



Article History	Received: 28-0-2025	Reviewed:22-11-2025	Accepted: 29-11-2025	Published: 01-12-2025
-----------------	---------------------	---------------------	----------------------	-----------------------

DISPARITY BETWEEN CRIMINAL SANCTIONS IN THE KUHP AND LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE

Ilham Saputra Halilintar¹, Abdul Aziz Nasihuddin²

^{1,2}University Jenderal Soedirman
ilham.halilintar@mhs.unsoed.ac.id

ABSTRACT

The current Criminal Code (KUHP) is a legacy of Dutch colonialism, with individualistic and colonialist principles that are not aligned with Indonesian ideological values. The enactment of Law No. 1 of 2023 concerning the Criminal Code marks an update to criminal law to make it more relevant to social, cultural values, and the needs of society today and in the future. This study aims to analyze the disparity in criminal sanctions between the old Criminal Code and Law No. 1 of 2023. The method used is normative legal research through a systematic review of the provisions of sanctions in both regulations. The results show that the national Criminal Code requires consideration of the purpose of punishment, guidelines for punishment, formulation of imprisonment (single or alternative), aggravation of punishment, and other provisions related to punishment (Articles 51–63), which were not yet known in the old Criminal Code. The purpose of punishment is the main basis for analyzing the differences in the provisions of the main criminal sanctions in the two regulations.

Keywords: Disparity, Criminal Sanctions, Criminal Code, National Criminal Code.

ABSTRAK

KUHP yang berlaku saat ini adalah warisan kolonial Belanda dengan asas individualistik dan kolonialis yang kurang selaras dengan nilai ideologi Indonesia. Disahkannya UU No. 1 Tahun 2023 tentang KUHP menandai pembaruan hukum pidana agar lebih relevan dengan nilai sosial, budaya, dan kebutuhan masyarakat kini dan masa depan. Penelitian ini bertujuan menganalisis disparitas sanksi pidana antara KUHP lama dan UU No. 1 Tahun 2023. Metode yang digunakan adalah penelitian hukum normatif melalui kajian sistematis terhadap ketentuan sanksi dalam kedua regulasi. Hasil penelitian menunjukkan bahwa KUHP nasional mengharuskan pertimbangan tujuan pemidanaan, pedoman pemidanaan, formulasi pidana penjara (tunggal atau alternatif), pemberatan pidana, serta ketentuan lain terkait pemidanaan (Pasal 51–63), yang belum dikenal dalam KUHP lama. Tujuan pemidanaan menjadi dasar utama analisis perbedaan pengaturan sanksi pidana pokok kedua aturan tersebut.

Kata Kunci: Disparitas, Sanksi Pidana, KUHP, KUHP Nasional.

INTRODUCTION

Criminal law reform in Indonesia has long been a topic of discussion and research, both by academics and practitioners. Efforts to reform criminal law represent the nation's aspiration to create a just legal system consistent with Indonesian values. The current Criminal Code (KUHP) is a legacy of the Dutch colonial era, grounded in individualistic and colonialist ideologies, and therefore inconsistent with Indonesian national ideology. The early legal drafters intended the colonial-era Criminal Code to be merely a temporary measure to regulate national criminal law. However, in reality, the colonial Criminal Code remains in use today.

Efforts to replace the colonial-era Criminal Code (KUHP) have long been a concern for criminal law experts in Indonesia. The process of national legal reform actually began with the Proclamation of Independence on August 17, 1945. This reform is based on the 1945 Constitution of the Republic of Indonesia, which is inseparable from the foundations of the state and the national goals as stated in its Preamble. According to Barda Nawawi Arief, the national goal contains two important keywords: "community protection" and "community welfare." These two concepts align with the terms known in legal and academic literature as "social defense" and "social welfare." These two terms demonstrate the principle of balance within national development goals. Furthermore, it is important to note that these two terms are often conflated under the single term "social defense," as the term "community protection" already encompasses "community welfare."¹

The national goal is the primary policy that serves as the foundation and target of law in Indonesia. This should be the basis and objective of every legal reform effort, including improvements to criminal law and efforts to combat crime through criminal law in Indonesia. Changes in increasingly advanced society have led to shifts in existing culture and values, which are not balanced by relevant laws. As a result, the public perceives injustice, leading to a loss of trust in law enforcement. Thus, Law Number 1 of 2023 concerning the Criminal Code (KUHP) was drafted to adapt to current societal values and conditions while considering future societal situations. This is crucial because the current Criminal Code is deemed incapable of addressing

¹ Barda Nawawi Arief, *Tujuan Dan Pedoman Pemidanaan*, ed. Badan Penerbit Universitas Diponegoro (Semarang, 2009).

existing legal issues in Indonesia, particularly in light of recent developments that have led to public dissatisfaction with law enforcement.

