Yoserwan, "Monetary sanction in Indonesian criminal law system: Currently and in the future," *Journal of Legal Ethical and Regulatory Issues* 24, no. 1 (2021): 45.

¹⁴ Setia Untung Arimuladi, "Enhancing Legal Certainty Through Restorative Justice: A Focus on the Role of Indonesia's Attorney General's Office," *Pakistan Journal of Criminology* 16, no. 2 (2024): 1099. See also, Nur Azisa et al., "Psychological recovery of crime victims within contemporary restorative justice: An Islamic legal perspective," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1099; Junaidi Junaidi, "The restorative justice approach in the Tepung Tawar tradition: How do customary rules resolve criminal cases.?" *Udayana Journal of Law and Culture* 10 no. 1, no. 1 (2026): 28; Uche Nnawulezi et al., "An Analysis of Indonesian Administration of Criminal Legislation as Instrument of Restorative Justice for Prisoners," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 1 (2025): 268; Siti Nurlaila et al., "Reconstructing Gender-Responsive Restorative Justice for Domestic Violence: A Study of Contextual Islamic Law in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 13, no. 1 (2026): 458; Faiz Rahman, "Contextualizing Restorative Justice Through Diversion Mechanism: A Study Of Indonesia Juvenile Justice System," *Indonesia Law Review* 9, no. 3 (2019): 241; Joko Sriwidodo, "The efforts to resolve criminal cases based on the restorative justice concept by attorney offices," *Substantive Justice International Journal of*

regulatory fragmentation and the need for harmonization among law enforcement agencies, while the formal nature of the state system can create tension with customary justice practices.¹⁵ The Islamic legal concepts of *'afw* (forgiveness) and *islah* (reconciliation) offer a basis for resolutions emphasizing forgiveness, reconciliation, and restoration.¹⁶

The novelty of this research lies in its integrative analysis of alternative sanctions from three interconnected dimensions. First, it examines the conceptual foundations of sentencing philosophy and judicial discretion within Indonesian criminal law. Second, it analyzes the evolution of alternative sanctions and the emergence of the double track system within criminal justice reform, particularly under Law Number 1 of 2023. Third, it explores the objectives of punishment through comparative and international perspectives on non-custodial alternatives, including developments reflected in the Tokyo Rules and various international practices. Through this approach, the study contributes a broader theoretical understanding of sentencing reform beyond merely discussing individual alternative sanctions.

This research is important because the continuing reliance on imprisonment raises concerns regarding prison overcrowding, stigmatization of offenders, recidivism, and the limited effectiveness of short-term imprisonment in achieving rehabilitation.¹⁷ The criminal justice system should not solely aim to impose suffering but should also facilitate behavioral improvement and social

Law 4, no. 1 (2021): 36; Gregorius Widiartana et al., "Exploring Restorative Justice in Domestic Violence Cases," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 3 (2025): 646.

¹⁵ Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Masalah-Masalah Hukum* 51, no. 2 (2022): 16. See also, Rakhmi Izharti et al., "The Urgency of Codifying and Unifying Restorative Justice Regulations in Criminal Procedure Code Reform," *Trunojoyo Law Review* 7, no. 2 (2025): 227; Ardian Kurniawan et al., "Recolonizing Formal Restorative Justice: A Socio-Legal Critique Of Indonesia's Shift from Customary Justice To State Law," *Diponegoro Law Review* 10, no. 2 (2025): 301.

¹⁶ Muhammad Rijaldy Alwy Alwy, "The 'afw Principle and The Indonesian Restorative Justice System," *Jurnal Hukum Islam* 19, no. 2 (2021): 317. See also, Fauzan, "Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 184.

¹⁷ Peter Joo Hee Ng, "Offender rehabilitation, community engagement, and preventing re-offending in Singapore," *Resource Material Series* 80, no. 2 (2010): 17. See also, Agbodike Mmesoma Chinecherem, "Beyond the Prison Gates: Challenges and Pathways of Post-Incarceration Reintegration in Contemporary Societies," In *Zenodo (CERN European Organization for Nuclear Research)* (European Organization for Nuclear Research, 2025), 43; Bunyamin Bunyamin et al., "Reforming Indonesia's Correctional System: The Role of Maqāṣid Al-Syarī'ah in Ensuring Justice and Rehabilitation," *De Jure: Jurnal Hukum dan Syar'iah* 17, no. 1 (2025): 57; Ali Masyhar et al., "Economic assistance as a form of non-penal policy in countering terrorism for ex-prisoners in Indonesia," *Journal of Law and Legal Reform* 3, no. 3 (2024): 112; Ahmad Syaafi, "Remodeling of Criminal Case Settlement in Indonesia," *Wseas Transactions On Environment And Development* 19, no. (2023): 235.

reintegration. Consequently, there is a pressing need to evaluate sentencing policies and explore alternative sanctions that better reflect the principles of proportionality, humanity, and restorative justice while maintaining public protection.¹⁸

Based on the foregoing discussion, this study addresses the following research questions: (1) How are the conceptual foundations of sentencing philosophy and judicial discretion constructed within Indonesian criminal law. (2) How have alternative sanctions evolved, and how has the double track system emerged within Indonesia's criminal justice reform. (3) How do the objectives of punishment and international perspectives support the development of non-custodial alternatives to imprisonment.

Accordingly, this study aims to analyze the philosophical foundations of sentencing and judicial discretion in Indonesian criminal law, examine the evolution of alternative sanctions and the emergence of the double track system under criminal law reform, and evaluate the objectives of punishment from both national and international perspectives. Theoretically, this research contributes to the development of sentencing theory and criminal law reform discourse concerning non-custodial sanctions. Practically, it provides recommendations for policymakers, legal practitioners, and law enforcement institutions regarding the implementation of more humane, effective, and socially integrated sentencing policies in Indonesia.

