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AN INTEGRATED POLICY MODEL FOR SUPERVISORY PUNISHMENT UNDER INDONESIA'S NEW CRIMINAL CODE

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ABSTRACT

The inclusion of supervisory sanctions in Indonesia's new Criminal Code signifies a shift toward non-custodial and rehabilitative forms of punishment, reflecting a broader transition from retributive to corrective and restorative justice. Despite their formal adoption, the regulatory frameworks necessary for their implementation remain underdeveloped. This study examines the normative and philosophical foundations of supervisory sanctions and proposes an integrated legal policy model for their effective application. Employing a normative juridical method supported by statutory, comparative, and conceptual approaches, the research is analyzed within a prescriptive framework. The findings indicate that these sanctions are intended to provide offenders with a second chance through structured oversight and individualized rehabilitation, thereby avoiding incarceration. This study offers a novel insight by presenting an integrated policy model for supervisory sanctions, an approach that has not previously been developed within Indonesia's legal system. The proposed model outlines mechanisms for enforcement, supervision duration, and reintegration programs. By addressing a critical gap in Indonesia's penal system, this research contributes original perspectives and a practical framework for the operationalization of community-based criminal sanctions.

1. Introduction

The current Indonesian (formerly Dutch East Indies) Criminal Code (hereinafter referred to as KUHP) is a legacy of the Dutch government. The enactment of these criminal law provisions in the Dutch East Indies was based on the application of the principle of concordance. This principle is the basis that the provisions of Dutch law that were in force at that time, also apply to the Dutch East Indies which became its colony.[1] The validity of the legacy Criminal Code until now is based on the provisions of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia by not enforcing norms that are contrary to the values of Indonesian society. Since Indonesia became an independent country, there has been a fundamental change in the instrument of imprisonment.

Imprisonment during the colonial period was intended by the Dutch to subdue the indigenous population not only as a place of detention but also as an instrument of social control.[2] This social control instrument was

1 Nafi Mubarok, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan," *Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 27, no. 1 (2024): 15–31, https://doi.org/https://doi.org/10.15642/alqanun.2024.27.1.15-31.

2 Noveria Devy Irmawanti and Barda Nawawi Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (May 28,

intended for indigenous people who were considered to have committed political resistance and violated the laws of the colonial government at that time. After Indonesian independence, the instrument of imprisonment changed in line with the identity of an independent nation. The concept of deprivation of a person's freedom through imprisonment is no longer intended as a form of physical punishment to a person, but rather a place that focuses on moral rehabilitation and guidance for convicts with the aim of reintegration into society.[3] However, the spirit of punishment in the Criminal Code is still nuanced by the colonial era as a form of retaliation.

The purpose of punishment is theoretically divided into modern (combined) theory, relative theory, and absolute theory.[4] The absolute theory emphasizes that the punishment imposed on the convict is a form of retaliation for the crime committed. Meanwhile, the relative theory assumes that the punishment imposed on the convict is not as a retaliation, but rather provides benefits to society as a goal. Meanwhile, according to the combined theory, it leads to punishment as a form of retaliation as well as a form of action to achieve benefits for society. The three theories of punishment above will bring justice that is envisioned from a criminal provision.

A criminal law provision that places the deprivation of a person's freedom as a form of punishment shows that the applicable law adheres to the goal of absolute punishment. The adherence to the objective of absolute punishment will lead to the paradigm of retributive justice that places prison as a place to provide misery for the perpetrators of criminal acts.[5] Article 10 of the Criminal Code regulates the types of punishment, one of which is imprisonment as the main criminal stelsel which is specifically formulated for most of the criminal acts spread in various regulations in Indonesia. This is evident in the current criminal law policy as reflected in the Criminal Code, which contains provisions for the death penalty (10 articles), imprisonment (485 articles), fines (123 articles), and confinement (37 articles). These figures suggest that imprisonment remains the most rational penal approach to crime prevention.[6]

According to data from the Directorate General of Corrections (2024), a total of 499 correctional institutions, including prisons and detention centers, are operating across Indonesia, with a combined capacity of 140,424 inmates. However, the actual inmate population has reached 274,176, resulting in an overcrowding rate of approximately 95%. This situation reflects a significant structural imbalance within Indonesia's penal system and highlights the urgent need to implement non-custodial sentencing alternatives.[7] The imprisonment punishment system is in line with the development of the purpose of punishment with the main focus on providing suffering to the perpetrators of criminal acts, but has produced a humane solution to make the perpetrators of criminal acts realize social integration in the community. Therefore, imprisonment has received a lot of criticism and is considered no longer relevant or in accordance with the purpose of punishment by socializing criminal offenders.[8]

In his book "Bunga Rampai Kebijakan Hukum Pidana", Barda Nawawi Arief conveyed a criticism of imprisonment that came from the international world, apart from individual legal scholars.[9] Geneva was the venue of the United Nations Congress in 1975, which resulted in the Prevention of Crime and the Treatment of Offenders mentioned that many countries experienced an emergency of confidence in the effectiveness and tendency of correctional institutions in fostering criminals.[10]

If it is associated with the assumption that imprisonment is a form of punishment that is appropriate for

2021): 217–27, https://doi.org/10.14710/jphi.v3i2.217-227.

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

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

5 Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia," *Lex Renaissan* 6, no. 2 (2021): 225–34, https://doi.org/https://doi.org/10.20885/JLR.vol6.iss2.art1.

6 Moh. Fadhil, "Kebijakan Kriminal Dalam Mengatasi Kelebihan Kapasitas (Overcrowded) Di Lembaga Pemasyarakatan," *Al Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan* 9, no. 2 (February 6, 2020): 167–86, https://doi.org/10.24252/ad.v9i2.15996.

7 Nabila Ulva Andarista, "Overstaying Di Lapas Dan Rutan, Perlukah Kita Khawatir?," accessed August 4, 2025, https://kemenimipas.go.id/publikasi-2/kolom-opini/overstaying-di-lapas-dan-rutan-perlukah-kita-khawatir#:~:text=Berdasarkan%20data%20dari%20Direktorat%20Jenderal,sehingga%20mengalami%20overcrowding%20sebesar%2095%25.

8 Henky Fernando, "The Failure of Prisons in Fostering and Re-Socializing Prisoners," *Indonesian Journal of Criminal Law and Criminology* 4, no. 3 (2023): 137, https://doi.org/10.18196/ijclc.v4i3.19116.

9 Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru, Edisi Kedua* (Jakarta: Prenamedia Group, 2016).

10 Fernando, "The Failure of Prisons in Fostering and Re-Socializing Prisoners."

criminal offenders in causing deterrence, inversely to this, the United Nation through the International Bar Association (IBA) and the Office of the High Commissioner for Human Rights (OHCHR) considers that the existence of imprisonment will have a counterproductive effect in rehabilitating and reintegrating criminal offenders into society.[11] Muladi regarding the same thing in his view said that the search for alternative punishment from deprivation of one's freedom to non-institutional needs to be improved.[12]

In the report of the United Nations Office on Drugs and Crime,[13] several comparative studies show between imprisonment and non-imprisonment which shows that the imposition of punishment on criminal offenders in the form of imprisonment will cause criminal offenders to be in a condition that is not ideal to be accepted back into society and has a vulnerability to repeat criminal acts. Thus, it can be said that if the cycle of socialization from criminal offenders to society with good behavior is not achieved, then the essence of the purpose of criminal law is not achieved.

If the imposition of imprisonment brings benefits to a person after leaving prison, criminal law is said to have run as its purpose and function. Conversely, if a person who is released from prison has a negative impact, criminal law cannot be said to have run as its purpose and function. Therefore, Prof. Moeljatno said that it cannot be judged how effective or successful criminal law is based on the number of people imprisoned or the number of people imprisoned, but how the criminal system can shape the offender's personality to be good.[14] If it is associated with the inherent retributive justice paradigm, then the goal of retributive justice is achieved, but it does not pay attention to the condition of the criminal offender after carrying out the law and the condition of the community.

Along with the development of the paradigm of justice, there has been a shift in the goal of justice to be achieved from retributive justice, which views that retaliatory punishment must be received by the perpetrator for the crime committed, to restorative justice, which views that justice will be achieved by an approach that places the perpetrator, victim, and community in case resolution based on the principle of balance.[15] The change in perspective in the Indonesian criminal law system is reflected in the reform stated in Article 65 paragraph (1) of Law Number 1 of 2023 on Criminal Code. In this regulation, punishment is no longer only focused on imprisonment, but also includes other alternatives such as supervision punishment and social work as forms of non-prison principal punishment.