Criminal law has two primary functions: preventing crime and resolving crimes that have already occurred. In the context of resolving crimes, if someone is found guilty through the judicial process, they will be subject to criminal sanctions. These sanctions are negative because they cause suffering for the perpetrator, but their purpose is to maintain order, security, and control behavior in society. The application of criminal sanctions in Indonesia began with the enactment of the *Wetboek van Strafrecht voor Nederlandsch-Indie* (WvSNI) on January 1, 1918, after being enacted in 1915. After Indonesian independence, these regulations became known as the *Wetboek van Strafrecht* (WvS) or the Criminal Code (KUHP), as stipulated in Article 6 of Law Number 1 of 1946 concerning Criminal Law Regulations (KUHP). This remains in effect today.

Criminal cases that have received sentencing decisions, resulting in the continued application of punishments that date back to the Dutch colonial era, have caused a shift in societal culture and values. However, this is not balanced by applicable legal regulations, resulting in a sense of injustice in society, which also contributes to a lack of trust in law enforcement. With the enactment of Law Number 1 of 2023 concerning the Criminal Code, it is hoped that it will be adjusted to current societal values and situations, while also considering future conditions. This is because the current Criminal Code is considered incapable of addressing existing legal issues in Indonesia, especially in the context of increasingly modern developments, thus giving rise to public dissatisfaction with law enforcement.

Based on the above description, this paper aims to examine the provisions regarding the main criminal sanctions as stipulated in Law Number 1 of 1946 concerning the Criminal Code (KUHP) and Law Number 1 of 2023 concerning the Criminal Code. The discussion focuses on analyzing the similarities and differences between the two regulations, as well as identifying important aspects that require further attention. Thus, it is hoped that the implementation of criminal sanctions in the future will align with the objectives of criminal punishment, which are oriented towards balancing the interests of the perpetrator, victim, and society.

RESEARCH METHODOLOGY

The normative legal research method with a library approach uses secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.² In this study, the data analysis used uses a qualitative analysis method with an analytical descriptive approach, namely by organizing data through categorization and codification of various literature sources that have been collected, then interpreting the data to identify patterns, relationships, and meanings that are relevant to the research objectives.³

RESULT AND DISCUSSION

Criminal Sanctions Law Number 1 of 1946 concerning Criminal Law Regulations (KUHP) and Law Number 1 of 2023 concerning the Criminal Code

In criminal cases, every judge's decision will include the imposition of criminal sanctions on the defendant. These sanctions can take the form of a principal penalty, which, under certain circumstances, may be accompanied by additional sanctions or other measures. A principal penalty is the primary sanction in criminal law and is independent, meaning it can be imposed without additional sanctions. It cannot be combined with other principal penalties unless expressly permitted by law. Meanwhile, additional sanctions are optional, meaning the judge has the authority to determine whether additional sanctions are necessary. Furthermore, additional sanctions cannot be imposed separately but must be accompanied by the principal sanction.⁴

Measures are a form of treatment received by the perpetrator of a crime through a judge's decision and serve as a specific deterrent. The imposition of criminal sanctions through measures in a sentencing decision is also known as the dual-track system, which emerged as a solution to the differences between the classical school of thought, which focuses on retributive justice, and the

² Yati Nurhayati, Ifrani, and MYasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum " *Jurnal Penegakan Hukum Indonesia (JPHI)* 2, no. 1 (2021): 1-20.

³ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Masalah Hukum Kontemporer," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145-60.