2. Research Methods

This study employs a doctrinal (normative) legal research design, which focuses on the examination of legal norms, legal principles, legal doctrines, and statutory regulations to address legal issues related to the development of alternative sanctions within the Indonesian criminal justice system.¹⁹ Doctrinal legal research

¹⁸ Gordon Bazemore, "Restorative justice and earned redemption: Communities, victims, and offender reintegration," *American behavioral scientist* 41, no. 6 (1998): 769. See also, Herlambang Herlambang et al., "The Idea of Privatization and Self-Financing of Prison Management in Positive Law and Islamic Law," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 103; Nenny Dwi Maroni Ariani, "Humanistic Criminal Law Enforcement to Achieve Spiritual Justice," *J. Legal Ethical & Regul. Issues* 21, no. 2 (2018): 1; Maroni Sopian Sitepu and Nenny Dwi Ariani, "Humanistic law enforcement as the application of the value of justice, expediency and legal certainty based on Pancasila.," *Journal of Legal, Ethical and Regulatory Issues* 2, no. 4 (2019): 225; Gill McIvor, *What is the impact of community service?* (London: Palgrave Macmillan UK, 2016), 16; Wong Kevin, *Community service* (In The encyclopedia of corrections, 2017), 17.

¹⁹ Nasir Majeed et al., "Doctrinal Research in Law: Meaning, Scope and Methodology," *Bulletin of Business and Economics (BBE)* 12, no. 4 (2023): 560. See also, Jason NE Varuhas, *Mapping doctrinal methods* (Cheltenham: Edward Elgar Publishing, 2023), 2023; Ian Dobinson and Francis Johns,

is intended to identify, interpret, and evaluate legal rules governing sentencing policies and criminal law reform, particularly concerning alternatives to imprisonment.

The research utilizes a statute approach and a conceptual approach. The statute approach is applied through a comprehensive examination of relevant legislation governing criminal sanctions and sentencing policies in Indonesia. The primary regulatory framework analyzed includes the Indonesian Criminal Code (*Wetboek van Strafrecht*), Law Number 1 of 2023 concerning the Criminal Code, and legal provisions relating to sentencing objectives, sentencing guidelines, community service sanctions, supervision sanctions, and fines as alternatives to imprisonment.²⁰ To enrich the analysis, comparative perspectives are incorporated by examining international legal instruments, particularly the United Nations Standard Minimum Rules for Non-Custodial Measures (*Tokyo Rules*). This comparative dimension clarifies how global standards contribute to evaluating Indonesia's reforms and highlights similarities and differences that strengthen methodological rigor.

The legal materials consist of primary, secondary, and tertiary sources. Primary materials include legislation and international legal instruments; secondary materials comprise scholarly books, journal articles, legal commentaries, and academic literature; while tertiary materials include legal dictionaries, encyclopedias, and other supporting references. Materials were collected through library research by systematically identifying and reviewing sources relevant to the research objectives.

The collected materials were analyzed using qualitative juridical analysis, involving the interpretation of legal norms, examination of doctrinal arguments, comparison of relevant legal concepts, and construction of legal reasoning. This method is used to evaluate the philosophical foundations, legal development, and policy implications of alternative sanctions within contemporary criminal law reform.

"Legal Research as Qualitative Research," *Research Methods for Law*, no. (2017): 18; Ian Dobinson and Francis Johns, "Legal Research as Qualitative Research," *Research Methods for Law*, no. (2017): 18

²⁰ Alvin Syahrin et al., *Dasar-dasar Hukum Pidana: Suatu Pengantar (Buku Kesatu Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana)* (Medan: Merdeka Kreasi Group, 2023), 42. See also, Afandono Cahyo Putranto, and Irwan Triadi, "Konsep Hukum Pidana Adat Pasca Pemberlakuan Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Perspektif Living Law," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 7319.

3. Results and Discussion

3.1. Conceptual Foundations of Sentencing Philosophy in Indonesian Criminal Law

Law Number 1 of 2023 concerning the Criminal Code marks an important transformation in Indonesia's sentencing philosophy. The Code explicitly defines the objectives of punishment as preventing crime through the enforcement of legal norms for societal protection, socializing offenders through guidance, resolving conflicts and restoring social balance, and fostering remorse.²¹ Article 52 further requires that punishment must not degrade human dignity.²² These provisions demonstrate that punishment is no longer conceived solely in retributive terms but also incorporates social defense, rehabilitation, resocialization, and restoration as interconnected objectives.²³

The reform reflects a view of criminal law as a purposive system in which punishment is a means of achieving broader social objectives rather than an end in itself. The objectives of punishment therefore provide the philosophical direction for the criminal justice system and guide the relationship between criminalization, criminal responsibility, sanctions, and their implementation. In this framework, sentencing must balance the interests of society with the rights and interests of individuals.²⁴ This balanced orientation can be understood through the principle of monodualism, which recognizes that criminal law must protect society from crime while simultaneously respecting the dignity and rights of offenders.²⁵ The

²¹ Michael Adyhaksa Padang et al., "Keberpihakan Pemidanaan Dalam Undang-Undang Nomor 1 Tahun 2023," *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 2 (2024): 66. See also, Nur Aripkiah et al., "Pembaharuan Konsep Hukum Pidana Dalam Undang-Undang No. 1 Tahun 2023 Tentang KUHP," *Jurnal Fundamental Justice* 6, no. 2 (2025): 212; Dedi Purnama et al., "Analisis Hermeneutika Pasal 51 (C) Pada Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana dan Model Penyelesaian Tindak Pidana dengan Keadilan Restoratif," *Jurnal Locus Penelitian dan Pengabdian* 5, no. 2 (2026): 1267.

²² Padang et al., "Keberpihakan Pemidanaan Dalam Undang-Undang," 68. See also, Aripkiah et al., "Pembaharuan Konsep Hukum Pidana," 211; Purnama et al., "Analisis Hermeneutika Pasal 51 (C) Pada," 1268.

²³ Marcus Priyo Gunarto, "Sikap Memidana yang Berorientasi pada Tujuan Pemidanaan," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2012): 94.

²⁴ Easton Susan and Christine Piper, "Sentencing and punishment: The quest for justice," (PhD diss., Oxford University Press, 2012), 212. See also, Shira Thani et al., "Analisis hukum tentang pergeseran paradigma pemidanaan dari retributif ke restoratif dalam KUHP baru," In *Proceedings of Malikussaleh International Conference on Law, Legal Studies and Social Science (MICoLLS)* 5, no. 3 (2025): 55.