Article 75 to Article 77 of the National Criminal Code regulates supervision punishment. Supervision punishment is formulated as the main punishment in the National Criminal Code. However, specifically threatened in a criminal provision is not a characteristic of supervision punishment, but an alternative concept to the implementation of imprisonment.[16] The provision of supervision punishment is only intended for criminal offenses that meet the requirements and are not serious criminal offenses. Meanwhile, the KUHP also regulates the same thing through the provision of conditional punishment.

The Criminal Code recognizes conditional punishment and the National Criminal Code with its supervision punishment which have different characteristics although they look similar. Conditional punishment in the KUHP is not one of the main punishments system, but as a form of imprisonment that is suspended to be executed.[17] Barda Nawawi Arief stated that in overcoming the rigid nature of imperative imprisonment, conditional punishment is less able to overcome such condition. This is because conditional punishment is a *strafmodus* or a way of implementing a punishment and not as the main punishment of the choice of punishment *(strafsoort)*.[18] Meanwhile,

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11 Omboto John Onyango, "Curse or Blessing in Reformation of Convicts? An Analysis of Imprisonment as a Form of Punishment," *London Journal of Research in Humanities and Social Sciences* 23, no. 3 (2023): 9–18, http://ir-library.ku.ac.ke/handle/123456789/24953.

12 Muladi and Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Bandung: Alumni, 2005).

13 UNODC, Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment Criminal Justice Handbook Series (New York: UNODC Publication, 2007), https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf.

14 Afdhal Ananda Tomakati, "Konsepsi Teori Hukum Pidana Dalam Perkembangan Ilmu Hukum," *Jurnal Hukum Pidana Dan Kriminologi* 4, no. 1 (April 30, 2023): 49–56, https://doi.org/10.51370/jhpk.v4i1.99.

15 Yayan Muhammad Royani, *Relevansi Asas Keseimbangan Dalam KUHP Baru Dan Hukum Pidana Islam*, ed. Dian Herdiana (Bandung: Widina Media Utama, 2024).

16 Hajairin et al., "Kebijakan Pidana Pengawasan Dalam Pembaharuan Hukum Pidana Indonesia," *IBLAM Law Review* 2, no. 2 (August 1, 2022): 165–74, https://doi.org/https://doi.org/10.52249/ilr.v2i2.81.

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

18 Barda Nawawi Arief, *Reformasi Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 2015).

the main punishment of supervision can be used as an alternative to the implementation of imprisonment as determined by the judge.

The existence of supervision punishment norm in the National Criminal Code is also in line with the content of Tokyo Rules which introduces a type of punishment known as probation and judicial supervision.[19] Muladi, in his view, stated that supervision punishment can be interpreted as a system that intends to carry out recovery of criminal offenders by returning them to the community during the supervision period.[20] Supervision punishment in the National Criminal Code has been formulated, but until now further provisions governing the implementation of supervision punishment have not been formulated.

One of the consequences of the ongoing legal uncertainty surrounding the implementation of criminal supervision can be seen in Decision Number 121/Pid.Sus/2022/PN Yyk from the Yogyakarta District Court. In this case, the defendant was involved in a minor offense, had no prior criminal record, and came from a disadvantaged socio-economic background. Based on the nature of the offense and the circumstances of the defendant, criminal supervision would have been an appropriate and proportional punishment under Law Number 1 of 2023 on the Criminal Code.[21] However, due to the absence of clear procedural guidelines and designated institutions responsible for executing criminal supervision, the judge ultimately imposed a conditional prison sentence instead. This decision reflects a broader issue, although criminal supervision is now formally recognized in the new Criminal Code, its practical application remains uncertain. The lack of an operational framework undermines its potential as a restorative and non-custodial alternative to imprisonment, thereby contributing to prison overcrowding and limiting rehabilitative justice.

The rationale of this paper is based on the continuation of a previously published article in *Jurnal Lex Renaissance* entitled *"Pembaruan Hukum Pidana di Indonesia: Analisis tentang Pidana Pengawasan dan Asas Keseimbangan"* by Afif Firdaus and Indra Yugha Koswara.[22] The article discusses the reform of criminal supervision penalties in the new Indonesian Criminal Code (National Criminal Code), while also suggesting the need for an effective framework for the enforcement of criminal supervision law. Additionally, an article published in Badamai Law Journal by Norwafa Rahmawati titled *"Pidana Pengawasan dalam Kebijakan Pembaharuan Hukum Pidana di Indonesia"*[23] addresses future regulations on criminal supervision aligned with the goals of integrative punishment. Another relevant work is by Rifqi Arif Maulana, Nafiatul Ismiah, and Septiani Tri Ambarwati, entitled *"Penjatuhan Pidana Pengawasan Perspektif Penologi (Studi UU No. 1 Tahun 2023)"*, published in Journal Justiciabellen.[24] This article examines a new type of principal punishment in the form of non-custodial sentencing, intended to provide restoration for victims, offenders, and society. However, it also emphasizes the need for the continued development of a comprehensive regulatory framework. Furthermore, an article by Fazal Akmal Musyarri and Gina Sabrian, published in *Jurnal Yudisial* and titled "The Urgency of Implementing Criminal Supervision in Law Number 1 of 2023 on the Criminal Code: An Analysis of Decision Number 121/Pid.Sus/2022/PN Yyk",[25] highlights a case that, based on the new Criminal Code, meets the requirements for the imposition of criminal supervision. Nevertheless, it underscores the necessity for judges to comprehensively consider the implications of their rulings. More over, the article "Implementation of Criminal Supervision by the Prosecutor's Office Based on Legal Certainty" by Vidya Khairunnisa and Andri Winjaya Laksana, published in the Ratio Legis Journal,[26] explores the implementation of criminal supervision by prosecutors as executors of criminal verdicts.

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19 Genoveva Alicia K.S. Maya et al., *Alternatives to Imprisonment: Provision, Implementation, and Projection of Alternatives to Imprisonment in Indonesia*.

20 Teriyanti Btr, Arika Palapa, and Iksan Saifudin, "Pidana Pengawasan Dalam Perspektif Pembaharuan Hukum Pidana Di Indonesia.," *Syntax Idea* 6, no. 7 (July 12, 2024): 3131–44, https://doi.org/10.46799/syntax-idea.v6i7.4069.

21 Fazal Akmal Musyarri and Gina Sabrina, "The Urgency of Implementing Criminal Supervision in Law Number 1 of 2023 on the Criminal Code," *Jurnal Yudisial* 16, no. 1 (2023): 65–82, https://doi.org/10.29123/jy/v16i1.586.

22 Afifah Firdaus and Indra Yugha Koswara, "Pembaharuan Hukum Pidana Di Indonesia: Analisis Tentang Pidana Pengawasan Dan Asas Keseimbangan," *Lex Renaissance* 9, no. 1 (June 28, 2024): 1–22, https://doi.org/10.20885/JLR.vol9.iss1.art1.

23 Norwafa Rahmawati, "Pidana Pengawasan Dalam Kebijakan Pembaharuan Hukum Pidana Di Indonesia," *Badamai Law Journal* 9, no. 1 (January 1, 2024), https://doi.org/10.20885/jlr.vol4.iss1.art3.

24 Rifqi Arif Maulana, Nafiatul Ismiah, and Septiani Tri Ambarwati, "Penjatuhan Pidana Pengawasan Berdasarkan Perspektif Penologi (Studi UU No. 1 Tahun 2023)," *Journal Justiciabelen* 3, no. 02 (July 31, 2023): 80–90, https://doi.org/10.35194/jj.v3i02.3080.

25 Musyarri and Sabrina, "The Urgency of Implementing Criminal Supervision in Law Number 1 of 2023 on the Criminal Code."

26 Vidya Khairunnisa and Andri Winjaya Laksana, "Implementation of Criminal Supervision by the Prosecutor's Office

However, the article notes that the procedures for effective implementation of criminal supervision have not yet been regulated, and thus need to be formulated from an early stage.

The novelty of this research, compared to previous studies, lies in its focus on the policy, procedures, and mechanisms for implementing criminal supervision as a new principal punishment under the National Criminal Code. Previously, criminal supervision was primarily recognized within the juvenile justice system, however the new Criminal Code has formally incorporated it as one of the principal forms of punishment. This study aims to examine and analyze the ratio legis behind the establishment of criminal supervision in the National Criminal Code. Moreover, the Code also formulates sentencing objectives and guidelines intended to ensure that the imposition and execution of criminal supervision by judges are aligned with the overall purposes of sentencing. Furthermore, the current legal framework does not yet regulate the specific mechanisms for implementation nor identify the responsible institution for carrying out criminal supervision. The absence of clear procedures for implementing supervisory punishment creates uncertainty for law enforcement officials in executing court decisions. Therefore, this study addresses these issues and conducts a comparative analysis with the Netherlands in order to formulate an effective policy for the implementation of criminal supervision.