⁴ C. Djisman Samosir, *Penologi Dan Pemasyarakatan*, ed. Nuansa Aulia (Bandung, 2016).

modern school of thought, which emphasizes community protection (Carl Stoos was the original initiator of this system for the Swiss Criminal Code).⁵

Furthermore, Article 10 of Law Number 1 of 1946 concerning the Criminal Code (hereinafter referred to as the old Criminal Code) stipulates primary and secondary penalties. However, certain actions were not explicitly stated in the old Criminal Code and only appeared in the context of the judge's authority to: 1) order someone to be treated in a mental hospital as stipulated in Article 44 of the old Criminal Code; 2) return a guilty child to their parents, guardian, caretaker, or the government without punishment, as stipulated in Articles 45-46 of the old Criminal Code (which are also specifically regulated in the Law on the Juvenile Criminal Justice System).

Article 64 of Law Number 1 of 2023 concerning the Criminal Code states that criminal penalties are now divided into three categories: a. primary penalties; b. secondary penalties; and c. special penalties for certain violations regulated by law. Furthermore, these actions are fully regulated for legal subjects, both individuals (including children) and corporations, in Articles 103 to 131.

Table 1. Types of Criminal Sanctions in Law Number 1 of 1946 concerning Criminal Law Regulations

Principal Criminal Offense (Article 10)	Additional Penalties (Article 10)
1. Death penalty (Article 11 which has been replaced by Presidential Decree Number 2 of 1964);	1. Revocation of certain rights (Article 34-Article 38);
2. Imprisonment (Article 12-Article 17, Article 20, Article 22-Article 29, Article 32-Article 33, Article 42);	2. Confiscation of certain objects (Articles 39-42);
3. Imprisonment (Article 18-Article 29, Article 31-Article 33, Article 42);	3. Announcement of the Judge's decision (Article 43).
4. Criminal fines (Article 30-	

⁵ Teng Junaidi Gunawan, "Ius Constituendum Criminal Law Sanction System with Double Track System Principle in the National RKUHP," *Sasi* 28, no. 4 (2022): 532, <https://doi.org/10.47268/sasi.v28i4.1038>.

Table 2. Types of Criminal Sanctions in Law Number 1 of 2023
concerning the Criminal Code

Principal Criminal Offense (Article 65)	Additional Penalties (Article 66)	Special Penalties For Certain Crimes Specified in Law (Article 67)
a. Imprisonment (Articles 68-73); b. Imprisonment (Article 74); c. Supervision (Articles 75-77); d. Fine (Articles 78-84, Article 620); e. Community service (Article 85).	a. Revocation of certain rights (Articles 86-90); b. Confiscation of certain goods and/or claims (Articles 91-92); c. Announcement of the judge's decision (Article 93); d. Payment of compensation (Article 94); e. Revocation of certain permits (Article 95); f. Fulfillment of local customary obligations (Articles 96-97).	The death penalty is always threatened as an alternative (Article 98-Article 102)

All types of criminal sanctions and actions in the new Criminal Code mentioned above, when applied to perpetrators, must comply with the following provisions:

- 1) The purpose of punishment (Articles 51-52);
- 2) Guidelines for punishment (Articles 53-56);
- 3) Guidelines for the application of prison sentences with single and alternative formulations (Article 57);
- 4) Increased sentences (Articles 58-59);
- 5) Other provisions related to punishment (Articles 60-63).

This is very different from the application of criminal sanctions in the old Criminal Code, which did not recognize these five important elements because they were not yet regulated in the regulations. The purpose of

punishment is one of the key elements that forms the basis for analysis in the regulation of the main criminal sanctions in both regulations.

Death Penalty

The death penalty is a form of punishment imposed by the state through actions that result in the death of a person found guilty by a valid and legally binding court decision. This type of punishment has been known since the time of the kingdoms in Indonesia, long before the advent of colonialism. The death penalty is characterized by its absolute nature, because once executed, the convict's life cannot be restored if errors in the judicial process are later discovered.⁶ This is one reason many oppose the death penalty.

In the old Criminal Code (KUHP), the death penalty was considered a primary criminal sanction and occupied the highest position in the hierarchy of types of punishment, reflecting the severity of the punishment. However, in the new KUHP, the death penalty is no longer categorized as a primary punishment but rather as a special punishment applicable only to certain crimes as stipulated by law. Article 98 of the new KUHP emphasizes that the death penalty is designated as a last resort (*ultimum remedium*) to protect society.