²⁵ Arief Barda Nawawi, "RUU KUHP baru: Sebuah restrukturisasi/rekonstruksi sistem hukum pidana Indonesia," (PhD diss., Badan Penerbit, Universitas Diponegoro, 2009), 209. See also, Arief Barda Nawawi, *Perkembangan asas-asas hukum pidana Indonesia: perspektif perbandingan hukum pidana*. (Semarang: Badan Penerbit Undip, 2010), 210.

integration of social defense and social welfare consequently places punishment within a broader framework of public protection, social harmony, and individual rehabilitation.²⁶

This orientation also changes the position of the judge in sentencing. Sentencing is not simply a mechanical application of statutory provisions but requires an assessment of the circumstances of both the offense and the offender. Judicial decision-making involves at least three dimensions: *strafsoort*, concerning the type of sanction; *strafmaat*, concerning its severity or duration; and *strafmodus*, concerning the manner of its execution.²⁷ Legislative policy establishes the permissible framework and limits, whereas judicial policy determines how those provisions are applied to individual cases.²⁸ Judicial discretion therefore operates within the boundaries established by law but allows judges to select a response that is proportionate and consistent with the purposes of punishment.

Law Number 1 of 2023 strengthens this framework by providing more explicit sentencing objectives and guidelines than the previous Criminal Code.²⁹ The formulation of these objectives performs a controlling and directional function: it provides the rationale and justification against which sentencing decisions can be assessed.³⁰ The sentencing process can consequently be understood as consisting of three interconnected stages: formulation through legislative policy, application through judicial policy, and execution through administrative or correctional policy.³¹ Coherence among these stages is essential because a rehabilitative

²⁶ Zafar Ali et al., "The role of Islamic values in promoting social justice and community welfare," *International Research Journal of Management and Social Sciences* 5, no. 1 (2024): 577. See also, Charlotte Heath-Kelly, "'Social defence' and the resilience of the domestic war on terror: A genealogy of social security, national security, and defence," *European Journal of International Security* 10, no. 1 (2025): 16.

²⁷ I Gede Adhi Mulyawarman et al., "Blocking Dangerous Content in Electronic Communications Networks: Evidence from Netherlands, United States and Singapore," *Journal of Human Rights, Culture and Legal System* 4, no. 1 (2024): 238.

²⁸ Muh Zumar Aminuddin, "Kebijakan Legislatif dalam Rangka Perlindungan Ideologi dan Konstitusi Negara dengan Hukum Pidana," (PhD diss., Program Pascasarjana Universitas Diponegoro, 2006), 43. See also, Dadan Taufik Fathurohman, "Rekonstruksi regulasi kewenangan Komisi Yudisial dalam menjaga keluhuran marwah dan martabat hakim yang berdasarkan nilai keadilan," (PhD diss., Universitas Islam Sultan Agung, 2023), 42.

²⁹ Muhammad Ridho Hakiki et al., "Reformulation of the Legal Politics of Restorative Justice in Handling Minor Criminal Offenses under Law Number 1 of 2023 on the Criminal Code," *Interdisciplinary Journal and Humanity* 5, no. 2 (2023): 77.

³⁰ Japansen Sinaga et al., "Elemen-elemen sistem peradilan pidana yang mempengaruhi keberhasilan penegakan hukum," *Jurnal SOMASI (Sosial Humaniora Komunikasi)* 6, no. 1 (2025): 223.

³¹ Noveria Devy Irmawanti and Barda Nawawi Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 218. See also, Kenedi John, *Buku Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum di Indonesia* (Jakarta: Pustaka Pelajar, 2017), 217.

sentencing philosophy cannot be achieved solely through legislation if judicial application and correctional implementation remain predominantly punitive.³²

One important consequence of this reform is the diversification of sanctions. The new Criminal Code recognizes supervision, fines, and social work as alternatives to imprisonment. Under Article 71, imprisonment of less than five years may, under specified conditions, be replaced by a fine, including consideration of the victim's position and the offender's recidivism status.³³ Fine categories and their implementation are further regulated in Articles 78–84.³⁴ Article 75 also provides for probation for offenses punishable by imprisonment of up to five years, with further provisions in Articles 76–77. Social work is designed particularly for minor offenses and short-term imprisonment alternatives and requires the offender's consent, while its implementation must consider the offender's physical, mental, and social condition as well as relevant skills or profession.

The diversification of sanctions is closely connected with the double track system,³⁵ which allows criminal sanctions to operate alongside measures directed toward treatment, rehabilitation, counseling, and other corrective interventions.³⁶ This approach recognizes that criminal behavior cannot always be addressed effectively through punishment alone. Rehabilitation-oriented interventions may be particularly important where offending is associated with social, psychological, economic, or developmental factors. Research on juvenile and narcotics offenders, for example, highlights the importance of individualized and family-based rehabilitation, while other studies emphasize literacy programs, community-based correction, and locally responsive interventions as mechanisms for strengthening reintegration.³⁷ The double track orientation therefore reinforces the idea that sentencing should pursue both accountability and behavioral change.

The same philosophy supports the principle of subsidiarity, under which imprisonment should not automatically be imposed where a less restrictive sanction can adequately achieve the purposes of punishment. This is particularly

³² Nawawi, "RUU KUHP baru: Sebuah restrukturisasi," 212.

³³ Gunarto, "Sikap Memidana yang Berorientasi pada Tujuan," 97.

³⁴ Nur Kamisah et al., "Analisis Yuridis Perbandingan Pidana Bersyarat (KUHP Lama) Dengan Pidana Pengawasan (KUHP Baru)," (PhD diss., Universitas Maritim Raja Ali Haji, 2024), 24.

³⁵ Wojciech Zalewski, "Double-Track System in Polish Criminal Law. Political and Criminal Assumptions, History, Contemporary References," *Acta Poloniae Historica* 118, no. (2019): 41.

³⁶ Bagaric Mirko, *Punishment and sentencing: A rational approach* (Routledge: Routledge, 2025), 225.