The formulation of supervision punishment as the main punishment cell does not rule out the possibility that the implementation of this supervision punishment does not run in accordance with the objectives. The tendency of the implementation of supervision punishment, which can be reduced by the proposed reduction of the supervision period by the prosecutor with the consideration of the social counselor, provides an opportunity to create a perception that this supervision punishment policy becomes transactional. This research is urgently needed in anticipation of the enactment of the National Criminal Code in 2026, particularly in the context of implementing supervisory punishment. It offers a comprehensive model for the implementation of supervisory punishment, grounded in philosophical and normative analysis. At the practical level, this research can serve as a policy reference within the framework of legal reform. Academically, it contributes to the development of the field of criminal law implementation.

2. Method

Type of Research

This research employs a normative juridical method, as formulated by Peter Mahmud Marzuki[27] who defines it as a process of identifying legal principles, provisions, or doctrines to answer specific legal issues. This method, also known as doctrinal legal research, involves the conceptualization and identification of legal norms as binding rules that apply within a particular legal system and time frame. In this context, the normative system becomes the primary object of study, encompassing legal principles and norms that reflect how human behavior ought to be regulated.[28]

Research Approach

The formulation of the research problem in this study is studied using a statutory approach, a comparative legal approach, and a conceptual approach. Research with a normative juridical method uses a statute approach or statutory approach because the focus of study in the problem to be studied is on legal issues at the level of norms.[29] The approach in this research will examine various laws and regulations that are relevant to the legal issues to be studied, including Law Number 1 of 2023 on the Criminal Code, Academic Paper on the formation of Law Number 1 of 2023 on the Criminal Code, and Minutes of the formation of Law Number 1 of 2023 on the Criminal Code. The legislative text is interpreted through grammatical interpretation, which aims to ascertain the meaning of statutory terms in accordance with established rules of language and syntax. Additionally, a systematic interpretation is applied to derive the meaning of a provision by situating it within the broader context of the legal system, rather than treating it as an isolated or self-contained norm. This research will also be conducted

Based on Legal Certainty," *Ratio Legis Journal* 2, no. 3 (2023): 1346–66, https://doi.org/http://dx.doi.org/10.30659/rlj.2.3.%25p.

27 Agung Hidayat, "Critical Review Buku 'Penelitian Hukum' Peter Mahmud Marzuki Penelitian Hukum Ad Quem Tentang Norma," *Yustisia Merdeka: Jurnal Imiah Hukum* 7, no. 2 (2021): 117–25, https://doi.org/https://doi.org/10.33319/yume.v7i2.109.

28 Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Kencana, 2017).

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

with a comparative approach by conducting a study of Dutch legislation regarding supervision punishment and methods of implementing supervision punishment in accordance with the objectives of punishment. Furthermore, this study employs a comparative legal approach using a functional comparison framework, which focuses on analyzing how different legal systems address similar legal functions or objectives. The Dutch legal system is chosen as the primary comparator due to its shared civil law tradition with Indonesia and its early adoption of, as well as well-established framework for, supervisory punishment—beginning with Staatsblad 1915 No. 33. The Netherlands serves as a relevant and instructive model, as it clearly regulates both the institutional responsibilities and the implementation mechanisms of supervisory sanctions. A comparative law approach can offer well-founded policy recommendations in realizing Indonesian criminal law policy regarding the implementation of supervision punishment as a new main punishment in the Criminal Code 2023. Meanwhile, concept approach is used to examine the concept of supervision punishment.

Types of Legal Materials and Techniques for Analyzing Legal Materials

This research utilizes both primary and secondary legal materials. The analysis is conducted using a prescriptive analytical method, which aims not only to describe existing legal norms but also to formulate normative recommendations. This method enables the construction of sound legal arguments, theoretical frameworks, and policy proposals. It also provides a comparative evaluation of the regulation of criminal supervision in Indonesia and the Netherlands, with the aim of promoting reform and strengthening the function of supervision punishment as a mechanism for social reintegration.

3. Findings and Discussion

3.1. Legis Ratio of Criminal Supervision Arrangement in Law Number 1 of 2023 on Criminal Code

A state has the authority to punish its citizens for acts that violate the law. One way the government can impose sanctions is through criminal punishment. Simons is one of the experts who defined punishment as suffering given to guilty individuals and regulated by criminal law.[30] In addition, Terance found that the general purpose of imposing criminal punishment is to restore the balance of power relations in the social order and eliminate threats to that social order.[31] It was thought that these punishments would serve to defend ideas and beliefs, render people incapacitated, and frighten those who might consider committing a crime. This is in line with the purpose of punishment set out in the current Criminal Code, which is still retaliation-oriented.

In the theory of punishment, several theories are known, among others, the absolute theory which views that punishment functions as a deterrent action for offenses committed by the perpetrator.[32] Then according to the relative theory, the beneficial purpose of punishment becomes the other side of this theory in addition to being used to deter offenders, and according to the combined theory, punishment has a plural purpose. Both theories combine utilitarian and retributivist perspectives. The National Criminal Code has stated that the objectives of punishment include:[33]

a. preventing crime by applying rules to protect and guide society;
b. integrating convicts into society by training and rehabilitating them to become productive and useful citizens;

30 Aldi Firmansyah et al., "Penjatuhan Sanksi Pidana Kepada Pelaku Penggandaan Hak Cipta Buku Sebagai Upaya Pemberantasan Penggandaan Buku Di Indonesia," *Jurnal Esensi Hukum* 4, no. 2 (December 2022): 185–97, https://doi.org/https://doi.org/10.35586/esh.v4i2.170.

31 Miethe, Terance, and Hang Lu, *Punishment–A Comparative Historical Perspective* (New York USA: Cambridge University Press, 2005), https://doi.org/http://dx.doi.org/10.1017/CBO9780511813801.

32 Muhammad Ramadhan and Dwi Oktafia Ariyanti, "Tujuan Pemidanaan Dalam Kebijakan Pada Pembaharuan Hukum Pidana Indonesia," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 5, no. 1 (March 30, 2023): 1–6, https://doi.org/10.52005/rechten.v5i1.114.

33 Michael Adyhaksa Padang, Billi J. Siregar, and Rosmalinda, "Keberpihakan Pemidanaan Dalam Undang-Undang Nomor 1 Tahun 2023," *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 2 (September 2024): 64–71, https://doi.org/10.56128/jkih.v4i2.348.

c. solving crime-related problems, fostering a sense of security and harmony in society, and restoring balance; and

d. giving convicts a sense of remorse and guilt.

These provisions indicate that Indonesian penal policy is neither exclusively retributive nor purely utilitarian, but rather adopts an integrated approach aligned with the combined theory. The articulation of restorative aims, such as reintegration and social harmony, reflects a deliberate shift toward a modern penal philosophy that prioritizes correction over mere retribution. Consequently, the incorporation of supervisory punishment within this framework is consistent with the broader normative orientation of the Criminal Code.

The National Criminal Code adopts one of the non-imprisonments punishments, namely supervision punishment. Supervision punishment first appeared in the punishment system in mainland Europe in 1891 in France and in Belgium in 1888, which is known in the form of postponement of conditional punishment.[34] This punishment system is different from the probation system, where supervision punishment emphasizes on the postponement of the implementation of imprisonment and not the postponement of the imposition of punishment. Non-imprisonment punishment regulated in the National Criminal Code refers to the basic provisions of the Tokyo Rules, which provide minimum standards for the state in imposing non-imprisonment punishment. Tokyo Rules is of the view that individualizing sentencing approach pays attention to the needs of each person so that it becomes an advantage in the application of punishment, because it is considered proven to be more effective in providing guidance to convicts and able to return convicts to society again in a state that is acceptable to society.[35] Tokyo Rules encourages every country to understand and apply non-imprisonment punishment to every offender. The purpose of the Tokyo Rules is to unravel the imprisonment of deprivation of liberty and its impact.[36]

One of the considerations of the National Criminal Code in formulating non-imprisonment punishment in Indonesia is taking into account the provisions of the Tokyo Rules. The National Criminal Code always upholds human dignity, because the existence of punishment is not to degrade the dignity of a person. Therefore, the National Criminal Code stipulates a new basic punishment, namely supervision and social work punishment. The National Criminal Code includes supervision punishment and social work as the main criminal structures, but they are not considered separate criminal structures. This is because supervision punishment and social work punishment function as alternatives to imprisonment.[37]

Articles 75 to 77 of the National Criminal Code regulate the provision of criminal supervision. By considering the purpose and guideline of punishment, a criminal offense punishable by a maximum of 5 (five) years committed by the defendant may be decided by supervision punishment. Furthermore, according to Article 76, supervision punishment may be imposed for a maximum period equivalent to imprisonment under the provisions of the article, but not more than 3 (three) years. This means that supervision punishment may be imposed for criminal offenses that meet the requirements stipulated in Article 75.