Table 3. Disparity in the Death Penalty in the Criminal Code and Law Number 1 of 2023 concerning the Criminal Code

OLD CRIMINAL CODE (Article 11 which has been replaced by Presidential Decree Number 2 of 1964)	NEW CRIMINAL CODE (Article 98-Article 102)
Initially, it was regulated in Article 11 by the executioner hanging the convict's neck with a rope from the gallows and after some time the board on which the convict was standing was dropped.	The death penalty is directly regulated by shooting the convict to death because it is considered the most humane method and can be adapted to developments if there are other, more humane methods.
- Since the issuance of Presidential Decree Number 2 of 1964, the method of execution of the death penalty has been changed to shooting. This is further explained in detail in the National Police Chief Regulation Number 12 of 2010.	- The death penalty for mentally ill individuals is carried out if the convict has recovered. - The death penalty is an alternative to life imprisonment and 20 years' imprisonment in relevant articles. - The exact duration of the death penalty for convicts is clearly defined. Article 101 explicitly states that, "If a death row inmate's

⁶ J. E. Sahetapy, *Pidana Mati Dalam Negara Pancasila*, ed. PT Citra Aditya Bakti (Bandung, 2017).

<ul style="list-style-type: none"> - The death penalty is regulated as an option in articles relating to life imprisonment and 20 years' imprisonment. - There is no certainty regarding the length of time a convict will be sentenced after a final legal decision. - Judges are not required to consider various aspects such as the purpose of sentencing, sentencing guidelines, guidelines for applying prison sentences with single and alternative formulations, aggravating factors, and other provisions related to sentencing. 	<p>clemency request is rejected and the death penalty is not carried out within 10 (ten) years of the clemency rejection, not because the inmate has escaped, the death penalty may be commuted to life imprisonment by Presidential Decree."</p> <ul style="list-style-type: none"> - Furthermore, Article 100 stipulates that a judge, in his or her court decision, may impose the death penalty with a 10-year probationary period (starting from the first day after the in kracht verdict) if (i) the defendant shows remorse and hopes to improve, (ii) the defendant did not play a significant role in the relevant crime, or (iii) there are mitigating circumstances. - It is also regulated that during the probation period, if the convict demonstrates commendable attitudes and actions, then his sentence can be changed to life imprisonment by Presidential Decree after receiving consideration from the Supreme Court. - Likewise, if the convict does not demonstrate commendable attitudes and actions, there is no hope of improvement, then his sentence can be carried out on the orders of the Attorney General.
	<ul style="list-style-type: none"> - Judges are required to consider: <ol style="list-style-type: none"> 1) the purpose of sentencing (Articles 51-52); 2) Entencing guidelines (Articles 53-56); 3) Guidelines for imposing prison sentences with a single sentence and alternative sentences (Article 57); 4) Sentence aggravation (Articles 58-59); 5) Other provisions regarding sentencing (Articles 60-63).

The objectives of punishment as stipulated in Articles 51–52 of the new Criminal Code demonstrate that the future direction of Indonesian criminal law policy is based on utilitarian or relative theory. This theory emphasizes that the imposition of criminal sanctions is not intended to degrade human dignity, but rather to prevent crime, educate and socialize perpetrators, restore social balance, and create a deterrent effect. Based on these objectives, the

death penalty is considered inconsistent with the modern orientation of punishment because it emphasizes retribution for past crimes without considering the individualization of the sentence for the convict. Furthermore, as a country based on Pancasila, specifically the Second Principle on "Just and Civilized Humanity," the application of the death penalty is considered contrary to these humanitarian values. Humans, even when committing crimes, still possess dignity and worth that must be respected. Therefore, the death penalty through execution by firing squad does not reflect respect for noble humanitarian values.