³⁷ Adhari et al., "Rehabilitation through Reading," 24. See also, Pratama et al., "Developing a Family-Based Rehabilitation Model for," 769; Hamja, "Community-Based Correction (CBC): Efforts to Achieve," 139; Tajuddin et al., "The Underutilized Rehabilitation Policy: Why Local," 65.

relevant to short-term imprisonment, which may produce stigmatization, disruption of employment and family relationships, and prisonization without necessarily providing sufficient rehabilitative benefits. Non-custodial measures allow offenders to remain connected to their families, employment, education, and communities while remaining subject to legal accountability. Community service, for example, has been developed as an alternative for minor offenses and as a response to prison overcrowding, while also promoting rehabilitation and social reintegration.³⁸ Fines and supervision similarly expand the range of responses available to judges beyond incarceration.³⁹

This sentencing philosophy is also connected with restorative justice. The objective of restoring social balance under the new Criminal Code creates normative space for approaches that consider not only the offender but also victims and the wider community. Indonesian restorative justice practices have developed through police, prosecutorial, and judicial mechanisms, although their implementation remains institutionally fragmented.⁴⁰ Research further indicates that restorative justice may strengthen victim recovery, reconciliation, and offender accountability, but its effectiveness depends on substantive victim protection and consistent implementation.⁴¹ Thus, restorative justice complements rather than simply replaces conventional punishment within the broader transformation of sentencing.

The philosophical basis of this transformation is also supported by Indonesia's plural normative traditions. Humanistic criminal law has been associated with Pancasila values, particularly humanity, social justice, and the balance between individual and collective interests.⁴² Customary justice likewise demonstrates the significance of community-based approaches to resolving conflict, although the formalization of restorative justice may create tensions with existing customary mechanisms.⁴³ These perspectives reinforce the argument that Indonesian sentencing reform is not simply a technical reduction of imprisonment but reflects

³⁸ Andini, and Putri, "Ahead of enforcing community service under," 141268; Purnomo et al., "Community service order in Indonesia," 57.

³⁹ Sholehuddin and Gunawan, "Sentencing Inequality and Social Stratification," 3005. See also, Yoserwan, "Monetary sanction in Indonesian criminal law," 46.

⁴⁰ Akbar, "Pembaharuan Keadilan Restoratif," 16. See also, Izharti et al., "The Urgency of Codifying and Unifying," 225.

⁴¹ Azisa et al., "Psychological recovery of crime victims within," 1100; Nnawulezi et al., "An Analysis of Indonesian Administration of," 268; Efa Rodiah Nur et al., "Restorative justice in settling criminal case: A normative-empirical study of the law," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 3, no. 2 (2025): 552.

⁴² Fauzan, "Alternatives to Criminal Conviction," 186. See also, Maroni and Nenny, "Humanistic law enforcement," 225; Alwy, "The 'afw Principle and The Indonesian," 317.

⁴³ Junaidi, "The restorative justice approach in the," 296. See also, Kurniawan et al., "Recolonizing Formal Restorative Justice," 301.

a broader effort to construct a form of criminal justice compatible with human dignity, social harmony, and rehabilitation.

The emerging framework is further situated within international developments concerning non-custodial measures. The United Nations Tokyo Rules, adopted through General Assembly Resolution 45/110 in 1990, establish internationally recognized principles for the use of non-custodial measures and encourage flexible responses that take account of the nature of the offense and the circumstances of the offender.⁴⁴ Community sanctions and community service have also been developed in various jurisdictions, including the Netherlands and England, providing comparative reference points for Indonesia's current reform.⁴⁵ These international developments support the principle that imprisonment should be used cautiously and that appropriate non-custodial measures can pursue accountability while facilitating rehabilitation and social reintegration.⁴⁶

Accordingly, the conceptual foundation of Indonesia's current sentencing system can be understood as a movement from imprisonment-centered punishment toward a more diversified and purposive model. The central issue is not the elimination of punishment, but the selection of sanctions that best correspond to the purposes of criminal law. Law Number 1 of 2023 provides judges with a broader normative framework in which proportionality, human dignity, social protection, rehabilitation, restoration, and reintegration can be considered together. Judicial discretion becomes particularly important in translating these principles into individual sentencing decisions. The resulting framework therefore positions alternative sanctions, rehabilitation, restorative justice, and the double track system not as isolated innovations, but as components of a broader transformation in Indonesia's philosophy of punishment.

3.2. Evolution of Alternative Sanctions and the Emergence of the Double Track System

The Indonesian Criminal Code lacks a comprehensive sentencing guideline (*strafstoematingsleiddraad*), a tool crafted by legislators to furnish judges with essential

⁴⁴ Maria Ulfah, "Pidana Kerja Sosial, Tokyo Rules, serta Tantangannya di Masa Mendatang," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (2021): 518.

⁴⁵ Andini, and Putri, "Ahead of enforcing community service under," 141269. See also, McIvor, *What is the impact of community service*, 16; Kevin, *Community service*, 17.

⁴⁶ Hans-Jörg Albrecht, "Sanction policies and alternative measures to incarceration: European experiences with intermediate and alternative criminal penalties," *Criminal Justice Policy Review* 2, no. 3 (1987): 3. See also, Ishaya Agmeshi Adikwu, and Mohammed Sagir Bununu, "Non-custodial Sanctions and Administration of Restorative Justice in Wukari Local Government Area, Taraba State, Nigeria," *Federal University Wukari Journal of Social Sciences* (2024): 3. See also, Olubunmi, Oluwatise, Jimoh Aliyah Bakare Khadijat Adebisi Sulaimon, and Oni Eunice. "Non-Custodial Measures Under the Nigerian Criminal Justice System: An Exploratory Analysis." *Available at SSRN* 3, no. 3 (5847): 457.

principles for decision-making. Instead, the Criminal Code exclusively prescribes rules for sentencing (*strafvoetingsregels*). These sentencing guidelines are delineated in the elucidation of the Criminal Code, specifically in the *Memorie Van Toelichting* WvS, serving as a framework for judges to ascertain the appropriate severity of a sentence for each offense.⁴⁷ Judges are required to consider both objective and subjective circumstances surrounding the criminal act, taking into account the nature of the act (*daad*) and the characteristics of the perpetrator (*dader*).⁴⁸ This evaluation involves an examination of the violated rights and resultant losses, the perpetrator's prior behavior, and a determination of whether the offense represents an initial misstep or a recurrent pattern of criminal conduct. Such considerations are intended to ensure that sentencing reflects not only the seriousness of the offense but also the individual circumstances of the offender. Despite being based on the *Wetboek van Strafrecht*, the Indonesian Criminal Code, particularly in Book II addressing crimes and offenses, maintains a predominant focus on imprisonment as the primary form of punishment.⁴⁹

Historically, imprisonment has occupied a central position within Indonesian criminal law policy. The dominance of custodial sanctions reflects a conventional assumption that deprivation of liberty constitutes the most effective response to criminal behavior.⁵⁰ However, developments in criminal law have increasingly questioned the effectiveness of imprisonment, particularly short-term imprisonment, in achieving rehabilitation and reducing recidivism.⁵¹ Consequently, criminal justice reform has gradually shifted attention toward alternative sanctions that are capable of maintaining accountability while minimizing the negative consequences associated with incarceration.