Such formulation is that only perpetrators of criminal offenses are punishable by imprisonment for a maximum of 5 (five) years and, in its implementation, can be executed with supervised punishment. The purpose of this formulation is to determine an objective measure of what criminal offenses can be imposed with supervision punishment, in other words, the criminal offenses imposed with supervision punishment are not serious criminal offenses, such as premeditated murder.[38] The norm formulated in the provision of Article 75 of the National Criminal Code considers that the judge has not imposed a definite imprisonment, because it is at the limit of the punishment imposed. Thus, the first filter that must be met for a person to be sentenced to supervision is that the person must have commited a crime punishable by 5 (five) years of imprisonment and not look at the punishment

34 Rahmawati, "Pidana Pengawasan Dalam Kebijakan Pembaharuan Hukum Pidana Di Indonesia."

35 Marta Turnip Mega, Kurnia Mahendra Putra, and Rika Erawaty, "Penanganan Terbaik Pada Kelebihan Kapasitas Lembaga Permasyarakatan Di Beberapa Negara," *Jurnal Risalah Hukum* 19, no. 1 (2023): 11–20, https://doi.org/https://doi.org/10.30872/risalah.v19i1.1015.

36 United Nation, "United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)" (Tokyo, 1990), https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf.

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

38 National Legal Development Agency, *Academic Manuscript of Draft Law Number 1 of 2023 on the Criminal Code* (Jakarta: Ministry of Law and Human Rights, 2015).

imposed by the judge.[39] The implication of this norm is the existence of supervision punishment as an alternative to the implementation of imprisonment or postponement of the implementation of imprisonment and not as a form of postponement of the implementation of the decision.

Article 76, paragraph (1) stipulates that supervision punishment shall be imposed for a maximum time equal to the imprisonment imposed, which is not more than 3 (three) years. The formulation of the norm is inseparable from the direction of punishment in the new Indonesian National Criminal Code, which leads to rehabilitative justice or restorative justice.[40] The National Criminal Code 2023 no longer relies on retaliation as the atmosphere of the norms formed. Still, it is more aimed at the recovery and protection of each individual, both victims, perpetrators, and the community. This is in line with what was discussed by Barda Nawawi Arief, one of the formulators of the 2023 Criminal Code, who stated that the purpose of punishment contains two main aspects that must be considered, including the first aspect of protecting the community against criminal acts.[41] This aspect aims to prevent, reduce, and control criminal offenses and restore the balance of society, the realization of which is often expressed in various manifestations, including resolving conflicts, bringing a sense of security, restoring the situation due to criminal acts committed, and reinforcing the values that live in society. Meanwhile, the second aspect aims to improve the perpetrators of crime, which is often expressed in various ways, including rehabilitation, re-socializing the perpetrators, and protecting the perpetrators from punishment that is not with the law.[42]

The formulation of supervision punishment to be imposed for a maximum period equal to the punishment imposed with no more than three years, is based on the opinion of Howard Jones, who stated that "probation orders may be made for any period from one to three years..." (the implementation of supervision punishment may be made for a certain period within a period of one to three years).[43] It is then compared with Portugal, which provides that persons sentenced to supervision are subject to rehabilitation under supervision for a period of one to three years.[44]

The consideration of the formulation of the National Criminal Code as above shows the embodiment of criminal law that pays attention to the interests of the victim, the perpetrator, and society. This then makes the principle of balance one of the bases for the formulation of non-punishment punishment norms in the National Criminal Code.[45] Efforts and objectives are given to each individual as an effort to rehabilitate, reeducate, reintegrate, and eliminate guilt in the perpetrators so that they can become individuals who can be accepted back in society. From the community aspect, it aims to provide protection and a sense of security for victims and the community from a criminal offense.[46]

In addition to the stipulated period some conditions must be met by the defendant to be sentenced to supervision. Every person sentenced during the supervision period must meet basic and specific requirements. In general, Article 76, paragraph (2) of the National Criminal Code states that the convicted individual cannot commit another crime. Paragraph 3 also stipulates some restrictions, such as the obligation of the convicted person to compensate the loss caused by the crime they committed within a shorter period than the supervision period; or

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39 Allison Dara Dharmawan and Nadira Karisma Ramadanti, "Pidana Alternatif Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Dan Kaitannya Dengan Tujuan Pemidanaan," *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 1, no. 4 (October 15, 2024): 85–92, https://doi.org/10.62383/presidensial.v1i4.197.

40 National Legal Development Agency, *Academic Manuscript of Draft Law Number 1 of 2023 on the Criminal Code*.

41 Marfuatul Latifah and Prianter Jaya Hairi, "Pengaturan Pedoman Pemidanaan KUHP Baru Dan Implikasinya Pada Putusan Hakim," *Jurnal Negara Hukum* 15, no. 2 (November 2024): 25, https://doi.org/http://dx.doi.org/10.22212/jnh.v15i2.4573.

42 Muchlas Rastra Samara Muksin, "Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Indonesia," *Sapienta Et Virtus* 8, no. 1 (July 10, 2023): 225–47, https://doi.org/10.37477/sev.v8i1.465.

43 Rathna N. Koman and Matthew Soo Yee, "Reading between the Bars: Evaluating Probation, Remodelling Offenders, and Reducing Recidivism," *British Journal of Community Justice* 17, no. 2 (September 23, 2021): 134–49, https://doi.org/10.48411/t9x2-sv17.

44 António Pedro Dores, Nuno Pontes, and Ricardo Loureiro, *Alternatives to Prison in Europe Portugal* (Roma: Associazione Antigone Onlus, 2015).

45 Firdaus and Koswara, "Pembaharuan Hukum Pidana Di Indonesia: Analisis Tentang Pidana Pengawasan Dan Asas Keseimbangan."

46 Maulana, Ismiah, and Ambarwati, "Penjatuhan Pidana Pengawasan Berdasarkan Perspektif Penologi (Studi UU No. 1 Tahun 2023)."

the obligation of the convicted person to do or avoid doing something prohibited by the prison sentence.[47]

During the supervision period, convicted persons must not violate any of the general or specific criteria mentioned above. If they violate the general requirements, the convicted person must serve a prison sentence that does not exceed the maximum term for the offense. Meanwhile, suppose the convicted person violates the stipulated conditions without sufficient reason. In that case, the Prosecutor recommends to the Judge to increase the stipulated supervision period, which cannot be longer than the previous supervision sentence, or impose a prison sentence.[48]

The general conditions stipulated in the norms of criminal supervision are intended as an effort to prevent convicts from committing a criminal offense or repeating a criminal offense and, at the same time, as a form of general prevention that the convict will serve imprisonment if the general conditions that have been determined are violated. Meanwhile, special conditions are formulated to provide positive and constructive effects for the perpetrators of crime so that they can become independent thinkers who violate the predetermined conditions. This aligns with the philosophical view of punishment as a means of rehabilitating offenders and guiding them toward socially acceptable behavior and be able to return to society to become individuals who have and comply with community norms and legal norms. The special conditions given are intended so that the benefits of supervision punishment are not only enjoyed by the perpetrators of criminal acts but also by the community.[49] This can be seen from the reimbursement of losses arising from the criminal offense committed, which can have a positive effect on the convict himself and on the community itself as a form of realization of the principle of balance.

The provision of norms regarding general and special conditions in the imposition of supervision punishment as stipulated in Article 76, paragraph (2) and paragraph (3) of the National Criminal Code shows that the National Criminal Code has adopted the purpose of punishment, which not only provides benefits to individuals, both perpetrators and victims, but also provides benefits to society. The protection of individuals provides rehabilitation and reintegration efforts to the perpetrators of criminal acts in carrying out any prescribed guidance. Meanwhile, the protection of the community is intended to provide protection both at the level of prevention and at the level of restoring the balance of the harm caused by the criminal offense committed.[50] The general and special requirements are important in the implementation of supervision punishment in providing guidance to criminal offenders and protecting the interests of victims and society. Therefor, such provisions are formulated imperatively and not facultatively. This is to show the essence of supervision punishment to implement effective supervision and guidance of criminal offenders so that it can run as the inherent philosophical basis.