Internationally, several organizations oppose the implementation of the death penalty, including Amnesty International, founded in 1961, and the World Coalition Against the Death Penalty (WCADP), formed in 2002. The existence of these organizations demonstrates the global movement rejecting the death penalty as a violation of human rights. Sociologically, the implementation of the death penalty in Indonesia has sparked public debate. Those in favor generally argue that the death penalty is necessary to eliminate individuals deemed dangerous to the public or the state and deemed irreparable. Conversely, those against argue that the death penalty violates human rights principles and is irreversible, as errors in the judicial process cannot be corrected after execution.⁷

Despite these differing views on the implementation of the death penalty, if Indonesia continues to maintain this form of punishment, its implementation must adhere to international guidelines, namely the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty issued by the United Nations (UN). These guidelines are intended to ensure that the death penalty is implemented carefully and in accordance with the principles of human rights protection. Furthermore, it is important to remember that in implementing the death penalty in Indonesia, the state must avoid all forms of torture—that is, any act that causes physical or mental suffering to a person and is prohibited by law. The implementation of the death penalty must also not lead to social injustice or undermine the values of civilized humanity as upheld by Pancasila.

⁷ Salmon Latue, Juanrico Alfaromona Sumarezs Titahelu, and Erwin Ubwarin, "Penjatuhan Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi Dimasa Pandemi Covid-19," *MATAKAO Corruption Law Review* 1, no. 2 (2023): 151-61, <https://doi.org/10.47268/matakao.v1i2.11542>.

Imprisonment

Imprisonment is a punishment that restricts the freedom of movement of a person who has been sentenced and registered in a correctional institution. This punishment has been implemented since the colonial era. This sanction has a special character because it provides an opportunity for offenders to improve themselves personally and is expected to provide benefits to the surrounding community (specific deterrence) and is also expected to achieve more general deterrence. In the Criminal Code, imprisonment is considered a type of primary punishment that is second in order, while provisions regarding imprisonment have only recently been made as a primary punishment that is first in order.

Table 4. Disparity in Prison Sentences in the Criminal Code and Law Number 1 of 2023 concerning the Criminal Code

OLD Criminal Code (Articles 12-17, 20, 22-29, 32-33, 42)	NEW CRIMINAL CODE (Articles 68-73)
<ul style="list-style-type: none"> - -The type of imprisonment is set for life or a specific term. The sentence starts from one day and can last up to a maximum of fifteen consecutive years, and there is the possibility of up to twenty consecutive years as an alternative to the death penalty or life imprisonment, calculated in days, weeks, months, or years without fractions. - Accompanied by mandatory obligations. - Can be carried out anywhere within the Correctional Institution according to its designated area (not limited to the area where the convict is imprisoned). - Applies only to criminal offenses. - There is the possibility of applying a conditional sentence of imprisonment as per Articles 14a to 14f, with applicable provisions if the Judge imposes a prison sentence of not more than one year or a prison sentence. 	<p>The type of prison sentence is regulated as either life imprisonment or a fixed term (ranging from one day to a maximum of fifteen consecutive years, and possibly up to twenty consecutive years as an alternative to the death penalty or life imprisonment).</p> <ul style="list-style-type: none"> - Accompanied by work obligations. - Can be implemented in various correctional facility locations appropriate to their function (not limited to the prison's convict area). - Applies only to criminal offenses (because the terms crime and violation are no longer used). - There are no provisions regarding conditional prison sentences; instead, there are supervision sentences. - Article 69 stipulates that prisoners serving a life sentence who have served at least 15 years can have their sentence reduced to 20 years by presidential decree after obtaining an opinion from the Supreme Court. - Conditional release is regulated after serving two-thirds of the sentence. - Article 70 stipulates that prison sentences should not be imposed in certain circumstances (for example: the defendant is

<ul style="list-style-type: none"> - Conditional release is regulated after serving two-thirds of the sentence (further information regarding this and other important matters can be found in the Correctional Law and related implementing regulations). - Judges are not required to consider the purpose of sentencing, sentencing guidelines, guidelines for applying imprisonment with single and alternative formulations, sentence aggravation, and other provisions on sentencing. 	<ul style="list-style-type: none"> a child or is over 75 years old, etc.). - There are provisions regarding minimum prison sentences specifically for certain criminal offenses (which already exist in criminal provisions outside the Criminal Code). - An increasing number of alternative sentences other than imprisonment can be imposed, with sentences of less than five years. - Judges are required to consider the following: <ol style="list-style-type: none"> 1) the purpose of sentencing (Articles 51-52); 2) sentencing guidelines (Articles 53-56); 3) guidelines for imposing single and alternative prison sentences (Article 57); 4) sentence aggravation (Articles 58-59); 5) other provisions regarding sentencing (Articles 60-63).
---	---