A noteworthy evolution in criminal law pertains to the emergence of alternative sanctions, shifting away from confinement to explore options like fines, particularly for offenses that traditionally incur imprisonment for less than one year. From the perspective of criminal law policy, the practice of resorting to imprisonment as a punitive measure may be deemed “wasteful” and stands in contrast to the prevailing global trend.⁵² This trend advocates for the selective and restricted use

⁴⁷ Anggun Intan Nur Amalia, “Perbandingan Pedoman Pemidanaan di Indonesia Dan Jerman,” (PhD diss., Tegal, Universitas Pancasakti Tegal, 2025), 432.

⁴⁸ Roy Sanjaya, “Konstruksi Teori Efek Jera Sebagai Parameter Hakim dalam Menjatuhkan Putusan Pidana,” *Pusat Analisa Kebijakan Hukum dan Ekonomi* 20, no. 3 (2020): 344.

⁴⁹ Iqbal Kamalludin et al., “The Paradox of Imprisonment: Navigating Human Rights and Penal Policy in Indonesia’s New Criminal Code,” *Jurnal Hukum Progresif* 13, no. 2 (2025): 355.

⁵⁰ Patrice Villettaz et al., “The Effects on Re-offending of Custodial vs. Non-custodial Sanctions: An Updated Systematic Review of the State of Knowledge,” *Campbell Systematic Reviews: Better Evidence for a Better World* 11, no. 1 (2015): 16.

⁵¹ Matthew Cracknell, “Post-release reforms for short prison sentences: re-legitimising and widening the net of punishment,” *Probation Journal* 65, no. 3 (2018): 307.

⁵² David J. et al., *Civilising criminal justice*, 13.

of imprisonment, reflecting a broader international movement steering away from its excessive imposition. Despite this, theoretically, even short-term imprisonment remains a cornerstone of the penal system. Faced with this dilemma, there arises a compelling need for the reconstruction of criminal law, grounded in a value-based approach that aligns with the civilization of the criminal justice system.⁵³

The revitalization of criminal law aims to establish a legal framework that embodies a more balanced concept of justice. Criminal law reform is therefore not merely concerned with changing forms of punishment but also with reconsidering the values underlying sentencing policies.⁵⁴ At the core of the reflection on criminal law policy, particularly in the exploration of alternative prison sentences, lies the imperative to revitalize laws by moving away from punitive approaches toward a value-based orientation in criminal law policy, ultimately leading to a more dignified form of punishment.⁵⁵ This development reflects growing recognition that criminal sanctions should contribute not only to deterrence but also to rehabilitation and social reintegration.

The discourse on alternative sanctions involving deprivation of liberty, alongside non-custodial measures such as compensation and fines, is closely linked to the idea of a double track system or the simultaneous imposition of sanctions and actions in the realm of criminal punishment in Indonesia.⁵⁶ The emergence of this concept represents an important development in criminal justice reform because it broadens the range of legal responses available to address criminal conduct.

The fundamental concept of implementing sanctions in Indonesian legislation is rooted in specific goals associated with each regulation and the implementation of sanctions varies accordingly. The double track system underscores the equal status of criminal sanctions and action sanctions, emphasizing the importance of both punitive measures and rehabilitation elements within the criminal law

⁵³ A. R. Suhariyono, "Pembaruan pidana denda di Indonesia: pidana denda sebagai sanksi alternatif," *No Title* 12, no. 1 (2012): 525. See also, Arief Barda Nawawi, *Kapita selekta hukum pidana*. (Bandung: Citra Aditya Bakti, 2003), 43.

⁵⁴ Khairul Azhar et al., "Kebijakan Hukum Pidana Sebagian Bagian Dari Kebijakan Hukum Pidana," *Innovative: Journal of Social Science Research* 4, no. 4 (2024): 3728. See also, Purwanti et al., "Criminal law reform through the classification: Toward a restorative sanction in Indonesian immigration law," *Lex Scientia Law Review* 9, no. 1 (2025): 431.

⁵⁵ Purnawati Andi et al., *Pembabaruan Hukum Pidana*, (Purbalingga: CV Eureka Media Aksara, 2025), 25. See also, Zico Junius Fernando et al., "Advancing Ecological Justice through the Integration of Eco-Religion in Criminal Law Reform," *Journal of Law, Environmental and Justice* 3, no. 2 (2025): 163.

⁵⁶ Margono Rudi, *Paradigma Restoratif-Ketika Keadilan Tidak Harus Menghukum* (Malang: Brawijaya Press, 2026), 26.

sanctions system.⁵⁷ Under this framework, punishment is not viewed solely as retaliation but also as a means of encouraging behavioral change and reducing future offending. Criminal sanctions are diverse, including those aligned with the “Single Track System” (solely utilizing criminal penalties) and those adhering to the “Double Track System”.⁵⁸ The adoption of the latter necessitates the development of both punitive criminal sanctions and educational measures. This approach reflects the understanding that offenders may require treatment, guidance, or social intervention in addition to punishment. As a result, the double track system seeks to balance accountability with rehabilitation.⁵⁹

The proposed Indonesian Criminal Code underscores this approach by articulating that measures accompanying the main punishment may include counseling, rehabilitation, job training, treatment in institutions, and/or correction of the consequences of the crime. These measures demonstrate an increasing emphasis on offender development and social reintegration. Through such interventions, the criminal justice system seeks not only to punish offenders but also to facilitate their return to society as responsible citizens.