Although Article 76, paragraphs (2) and (3) of the National Criminal Code explicitly adopt a punishment objective that is oriented toward the protection of both individuals and society, several enforcement gaps remain that require further examination. These provisions are formulated in an imperative manner but are not supported by adequate technical mechanisms to ensure their effective implementation in practice. In the absence of detailed operational guidelines, such normative provisions risk becoming ineffective. Moreover, the regulation concerning the simultaneous protection of both offenders and victims lacks balancing mechanisms that can prevent potential conflicts of interest between the two parties. The absence of clear evaluative indicators also impedes the ability to assess the effectiveness of the guidance and supervision provided to offenders. Additionally, although community and victim participation is acknowledged as a normative objective within the provisions, there are no accompanying regulations that ensure their active involvement in the criminal justice process. These gaps indicate that, while Article 76 is philosophically aligned with a progressive approach to criminal justice, without concrete improvements in implementation, the effectiveness of criminal supervision is unlikely to be fully realized.

The norm that is then formulated for supervision punishment is regarding the policy of reducing the supervision period. According to the Community Supervisor, the Prosecutor may request the Judge to reduce the time spent in the supervision period if the convicted person shows exemplary behavior during the supervision period. According to Article 77 of the National Criminal Code,[51] If a convicted offender commits a crime while on supervision and is sentenced to a sentence other than death or imprisonment, the supervision sentence will be

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

48 Republic of Indonesia.

49 Musyarri and Sabrina, "The Urgency of Implementing Criminal Supervision in Law Number 1 of 2023 on the Criminal Code."

50 Mohamad Ali Syaifudin, Ali Imron, and Rahmida Erliyani, "Analisis Efektivitas Penerapan Hukum Pidana Dalam Pengawasan Tindak Pidana Di Indonesia," *UNES Law Review* 6, no. 4 (2024): 12369–76, https://doi.org/10.31933/unesrev.v6i4.

51 Republic of Indonesia, "Law Number 1 of 2023 on the Criminal Code."

carried out. However, if the offender is sentenced to imprisonment for a crime committed during the supervision period, the supervision sentence will be postponed and executed first. Nevertheless, the National Criminal Code does not provide clear guidance regarding the party responsible for implementing supervisory punishment, whether it falls under the sole authority of the Prosecutor as the executor of the judgment, or under the Correctional Center.

Based on the description above, the policymakers tried to formulate that supervision punishment is imposed on the convict by placing the convict in supervision and guidance outside the institution with the provision of general and special conditions. The provisions on general and special requirements are intended. However, as a primary non-custodial sanction, supervision punishment may incentivize behavioral reform, not to repeat criminal acts, and restore the balance of values in society and victims by performing actions that can restore or repair the consequences of the criminal offense committed.[52]

Supervision punishment, as discussed in its formulation, regulates that supervision punishment is not a way of executing punishment or *strafmodus*, but rather the selection of punishment type or transport. Supervision punishment is an alternative to imprisonment. Indonesia is not the first country to adopt non-imprisonment punishment; several countries have accommodated supervision punishment in their criminal justice system, which aims to achieve guidance, rehabilitation, and prevention of criminal acts in the community. In the supervision criminal system, criminal offenders will be included in a supervision program that aims to supervise and monitor their behavior, as well as provide opportunities for criminal offenders to improve themselves without having to be imprisoned first.

The philosophical foundation behind the inclusion of supervision punishment as the main punishment in the Indonesian criminal justice system is to provide a second chance for criminal offenders to improve their attitude and behavior so that they can become individuals who the community can accept. This supervision punishment system is implemented by policymakers so that with careful supervision and appropriate rehabilitation programs, criminal offenders who are placed outside the institution can be rehabilitated and prevented from committing criminal acts again in the future.[53] However, regarding how this supervision can be carried out carefully, what kind of rehabilitation program can improve the behavior of criminal offenders, and how any institution carries out supervision punishment has not been further regulated, so there is a void of norms in such circumstances.

3.1. Model of Supervision Criminal Implementation as Beneficial Non-Prison Punishment in the Future

Indonesia and the Netherlands have a strong relationship. This is inseparable from the history of the Indonesian state. Which the Netherlands initially colonized. With Dutch colonialism in Indonesia, the applicable law in Indonesia is a form of legal equality in the Netherlands based on the principle of concordance.[54] The current legal system is the result of the strong Dutch influence in Indonesia, which has made Indonesia embrace the Civil Law System or Continental European legal system. Like other Continental European legal systems, civil law prioritizes the written legal system, and this also applies to Indonesia.

The Netherlands was selected as the comparative country in this study because it shares a legal system similar to that of Indonesia, namely a civil law system derived from Roman-Germanic traditions. This similarity provides a strong methodological foundation for both normative and structural comparisons. Moreover, the Netherlands is among the earliest countries to regulate and implement probationary supervision, beginning in 1915 through Staatsblad 1915 No. 33. This regulation not only recognizes probation as an alternative sanction to imprisonment but also contains detailed provisions regarding the institutional and technical aspects of its implementation, including the competent supervisory authorities, methods of enforcement, duration of supervision, and social rehabilitation programs for offenders.

According to Mahmud MD, Indonesia used civil law or the Continental European legal system globally during its development. However, after the 1945 Constitution of the Republic of Indonesia changes, according to him, Indonesia is more appropriate to use the Pancasila legal system.[55] This concept takes the best part of two

52 Joko Sriwidodo, *Politik Hukum Pidana Dalam Pendekatan UU No. 1 Tahun 2023 Tentang KUHP*, Cetakan Pertama (Yogyakarta: Penerbit Kepel Press, 2023).

53 Sriwidodo.

54 Akhmad Khalimy, "Makna Aturan Peralihan Sebagai Politik Hukum RUU KUHP (Transformasi Dari Hukum Kolonial Ke Hukum Nasional)," *Jurnal Hukum Progresif* 8, no. 2 (October 2020): 121–36, https://doi.org/10.1016/j.landusepol.2020.104869.

55 Praise Juinta W.S. Siregar, "Perbandingan Sistem Hukum Civil Law Dan Common Law Dalam Penerapan Yurisprudensi

conflicting ideas between the rule of law and *Rechstaat*. Then, it is taken as an independent system so that it can bind with the values of Indonesian society and with the development of society.

Meanwhile, the Dutch civil law system is heavily influenced by French law, leading Rene David to classify Dutch law as the Romano-Germaic Legal Family.[56] In its development, the Dutch civil law system has authorized judges or courts to create a general principle of civil law, when at that time civil law when, at that time, the written civil law does not accommodate it to be applied in a case.

The legal systems of Indonesia and the Netherlands have similarities with the adoption of civil law. The Criminal Code currently applicable in Indonesia was previously derived from the criminal law applicable in the Netherlands with the spirit of retaliation. However, until now, the Netherlands has recognized non-imprisonment punishment. Meanwhile, Indonesia has just implemented non-imprisonment punishment in the National Criminal Code.

In the Tokyo Rules, "non-custodial measures" is a norm referring to powers taken by competent authorities at various stages of the criminal justice process that require a person accused or convicted of a crime to fulfill certain obligations that do not necessarily involve imprisonment.[57] This expansion of the concept of non-custodial measures has existed to allow for the duplication of bail to convicted persons that would normally be granted while serving a prison sentence.

The idea of non-imprisonment punishment arises due to the metamorphosis of crime and affects the punishment. The main source of the emergence of the concept of non-imprisonment punishment is due to the concurrent discussion on the concept of rehabilitation. This concept is contrary to the classical concept, which considers that every criminal offender must be punished with imprisonment.[58] However, along with the development of punishment, it is considered that imprisonment has negative characteristics. In contrast, the concept of non-imprisonment punishment does not achieve these negative characteristics in reintegrating convicts into society.

Non-prison criminal sanctions have two main characteristics, namely prevention to prevent criminal acts and the purpose of punishing the perpetrators of criminal acts.[59] The main objective is to eradicate criminal offenses without the need for imprisonment or punishment that deprives a person of freedom. Non-imprisonment punishment in the Indonesian criminal justice system will allow flexibility with the origin and type of offense, the history of the offender, protection of the community, and unnecessary detention. In addition, non-imprisonment punishment should be offered from the pre-adjudication process to the adjudication process.

In the development of modern punishment, Indonesia adopted non-prison punishment, which consist of supervision punishment and social word punishment, as described in the previous sub-discussion.[60] According to the explanation in Article 75 of the National Criminal Code, supervision punishment is one of the main types of punishment. However, since it is an alternative to imprisonment, it is not explicitly stated in a separate phrase as a punishment stelsel. According to the current KUHP, supervision punishment is similar to conditional imprisonment. Supervision is carried out outside the institution or outside imprisonment. Supervision punishment is an alternative to imprisonment and is not intended for serious criminal offenses.