Based on the objectives of punishment as stipulated in Articles 51–52 of the new Criminal Code, imprisonment is one of the main forms of criminal sanctions considered most relevant to achieving these objectives. This punishment serves not only as a means of retribution but also as an effort to foster and socially reintegrate perpetrators of criminal acts. Furthermore, there are several important aspects that require further analysis regarding the application of imprisonment, as listed in the previous table, particularly in relation to the objectives of punishment stipulated in the new Criminal Code, as follows:

1. Conditional imprisonment is still rarely used consistently in the Indonesian legal system. Barda Nawawi Arief suggests that this is due to several factors, namely⁸:
 - a. its non-mandatory (non-imperative) nature;
 - b. the emergence of distrust among judges regarding its implementation;
 - c. the negative public reaction to sentencing perpetrators. In the new Criminal Code, conditional imprisonment is abolished and replaced with supervision sanctions.

⁸ Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, ed. Genta Publishing (Yogyakarta, 2010).

2. The process of conditional release in the Criminal Code has been more clearly regulated in the Corrections Law. Although there are provisions regarding conditional release in the new Criminal Code, they do not comprehensively cover other rights of inmates, such as family leave and integration, and do not refer to other regulations in the Corrections Law. Therefore, it is important to clarify the position of the Corrections Law alongside other implementing regulations in existing law with the future implementation of the new Criminal Code. If this is not clarified, there will be potential confusion among the public regarding their complementary application or whether one of them may not apply.
3. The change to a more humane life sentence and the effort to avoid imposing imprisonment in certain situations are positive steps that need to be implemented in the future.
4. The imposition of minimum prison sentences for certain crimes raises questions regarding the underlying rationale. According to the explanation in the new Criminal Code, it states that "essentially, special minimum sentences are exceptional, applied only for certain crimes deemed highly detrimental, extremely dangerous, or extremely disruptive to society, as well as for crimes with aggravated consequences." This aims to: avoid a glaring disparity in punishment for crimes of comparable quality; Increasing the effectiveness of general deterrence, particularly for crimes deemed dangerous and disruptive; considering the possibility of increasing maximum sentences under certain circumstances also means that minimum sentences for certain crimes can be increased. However it is crucial to remember that many correctional institutions in Indonesia are already overcrowded. The provision regarding special minimum prison sentences implies that prison sentences must be applied at the minimum stipulated in the relevant articles. This limits judges' discretion in imposing lighter sentences or other principal sanctions, resulting in more convicts serving prison sentences and contributing to the increase in the number of inmates in correctional institutions. Therefore, caution is needed in determining these special minimum prison sentences. This thinking aligns with Sudarto's view that in criminalizing an act, one factor that must be considered is "the use of criminal law must consider the capacity or work ability of law enforcement officers, to avoid excessive workload."⁹

⁹ Suhariyono AR, "Perumusan Sanksi Pidana Dalam Pembentukan Peraturan Perundang-Undangan," *Perspektif* 17, no. 1 (2012): 20-30, <http://jurnal-perspektif.org/index.php/perspektif/article/view/91>.

5. There is a growing trend toward the use of alternative punishments in lieu of imprisonment for sentences of less than five years, such as supervision, fines, or community service. However, to date, no alternative punishments are available for imprisonment between five and twenty years. As previously explained, new alternative options appear to be being applied to the death penalty and life imprisonment. Considering the objectives of sentencing stipulated in the new Criminal Code and the numerous provisions in Book II that threaten imprisonment of more than five years, developing alternative punishments for these categories is crucial. This effort is necessary to ensure a more proportional implementation of the sentencing system and to mitigate the problem of overcrowding in Indonesian correctional institutions. This analysis aligns with Sudarto's idea that in determining a crime, one factor that must be considered is that "the use of criminal law must also recognize the cost-benefit principle."¹⁰ It is true that imprisonment aligns with the objectives of sentencing outlined in the Criminal Code, which was enacted in September 2019. However, the reality of overcrowding in Indonesian correctional institutions can hinder the achievement of these objectives. This is reflected in a statement from the Ministry of State Apparatus Empowerment and Bureaucratic Reform which states: "problems arising from overcrowding in prisons include suboptimal prisoner rehabilitation processes, difficulties in supervision and security, a decline in the psychological condition of prisoners including officers, the possibility of conflict between inmates, the risk of sexual deviation, damage to the sanitation system, deterioration of prisoner health, and waste of state funds caused by increased needs for food, water, and clothing."¹¹