Additionally, specific measures for individuals with mental and/or intellectual disabilities, or those with acute exacerbations of mental disabilities, incorporate rehabilitation, placement with a person, treatment in institutions, placement with the government, and/or treatment in a mental hospital. These provisions illustrate the growing recognition that criminal justice responses should be tailored to the personal conditions of offenders. Consequently, the double track system provides greater flexibility in achieving the objectives of punishment while maintaining public protection and legal certainty. By combining punitive sanctions with corrective measures, the system represents a significant step in the evolution of Indonesian criminal law toward a more balanced, humane, and effective model of criminal justice.⁶⁰

⁵⁷ Mujito et al., “Double Track System in Criminal Sanction Against Narcotics Abuse,” In *Journal of Law Theory and Law Enforcement* (Milan: JF Publisher, 2022), 22. See also, Januar Rahadian Mahendra, “Non-Penal Policy to Reduce the Rate of Narcotics Crime Through a Double Track System,” *Dialogia Iuridica* 15, no. 2 (2024): 31.

⁵⁸ Payaman J. Simanjuntak and Teguh Prasetyo, “Urgency of Criminal Liability for Corporations Paying Wages below the Minimum Wage Based on Justice Values,” *Global Legal Review* 6, no. 1 (2026): 66. See also, Ida Hanifah, “Criminal Liability Against Corporations in Payment of Wages Under the Provisions of Legislation,” *International Journal Reglement & Society (IJS)* 3, no. 2 (2022): 68.

⁵⁹ Nawawi, *Perkembangan asas-asas hukum*, 2010.

⁶⁰ Roeslan Saleh Muladi and Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung: Alumnus, 2021), 90. See also, Nawawi, *Perkembangan asas-asas hukum*, 215; Dwi Wiharyangti, “Implementasi Sanksi Pidana dan Sanksi Tindakan dalam Kebijakan Hukum Pidana di Indonesia,” *Pandecta Research Law Journal* 6, no. 1 (2011): 47.

3.3. Objectives of Punishment and International Perspectives on Non-Custodial Alternatives

Sentencing is not merely an instrument for imposing suffering but a purposive mechanism through which criminal justice seeks to protect society, prevent reoffending, rehabilitate offenders, restore social relations, and maintain social welfare.⁶¹ Accordingly, the legitimacy of punishment depends on whether a particular sanction is capable of achieving these objectives while remaining proportionate to the offense and respectful of human dignity.⁶² Sentencing policy therefore reflects both forward-looking objectives, including prevention, rehabilitation, reintegration, and incapacitation, and backward-looking considerations of accountability and retribution.⁶³

Four principal rationales are particularly relevant: retribution, incapacitation, reintegration, and resocialization.⁶⁴ Retribution emphasizes punishment as a proportionate response to established wrongdoing, while incapacitation seeks to protect society by restricting an offender's capacity to reoffend. Reintegration and resocialization, by contrast, focus on enabling offenders to return to society through education, treatment, guidance, and behavioral change. This humanistic orientation is consistent with the view of criminal behavior advanced by Olof Kinberg, who associated offending with abnormality or immaturity and therefore emphasized a therapeutic rather than exclusively punitive response.⁶⁵ Karl Menninger similarly advocated therapeutic approaches in place of predominantly punitive attitudes.⁶⁶ These perspectives support the development of sanctions that preserve liberty while addressing the causes and consequences of offending.⁶⁷

This orientation provides the basis for rehabilitation as an important objective of punishment. Rehabilitation addresses offenders through treatment, education, guidance, and recovery rather than relying exclusively on deprivation of liberty.⁶⁸

⁶¹ Failin Alin, "Sistem Pidana Dan Pemidanaan di Dalam Pembaharuan Hukum Pidana Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (2017): 17.

⁶² Muh. Amiruddin et al., "Reformulasi Kebijakan Hukum Pidana dalam Menjamin Keadilan Substantif dan Perlindungan Hak Asasi Manusia," *Jurnal Paradoks Hukum* 1, no. 2 (2025): 238.

⁶³ John Hagan and Ronit Dinovitzer, "Collateral Consequences of Imprisonment for Children, Communities, and Prisoners," *Crime and Justice* 26, no. (1999): 123. See also, Christian Henrichson and Ruth Delaney, "The Price of Prisons: What Incarceration Costs Taxpayers," *Federal Sentencing Reporter* 25, no. 1 (2012): 69.

⁶⁴ Muladi, *Kapita Selektia Sistem Peradilan Pidana*, (PhD diss., Badan Penerbit Universitas Diponegoro, 1995), 15.

⁶⁵ Kinberg, O. Punishment or Impunity?. *Acta Psychiatrica Scandinavica*, 21, no. 1-3 (1946): 429.

⁶⁶ Menninger Augustus Karl, *The crime of punishment* (New York City: Viking Press, 1968), 231.

⁶⁷ Grupp Stanley E., "Theories of punishment.," (PhD diss., Indiana University Press, 1971), 171. See also, Arief Barda Nawawi, "Kebijakan legislatif dalam penanggulangan kejahatan dengan pidana penjara.," (PhD diss., Badan Penerbit, Universitas Diponegoro, 1996), 19.

⁶⁸ Hatta Mohammad, *Kapita selektia pembaharuan hukum pidana dan sistem pemidanaan*. (Liberty: Liberty, 2016), 16.

Its relevance is particularly evident in juvenile and narcotics cases, where research emphasizes individualized and family-based approaches.⁶⁹ Rehabilitation can also be supported through literacy programs, community-based correction, and locally responsive interventions, although institutional limitations, inadequate differentiation of legal mechanisms, and persistent recidivism remain significant challenges.⁷⁰ These findings suggest that the effectiveness of punishment should be evaluated not simply by its severity but by its capacity to produce sustainable behavioral change and social reintegration.

The humanistic orientation of sentencing is consistent with Indonesian legal thought, which emphasizes justice, expediency, legal certainty, and humanitarian values grounded in Pancasila.⁷¹ Alternative sanctions therefore have significance beyond reducing the prison population. They provide a means of reconciling punishment with human dignity, social justice, and rehabilitation. Community-based correction seeks to balance rehabilitation with social justice by facilitating offenders' return to society, while open prisons provide less restrictive correctional environments that support gradual reintegration.⁷²

These objectives are reflected in Law Number 1 of 2023 concerning the Criminal Code, which identifies crime prevention, societal protection, offender guidance and socialization, conflict resolution, restoration of social balance, and the development of remorse as purposes of punishment. The requirement that punishment must not degrade human dignity reinforces the view that sentencing should serve purposes beyond retribution. The Code consequently provides a broader basis for non-custodial sanctions, including supervision, fines, and community service.