The Netherlands recognizes several non-imprisonment punishments, such as conditional punishment, community service, electronic monitoring, and fines. Dutch Law of November 25, 2015, Stb. 2015, 460 on Long-Term Supervision, Behavioral Influence, and Freedom Restrictions, the Dutch Criminal Code, and the Penitentiaire Maatregel (Dutch Imprisonment Regulations) regulate the electronic surveillance punishment applicable in the

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Ditinjau Dari Politik Hukum," *DHARMASISYA: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 2, no. 2 (June 2022): 1027–36, https://scholarhub.ui.ac.id/dharmasisya/vol2/iss2/37.

56 Jan M. Smits, "Law in the Netherlands: A Very Concise Overview," *SSRN Electronic Journal*, 2022, 1–8, https://doi.org/10.2139/ssrn.4196156.

57 United Nations, "United Nation Standard Minimium Rules for the Administration of Juvenile Justice (The Beijing Rules Adopted by General Assembly Resolution)," Pub. L. No. 40/33 (1985), https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile.

58 Patricia Gray and Julie M Parsons, "The Harms of Imprisonment and Envisioning a Desistance-Supporting 'Good Society,'" *The Journal of Criminal Law* 88, no. 4 (August 21, 2024): 282–301, https://doi.org/10.1177/00220183241265188.

59 Madya Cinta Kholdaa and Pujiyono Pujiyono, "Social Work Crime as an Alternative to Resolving Overcrowding in Correctional Institutions," *Justisi Journal* 10, no. 3 (September 2024): 806–16, https://doi.org/http://dx.doi.org/10.33506/js.v10i3.3491.

60 Pratiwi, "Urgensi Alternatif Pemidanaan Pengganti Pidana Penjara Demi Tercapainya Tujuan Pemidanaan Dalam Menanggulangi Kejahatan," *Jurnal Pendidikan Dan Konseling* 4, no. 6 (2022): 7098–7112, https://doi.org/https://doi.org/10.31004/jpdk.v4i6.9473.

Netherlands.[61]

This is in contrast to the provision of supervision punishment in Indonesia, which the judge imposes after the verdict on the criminal justice process. In addition, there is no further provision regulating the mechanism of supervision punishment in Indonesia. However, electronic supervision punishment has been used in the Netherlands since the beginning of the criminal justice process and can be carried out in 6 (six) types, namely:[62]

1) As a condition for detention pending trial. Prosecutors or judges (Chamber of Council) may request electronic surveillance.
2) As a means of deferring sentence. Probation Service, prosecutors, and judges may apply. The home address of the convicted person will be inspected first, provided that the person living together in the house agrees to the supervision and the inspection is carried out by the Probation Service. To receive this sentence, the convicted person must also give consent.
3) With the requirements of the correctional program. In the final stage of the prison term, a correctional program can be applied. The selection officer receives advice from the correctional counselor and advice from the Prosecutor and Probation Service. Then, the selection officer makes the final decision. During the first third of the program, electronic supervision is usually used. However, if there are underlying reasons for the convict's behavior, the supervision may be extended or readjusted. The convicted person and his/her family members must consent to the application of electronic supervision.
4) Regarding parole, although the law does not mention electronic surveillance explicity, it is an increasingly popular condition for release from correctional institutions. Selection officers make decisions about inmates' eligibility for release from prison and the conditions they must fulfill. For electronic monitoring to fulfill parole requirements, Global Positioning System (GPS) technology is required. This is the only one where the Probation Service function is not always included.
5) Conditions of parole include restrictions in certain areas. Parole can be granted to the offender for one year of the prison sentence already served. The Central Provision for Provisional Enforcement (CVVI) will apply exceptional conditions if the prisoner fulfills the conditions for parole. The Probation Service informs CVVI of the conditions to be met and determines whether the prisoner's home is suitable for electronic surveillance.
6) Termination of Terbeschikkingstelling (TBS) relies on individuals who have committed crimes and are placed in special institutions due to their inability to take responsibility for their actions.

A person may be electronically monitored for up to 10 (ten) years, and there is no upper limit on this type of monitoring. Electronic surveillance may be able to continue indefinitely, with the Dutch Law of November 25, 2015, Stb. 2015, 460 on Long-Term Supervision, Behavioral Influence, and Freedom Restrictions. Electronic device-based supervision is almost always used for probation monitoring. While supervisors talk to inmates about the conditions of supervision, officers from the Ministry of Justice and Security establish a technological link. Connecting electronic supervision equipment allows supervisors and inmates to interact regularly and indicates the time of the start of supervision. Supervisors and inmates have the option to meet with local governments, inmates' employers, or treatment facilities in addition to the required conversations.

An inmate's degree of freedom determines the time that can be spent on daily tasks, by degree:[63]

a) Twelve hours a week and four hours on weekends is the bare minimum of freedom;
b) Eight hours on weekends and fourteen hours during the week for moderate levels of freedom; and
c) Seventeen hours a day for the ultimate level of freedom.
d) Inmates are allowed two hours of free time per day if they have no activities throughout the day. However, convicts must attend a weekly program of at least 26 hours to be able to participate in the correctional program.

Supervision punishment in the Netherlands is implemented by Reclassering (Probation Service) as an independent institution funded by the Dutch Ministry of Justice and Security as stipulated in the

61 Arjan de Groot, "De Relevantie van Beccaria Voor Het Nederlandse Strafrecht: Het Beïnvloedingsprincipe," *Netherlands Journal of Legal Philosophy* 53, no. 1 (November 2024): 179–202, https://doi.org/10.5553/NJLP/.000117.

62 Miranda Boone, Matthijs van der Kooij, and Stephanie Rap, "The Highly Reintegrative Approach of Electronic Monitoring in the Netherlands," *European Journal of Probation* 9, no. 1 (April 18, 2017): 46–61, https://doi.org/10.1177/2066220317697660.

63 Boone, van der Kooij, and Rap.

Reclasseringsregeling (Staatsblaad 199 No. 875). Reclassering's main duties include:[64] a) executing and supervising the implementation of community service and special conditions in conditional sentences; b) providing considerations to the Prosecutor and Judges regarding the actions and penalties that need to be carried out against suspects and or defendants; and c) supervising convicts who receive conditional release. If observed, the duties of Reclassering have similarities with those of the Correctional Center in Indonesia, which is under the Ministry of Law and Human Rights. This similarity can be seen in the duties of the Indonesian Correctional Center, which also plays a role in conducting social work criminal guidance and providing consideration to the prosecutor about the implementation of supervision punishment to the judge. Meanwhile, the regulation on which institution will implement supervision punishment in Indonesia has not been further regulated, whether the prosecutor implements the supervision punishment as the executor of the judge's decision or the supervision punishment is implemented by the Correctional Center as done by Reclassering in the Netherlands.

Reclassering as an independent institution funded by the Dutch Ministry of Justice and Security must ensure that supervision sentences imposed on criminal offenders can be implemented properly. Reclassering carries out this task in the following stages:[65]

1) The first conversation. At this stage, the offender will receive an invitation to have an initial conversation with an officer from Reclassering. At this stage, the offender who is sentenced to supervision will receive an explanation of how supervision works. In addition, at this stage, the Reclassering Officer will also ask questions related to the special conditions imposed on the criminal offender. This stage aims to ensure the identity and identity of the criminal offender.
2) Supervision plan and rehabilitation program. This stage aims to determine a supervision plan and rehabilitation program appropriate to the offender's characteristic. This includes finding out about their daily activities, occupations, and problems encountered, such as those related to work, social life, addiction, or financial problems.
3) End of Supervision Period. This stage ensures that the supervision period imposed by the judge on the criminal offender has been completed without violating the general and special conditions that have been determined. In addition, at this stage, the offender will receive a letter stating that the supervision period has ended.