Community service is particularly important because it connects punishment with rehabilitation, social participation, and community benefit.⁷³ Its introduction under the new Criminal Code represents a movement away from imprisonment as the default response, particularly for minor offenses and cases involving short-term imprisonment. Fines similarly provide an alternative to imprisonment and may contribute to addressing prison overcapacity, although questions concerning

⁶⁹ Pratama et al., "Developing a Family-Based Rehabilitation Model for," 770. See also, Irwan Waris et al., "Reframing Public Policy on Narcotic Case Dismissals: Integrating Maqasid al-Shari'ah and Restorative Justice in the Contemporary Era," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 567.

⁷⁰ Adhari et al., "Rehabilitation through Reading," 24. See also, Tajuddin et al., "The Underutilized Rehabilitation Policy: Why Local," 66; Bunyamin et al., "Reforming Indonesia's Correctional System: The Role," 58.

⁷¹ Maroni and Nenny, "Humanistic law enforcement," 226.

⁷² Hamja, "Community-Based Correction (CBC)," 139.

⁷³ Lidya Suryani Widayati, "Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara Jangka Pendek," *Kajian* 17, no. 4 (2012): 570.

proportionality and sentencing inequality remain relevant.⁷⁴ These sanctions illustrate that non-custodial sentencing can preserve accountability without necessarily severing offenders' social and economic ties.

Restorative justice further broadens the objectives of punishment by shifting attention from the infliction of suffering toward repairing the consequences of crime. In Indonesia, restorative justice has developed through police, prosecutorial, and judicial mechanisms and has increasingly become part of criminal justice reform.⁷⁵ Its objectives include offender accountability, reconciliation, victim recovery, and restoration of social balance. Comparative studies likewise identify restorative justice as an important element in Indonesia's movement beyond purely retributive approaches.⁷⁶

Nevertheless, restorative justice should not be equated automatically with effective or humane justice. Its implementation remains affected by fragmented institutional regulations and differences among police, prosecutors, and courts.⁷⁷ Research also identifies concerns regarding victim protection and psychological recovery, particularly where procedural settlement takes precedence over substantive justice.⁷⁸ In domestic violence cases, the persistence of punitive attitudes may further constrain the effectiveness of restorative approaches.⁷⁹ These challenges demonstrate that the objectives of non-custodial and restorative measures depend substantially on the quality of their implementation.

Indonesia's objectives of punishment are also shaped by plural normative traditions.⁸⁰ Customary justice similarly demonstrates the historical role of community-based reconciliation, although the formalization of restorative justice

⁷⁴ Riski Dysas Prabawani et al., "Overcapacity in Indonesia's Prisons: The Role of Criminal Law Reform in Sustainable Solutions," *Journal of Law and Legal Reform* 6, no. 4 (2025): 2143. See also, Sholehuddin and Gunawan, "Sentencing Inequality and Social Stratification," 3008; Yoserwan, "Monetary sanction in Indonesian criminal law," 65.

⁷⁵ Akbar, "Pembaharuan Keadilan Restoratif," 18. See also, Arimuladi, "Enhancing Legal Certainty Through Restorative Justice," 903; Joko Sriwidodo, "The efforts to resolve criminal cases based on the restorative justice concept by attorney offices," *Substantive Justice International Journal of Law* 4, no. 1 (2021): 38; Alwy, "The 'afw Principle and The Indonesian,'" 318.

⁷⁶ Achmad Irwan Hamzani et al., "Implementation of restorative justice in the criminal justice system: A comparative study between Indonesia and India," *Indonesian State Law Review* 8, no. 2 (2025): 114.

⁷⁷ Izharti et al., "The Urgency of Codifying and Unifying," 227.

⁷⁸ Azisa et al., "Psychological recovery of crime victims within," 1100. See also, Nnawulezi et al., "An Analysis of Indonesian Administration of," 269; Nurlaila et al., "Reconstructing Gender-Responsive Restorative Justice for Domestic," 458.

⁷⁹ Gregorius Widiartana et al., "Exploring Restorative Justice in Domestic Violence Cases," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 3 (2025): 649.

⁸⁰ Fauzan, "Alternatives to Criminal Conviction," 186. See also, Alwy, "The 'afw Principle and The Indonesian,'" 319.

may create tensions with customary practices and local legal traditions.⁸¹ Consequently, Indonesian sentencing policy reflects an interaction between accountability, social protection, rehabilitation, restoration, and culturally embedded conceptions of justice rather than adherence to a single punitive rationale.

International developments provide an important comparative framework for assessing Indonesia's movement toward non-custodial sentencing. The United Nations Standard Minimum Rules for Non-custodial Measures, commonly known as the Tokyo Rules and adopted through General Assembly Resolution 45/110 in 1990, establish internationally recognized principles for the use of non-custodial measures.⁸² Their central orientation is to encourage individualized, proportionate, and flexible responses while avoiding unnecessary deprivation of liberty. Non-custodial measures may therefore be used at different stages of the criminal justice process and should be selected according to the circumstances of the offense and the offender.

Comparative experience demonstrates that community sanctions and community service have been developed in a number of jurisdictions, including the Netherlands, England and Wales, Australia, and other countries.⁸³ These experiences are relevant to Indonesia because they demonstrate that community-based sanctions can operate as meaningful forms of accountability while allowing offenders to remain connected to employment, education, family, and community life. They also provide practical references for designing supervision and implementation mechanisms.

The international preference for non-custodial measures is closely related to concerns about the limitations of imprisonment, particularly short-term imprisonment. The International Congress of Penal Law in Brussels in 1989 emphasized the disadvantages associated with short-term imprisonment, reinforcing the need to consider appropriate alternatives. The rationale is not that imprisonment should disappear entirely, but that it should be used when necessary and when less restrictive measures cannot adequately achieve the purposes of punishment. In this sense, imprisonment increasingly operates as a measure of last

⁸¹ Junaidi, "The restorative justice approach in the," 298. See also, Kurniawan et al., "Recolonizing Formal Restorative Justice," 303.

⁸² Abas Zeraat, and Seyed Ali Moosavi Baygi, "Fundamentals and criteria for individualizing custodial contracts at the gauge of United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules, 1990)," *The Judiciary Law Journal* 83, no. 107 (2019): 188.

⁸³ Andini, and Putri, "Ahead of enforcing community service under," 14126. See also, McIvor, *What is the impact of community service*, 18; Göran Melander and Gudmundur Alfredsson, "United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)," In *the Raoul Wallenberg Institute Compilation of Human Rights Instruments* (Brill: Nijhoff, 1997), 97; Kevin, *Community service*, 19.

resort, particularly where community-based sanctions can provide sufficient public protection and offender accountability.

Non-custodial sentences provide several advantages: (a) improved opportunities for rehabilitation; (b) the ability of offenders to maintain daily responsibilities, such as work, family life, and social interaction; (c) reduced stigma affecting offenders and their families; and (d) avoidance of the effects of prisonization. This reflects a shift away from the idea of *peine unique* or imprisonment as the *ultimum refugium*, especially for short-term sentences. The conceptual foundation of non-custodial sanctions is closely linked to the objectives of criminal punishment and judicial functions, whereby judges determine guilt, appropriate punishment, and the rehabilitative function of sentencing.⁸⁴ Moreover, these characteristics support a sentencing philosophy that treats liberty as an important dimension of human dignity while still recognizing the need for accountability.⁸⁵

However, international experience also demonstrates that alternatives to imprisonment are not inherently effective simply because they are non-custodial. Poorly designed alternatives may produce excessive supervision, inconsistent application, or new forms of penal control. Their legitimacy therefore depends on proportionality, procedural safeguards, institutional accountability, adequate supervision, and clear criteria for judicial decision-making. Community service in Indonesia, for example, remains relatively new, making institutional readiness, community participation, and detailed implementation mechanisms particularly important.⁸⁶

International standards should consequently function as a comparative reference rather than as a model to be adopted mechanically. The Indonesian context requires adaptation to its legal system, social conditions, institutional capacity, and normative traditions. The development of community service, supervision, fines, rehabilitation, restorative justice, and community-based

⁸⁴ Roeslan Saleh Muladi and Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung: Alumni, 2021), 91. See also, Carolyn Hoyle and Lucy Harry, "Diversion or death? The moral framework shaping bifurcated punishments for drug offences in Indonesia," *Drugs: Education, Prevention and Policy* 32, no. 4 (2024): 348.

⁸⁵ M. Cherif Bassiouni, "A Century of Dedication to Criminal Justice and Human Rights: The International Association of Penal Law and the Institute of Higher Studies in Criminal Sciences," *DePaul Law Review* 38, no. 4 (1989): 899. See also, Karen Engle, "Anti-impunity and the turn to criminal law in human rights," *Cornell Law Review* 100, no. 5 (2015): 1069; Andrew Clapham and William A. Schabas, "Human rights and international criminal law," *The Cambridge Companion to International Criminal Law* 11, no. 2 (2016): 16.

⁸⁶ Andini, and Putri, "Ahead of enforcing community service under," 141269. See also, Purnomo et al., "Community service order in Indonesia," 59.

correction should therefore be assessed according to their ability to achieve the purposes of punishment while respecting proportionality and human dignity.⁸⁷

Overall, the international perspective reinforces Indonesia's movement toward a more diversified sentencing system in which imprisonment is no longer the sole or automatic response to criminal conduct. Non-custodial alternatives provide different means of pursuing public protection, accountability, rehabilitation, and reintegration. Their legitimacy, however, depends on maintaining an appropriate balance between these objectives. Indonesia's reform under Law Number 1 of 2023 therefore represents not simply an expansion of sentencing options but an effort to align national sentencing policy with a broader understanding of punishment in which liberty, rehabilitation, restoration, and social protection can be pursued simultaneously.⁸⁸

4. Conclusion

The approach to alternative punishments for deprivation of liberty must be grounded in judicious and circumscribed criminal law policies, guided by principles of equitable and dignified penalties. Imprisonment ought to be reserved exclusively for severe offenses, sparing minor offenders from such measures. It should be perceived as a measure of last resort, contingent upon the intrinsic and consequential factors of the crime, the situational and personal characteristics of the offender, and mitigating circumstances that might warrant a more lenient response, such as restitution, compensation, or reconciliation.

From a theoretical perspective, this orientation strengthens the philosophy of punishment as a teleological system, where sanctions are not ends in themselves but instruments for achieving social defense, offender rehabilitation, and community welfare. It advances the civilization of criminal justice by embedding proportionality, humanity, and restorative justice into sentencing policy. Practically, the adoption of non-custodial sanctions rehabilitation, job training, social sanctions, restorative measures, fines, and compensation offers tangible benefits: reducing prison overcrowding, minimizing stigmatization, and enabling offenders to maintain family and community ties.

To ensure effective implementation, policy recommendations include establishing clear procedural guidelines for community-based sanctions, including supervision schedules, reporting obligations, and restorative activities; creating specialized institutional units within correctional agencies to monitor compliance

⁸⁷ Muladi, "Kapita Selektu Sistem Peradilan Pidana," 17.

⁸⁸ Erasmus AT Napitupulu and A. K. S. M. Genoveva, "Hukuman Tanpa Penjara: Pengaturan, Pelaksanaan, dan Proyeksi Alternatif Pemidanaan Non Pemenjaraan di Indonesia," *Institute for Criminal Justice Reform (ICJR)* 4, no. 3 (2019): 104.

and provide technical support; enhancing judicial and prosecutorial training to ensure consistent application of non-custodial measures; developing digital monitoring systems and community-based oversight mechanisms to safeguard public trust; and fostering collaboration with civil society and international partners to integrate best practices. Ultimately, the philosophy behind alternatives to imprisonment is social reintegration. Punishment should assume a character geared toward advancing the civilization of the criminal justice system, ensuring that offenders are not excluded but reintegrated as responsible members of society. By balancing justice, deterrence, and rehabilitation, Indonesia can move toward a more humane and effective criminal justice reform.

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