Supervision punishment, which the Netherlands has known, makes the Netherlands one of the countries that are qualified to implement supervision punishment and achieve the philosophical basis of giving a second chance to criminal offenders to improve themselves and maintain a balance with society, as previously explained. Referring to the provision of Article 76, paragraph (6) of the National Criminal Code, the prosecutor may propose a reduction of the supervision period to the judge if, during the supervision, the convict shows good behavior based on the consideration of the community supervisor. This shows that there is a close relationship between the prosecutor and community counselor in the implementation of supervision punishment. Meanwhile, Article 1, point 6 of Law Number 8 of 1981 on Criminal Procedure stipulates that the prosecutor is the executor of court decisions that have permanent legal force. Community Counselor in Law Number 22 of 2022 on Corrections stipulates that. Community Counselors are Correctional Officers who carry out Litmas, assistance, guidance, and supervision of Clients, both inside and outside the criminal justice process organized by the Correctional Center. Then, Article 56, paragraph (1) states that the implementation of community guidance includes mentoring, guidance, and supervision. Then, it is reaffirmed in Article 57.[66]

The provisions in the Correctional Act, which regulates the position of Community Supervisor and Correctional Center, show that the criminal law policy in the law leads to the implementation of social work punishment and supervision punishment organized by the Probation & Parole Office.[67] When compared to the duties and functions carried out by the independent Reclassering institution in the Netherlands, both have similar duties and functions in supervising criminal offenders during the supervision period and providing rehabilitation programs. However, Article 270 of the Criminal Procedure Code and Article 54 of Law No. 48/2009 on Judicial

64 Dika Agusta, Abdul Madjid, and Nurini Aprilianda, "Reforming Indonesian Criminal Law: Integrating Supervision, Punishment, and Rehabilitation for Restorative Justice," *International Journal of Islamic Education, Research and Multiculturalism* 7, no. 1 (2025): 54–68, https://doi.org/https://doi.org/10.47006/ijierm.v7i1.434.

65 Muhammad Arif Agus and Ari Susanto, "The Optimization of the Role of Correctional Centers in the Indonesian Criminal Justice System," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (September 2021): 369–84, https://doi.org/10.30641/dejure.2021.v21.369-384.

66 Republic of Indonesia, *Law Number 22 of 2022 Concerning Corrections* (Jakarta: State Secretariat, 2022).

67 Republic of Indonesia.

Power stipulate that the executor of court decisions in criminal cases is the Prosecutor. Furthermore, Article 30 paragraph (1) letter c of Law Number 11 of 2021, as an amendment to Law Number 16 of 2014 concerning the Prosecutor's Office of the Republic of Indonesia, regulates that the prosecutor's office has the duty and responsibility to supervise the implementation of conditional criminal decisions, supervision criminal decisions, and conditional release decisions.[68] Criminal law policy formulators need to pay attention to the provisions on how supervision punishment can be implemented.

Criminal law policy according to A. Mulder is used to determine the following policy lines:[69] a) in what cases the existing criminal provisions should be revised (*in welk opzicht de bestaande straftbepalingen hersien dien te worden*); b) what can be done to prevent criminal behavior (*wat gedaan kan worden om strafrechtelijk gedrag te voorkomen*); and c) the formulation of procedures for the implementation of investigation, prosecution, trial, and criminal execution (*hoe de opsproring, vervolging, berechting en tenuitvoerlegging van straffen dien te verlopen*). Based on this, one of the criminal law policies is regarding the implementation of the punishment itself, in this case is the supervision punishment.

In formulating the implementation policy of supervision punishment as a new main punishment in the Indonesian criminal justice system, it cannot be separated from the theory of punishment and the theory of legal expediency. The important issue of punishment in Roeslan Saleh's[70] view is how the criminal law can be applied. The relationship between society and the state is concretely regulated in regulatory provisions called law. State tools will work to process accountability for anyone who commits an offense. How criminal offenders are treated fairly and well is an important issue that needs to be considered in the application of criminal law. Along with the development of the theory of punishment as a means to reform society and as a form of crime prevention, there has also been a theory to achieve the goals of punishment that takes into account the perpetrators, victims, and society, including the theory of balanced punishment. The theory is motivated by the purpose of punishment now, which still focuses on the interests of the criminal and the interests of society only. In his view, Roeslan Saleh argues that punishment must be able to accommodate the interests of victims, society, and also the perpetrators.[71] It is not only the interests of the perpetrator that are accommodated by the punishment, but it is also necessary to pay attention to the interests of the victim or his family and the community. The current criminalization still only focuses on the interests of the perpetrator. Therefore, from the perspective of Roeslan Saleh's balance theory, it is conveyed that punishment needs to pay attention to the interests of victims, society, and criminal offenders.

Based on Roeslan Saleh's view above, in formulating a criminal law policy, it must be applicable and aim not only to focus on the perpetrators of criminal acts but also on the victims and society.[72] This research utilizes a comparative law method to formulate the concept of implementation of supervision punishment in Indonesia. Legal comparison is used to find similarities and differences in a legal system. However, more than that, comparative law has the aim of helping provide advice in shaping the law in a country to be better in accordance with the basic objectives set by the country. The goal of this legal comparison can be said to be an input test material in compiling legal provisions from a country as well as a comparative study material between legal systems.

Specifically, this paper uses the Netherlands as a comparative country to find out the mechanism of implementation of supervision punishment. The Netherlands is chosen as a comparative country because the Netherlands has the first recognized supervision punishment, and historically, the Indonesian legal system has a close relationship with the Netherlands. Below is a model of an integrated implementation of supervision punishment offered by the author:

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68 Republic of Indonesia, *Law Number 11 of 2021 as an Amendment to Law Number 16 of 2014 Concerning the Attorney General's Office of the Republic of Indonesia* (Jakarta: State Secretariat, 2021).

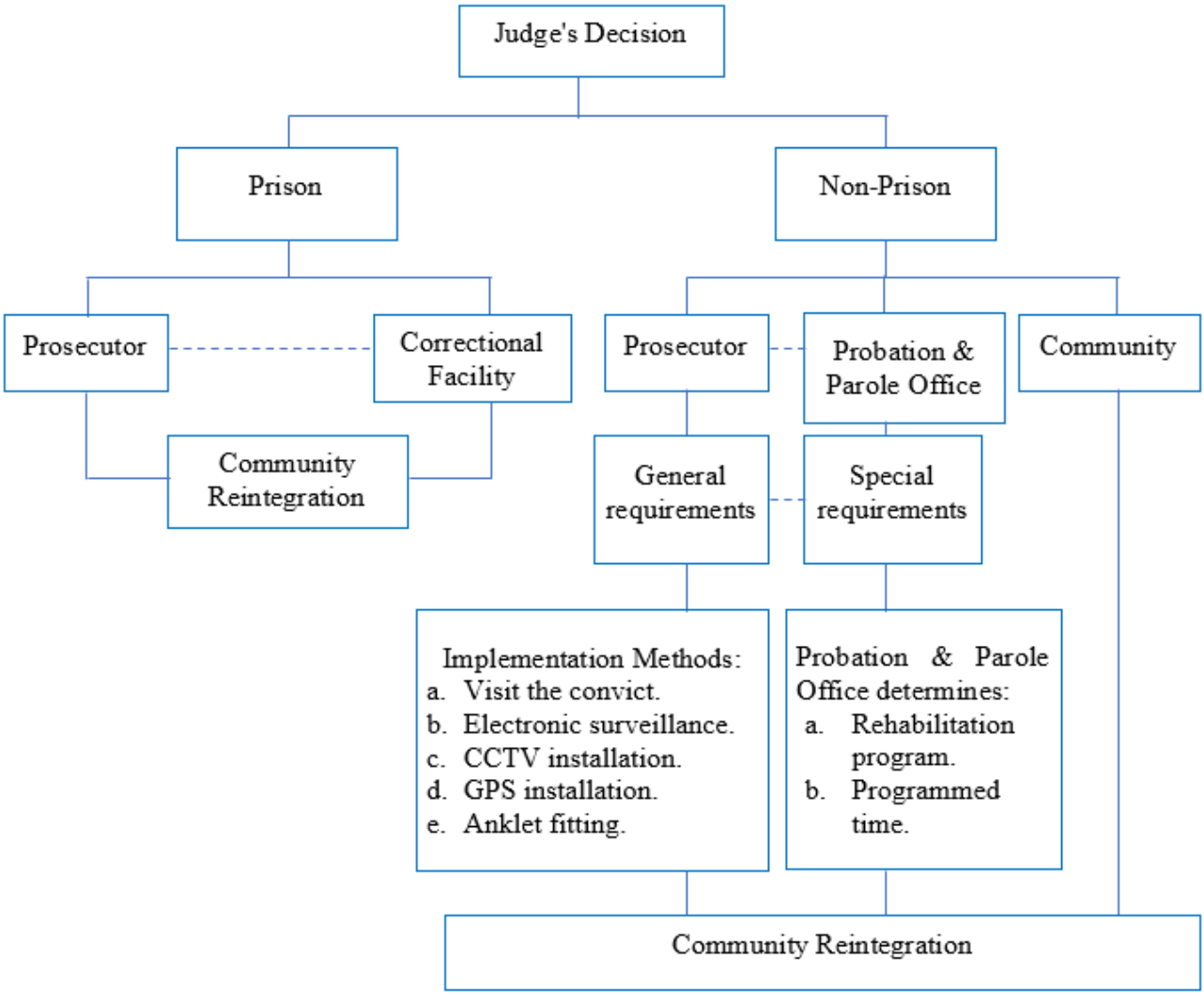
69 Irmawanti and Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana."

70 Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan."

71 Ramadhan and Ariyanti, "Tujuan Pemidanaan Dalam Kebijakan Pada Pembaharuan Hukum Pidana Indonesia."

72 Bagus Satrio Utomo Prawiraharjo, "Implementasi Ide Keseimbangan Monodualistik Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Jurnal Hukum Progresif* 11, no. 2 (2023): 159–71, https://doi.org/https://doi.org/10.14710/jhp.11.2.159-171.

Figure 1: Integrated Criminal Supervision Implementation Model



Source: Primary and secondary legal sources processed by the author by making comparisons with the Netherlands

The implementation model of integrated supervision punishment, as referred to above, is carried out by the Prosecutor, Probation & Parole Office, and the community. This is slightly different from the implementation of supervision punishment in the Netherlands, where the Probation Service carries out supervision punishment in the Netherlands as an independent institution. The author's consideration in determining the institution of supervision punishment implementation is at least based on several reasons. The first reason is that in the model offered, supervision punishment is carried out by the prosecutor because, based on Article 1 point 6 of Law Number 8 of 1981 on Criminal Procedure, the prosecutor is the executor of the judge's decision with permanent legal force. Supervision punishment is a unique non-imprisonment punishment because, in its imposition, it must be accompanied by general conditions and special conditions as specified in Article 76, paragraphs (2) and (3) of Law Number 1 of 2023 on the Criminal Code. In addition to the general condition not to commit another criminal offense, the law also determines that they can be subject to special conditions in the form of restoring the condition due to the criminal offense or doing or not doing something. By adopting the implementation of supervision punishment in the Netherlands by providing a rehabilitation program to return to an acceptable society, the author formulates that the special condition of doing something given to convicts can be in the form of the implementation of rehabilitation programs provided by the Probation & Parole Office as stipulated in Law Number 22 of 2022 on Corrections.

In determining the rehabilitation program for convicts, the Probation & Parole Office has an important role in identifying the convict and the crime committed so that a relevant rehabilitation program can be formulated. This is also applied by the Netherlands, where before the supervision punishment is carried out, reclassering

interviews with the convict are used to formulate a program and implement supervision punishment that is relevant to the convict and the crime committed. The implementation of general requirements that are the responsibility of the Prosecutor and the implementation of special requirements that are the responsibility of the Probation & Parole Office can realize an integrated implementation of supervision punishment. Therefore, coordination between the two institutions is important. In addition, considering that supervision punishment is a form of non-imprisonment punishment, which means that the convicts still mingle with the community. Therefore, in formulating the implementation of supervision punishment, the author adds the participation of the community in realizing successful supervision. The community is a party that directly interacts with and can conduct supervision and observation on a convict's basis. The community that the author considers to be included are the head of the local RT, the neighbors of the convict, and the family of the convict. The selection of these community components is based on an arrangement that is not interrelated so that it can produce a supervision report that can be accounted for.

Supervision punishment imposed on convicts will be considered successful if, during the supervision period, the convicts can improve themselves and become better individuals and can be accepted back by the community as the philosophical basis for the establishment of supervision punishment to provide a second chance to convicts to improve themselves without having to be imprisoned.[73] Therefore, the method of supervision is also an important thing that can determine the success or failure of the imposed supervision punishment. The method of implementation of supervision punishment offered by the author is adopted from the implementation of supervision punishment in the Netherlands with modification of the degree of supervision period imposed as follows:

a. Supervision period 0 months to 10 months: convicted visit and electronic surveillance.
b. Supervision period: 11 months to 22 months: convict visitation and electronic surveillance, or surveillance with CCTV installation,
c. Supervision period: 23 months to 36 months: visitation of convicts, electronic surveillance, surveillance by CCTV installation, and installation of GPS and ankle bracelet.

Meanwhile, the Prosecutor and the Probation & Parole Office also need to pay attention to the condition of the convict, whether he is actively working or not. Considering this situation, by referring to the purpose of criminalization development from Roeslan Saleh, the imposition of punishment is not only aimed at providing a deterrent effect and rehabilitation for the convict but also to benefit the community. Therefore, in its implementation, supervision punishment also needs to pay attention to the degree of time the convict has to carry out daily activities. The degree of time that can be applied in the implementation of integrated supervision punishment by adopting the Dutch supervision punishment system with modifications based on Roeslan Saleh's theory of punishment objectives can be determined as follows:

a. Supervision period 0 months to 10 months: fifteen hours a week are given the freedom to carry out activities outside the rehabilitation program set by the Probation & Parole Office.
b. Supervision period of 11 months to 22 months: Thirteen hours a week are given the freedom to carry out activities outside the rehabilitation program set by the Probation & Parole Office.
c. Supervision period of 23 months to 36 months: ten hours a week are given the freedom to carry out activities outside the rehabilitation program set by the Probation & Parole Office.

The degree of freedom time must be considered by the Prosecutor and the Probation & Parole Office, and for convicts who have no activities or have not worked, the provision of freedom time for two hours a day and are required to attend the Probation & Parole Office rehabilitation program for a minimum of twenty-four hours a week.

The integrated criminal supervision policy model proposed in this article still faces several challenges in terms of implementation. Institutional readiness, human resource capacity, infrastructure, and legal feasibility are critical factors that have not yet been fully addressed within the framework of Indonesia's current positive law. Therefore, although this model has been formulated normatively as an ideal representation of a progressive criminal justice system, its implementation requires further study that considers actual conditions on the ground, including institutional constraints and the ongoing development of relevant regulations.

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73 Gina Sabrina and Fazal Akmal Musyarri, "Urgensi Penerapan Pidana Pengawasan Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP," *Jurnal Yudisial* 16, no. 1 (December 24, 2023): 65–82, https://doi.org/10.29123/jy.v16i1.586.

The realization of supervision punishment that runs in accordance with the purpose of its establishment will strengthen the new paradigm built in Law Number 1 of 2023 on the Criminal Code, namely the paradigm shift from retributive to corrective, restorative, and rehabilitative paradigm. The non-imprisonment approach will be able to realize substantive justice not only for the perpetrators of criminal acts but also for the victims and the community. The model of implementation of integrated supervision punishment that the author offers as a model policy formulation is a rational effort to formulate problems effectively through legal policies that an agency can later determine. The policy model of integrated supervision criminal implementation that the author offers will bring the formulation of supervision criminal law policy that is in line with the culture and legal values of the aspired society.

3. Conclusion

Supervision punishment under the National Criminal Code constitutes a principal non-custodial sentence designed to provide offenders with opportunities for rehabilitation, maintain public order, and protect both victims and society. Reflecting the principles of restorative justice, this form of punishment prioritizes reintegration and seeks to minimize the negative effects of incarceration, in accordance with the theory of legal utility. The legislative ratio legis behind supervision punishment is to offer offenders a second chance to become productive members of society. The effectiveness of this approach depends on well-implemented supervision mechanisms and structured rehabilitation programs that can prevent future criminal behavior.

The Integrated Criminal Supervision Implementation Model proposed in this study is adapted from the Dutch criminal supervision system through a comparative legal approach. However, not all elements of the Dutch model are directly transferable to the Indonesian context. Key aspects such as the involvement of independent supervisory institutions and specific monitoring methods require careful modification due to institutional and cultural differences. In the Netherlands, supervision is typically carried out by established independent agencies supported by long-standing institutional frameworks. In contrast, Indonesia currently lacks such infrastructure. Consequently, the Dutch model cannot be adopted wholesale; instead, its components must be selectively adapted to align with Indonesia's legal framework, administrative capacity, and societal conditions.

This study identifies three essential components of the integrated model: (1) implementation methods, with clearly assigned institutional responsibilities; (2) the degree and duration of supervision based on risk assessment of the offender; and (3) a structured rehabilitation program. These elements must be integrated into a coherent policy framework aligned with the objectives of punishment and the utilitarian value of law. Despite its conceptual strength, supervision punishment in Indonesia still faces significant implementation challenges, including institutional readiness, availability of qualified personnel, infrastructure limitations, legal feasibility, and the absence of effective inter-agency coordination. Therefore, a realistic policy roadmap, coupled with post-enactment empirical research, is essential to evaluate its social impact and overcome operational obstacles. By adopting a more pragmatic and context-sensitive approach, the model can serve as a normative framework that supports Indonesia's transition toward a restorative and utilitarian system of criminal justice, while remaining responsive to the country's socio-legal realities.

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