Custodial Confinement

Imprisonment is a punishment that restricts freedom of movement, but is lighter than a prison sentence for convicts who are registered in a correctional institution within the jurisdiction of the court that imposed the

¹⁰ Suhariyono AR, "Perumusan Sanksi Pidana Dalam Pembentukan Peraturan Perundang-Undangan," *Perspektif* 17, no. 1 (2012): 20-30, <http://jurnal-perspektif.org/index.php/perspektif/article/view/91>.

¹¹ Galih Puji Mulyono and Barda Nawawi Arief, "Upaya Mengurangi Kepadatan Narapidana Dalam Lembaga Pemasyarakatan Di Indonesia," *Law Reform* 12, no. 1 (2016): 1, <https://doi.org/10.14710/lr.v12i1.15838>.

sentence (and also in accordance with the place of residence of the convict). This type of punishment has only been recognized since the colonial era. This sanction has a special nature because it provides an opportunity for the perpetrator to improve themselves and is expected to provide benefits to the surrounding community (special prevention) as well as achieving general prevention goals. In the Criminal Code, imprisonment is recognized as the third main type of punishment, while provisions regarding imprisonment in the Criminal Code have been abolished.

Table 5. Disparity in Imprisonment Sentences in the Criminal Code and Law Number 1 of 2023 concerning the Criminal Code

OLD CRIMINAL CODE (Articles 18-29, Articles 30-33, Articles 42)	NEW CRIMINAL CODE (Article 619)
<ul style="list-style-type: none"> - The length of imprisonment ranges from one day to a maximum of one year, which can be increased to one year and four months if the offense is repeated or committed concurrently (in units of days, weeks, months, or years, not fractions). - This applies to crimes or violations that were not committed intentionally. - It is carried out at the location where the convict is imprisoned based on a legally binding court decision. - Various obligations must be complied with, but are less stringent than those imposed on those serving a prison sentence. - They may be held in the same place as other inmates, but must be separated into separate cells or rooms. - Individuals sentenced to imprisonment may support themselves to improve their conditions in accordance with applicable regulations (right of the gun). - This can serve as an alternative to a fine (Article 30) with a 	<p>Imprisonment sentences are abolished. The provisions contained in Article 619 discuss:</p> <p>(1) Substitution of imprisonment for a fine with the following provisions:</p> <p>a. "An imprisonment sentence of less than 6 (six) months shall be replaced with a maximum fine of category I; and</p> <p>b. An imprisonment sentence of 6 (six) months or more shall be replaced with a maximum fine of category II. b. An imprisonment sentence of 6 (six) months or more shall be replaced with a maximum fine of category II. "</p> <p>(2) "If the fine imposed as an alternative to imprisonment as referred to in paragraph (1) exceeds category II, the provisions of the legislation in question shall remain in effect. II, the provisions of the legislation in question shall remain in effect."</p>

<p>duration of one day to six months, increasing to a maximum of eight months if the fine imposed is heavier.</p> <p>- There is no obligation for judges to consider the purpose of sentencing, guidelines for imposing sentences, guidelines for applying prison sentences with a single formulation and alternative formulations, weighting of sentences, and other provisions related to sentencing.</p>	
---	--

Imprisonment under the old Criminal Code was rarely applied in criminal cases. Even when imposed, its implementation lacked separate facilities, so convicts were generally treated the same as those sentenced to prison and placed in correctional facilities with similar cell conditions. This situation is thought to have been one of the considerations for the drafters of the new Criminal Code to eliminate this type of imprisonment. Although theoretically, imprisonment is included in the category of principal criminal sanctions that can support the achievement of the objectives of punishment as stipulated in Articles 51–52 of the new Criminal Code, in the new regulations, this type of sanction has been officially eliminated.

Criminal Fines

A fine is a form of punishment that requires the convict to pay a sum of money to the state treasury. This type of sanction has been known in Indonesia since the colonial era. Fines have a unique characteristic because they provide an opportunity for perpetrators of criminal acts to improve themselves. When imposed independently without imprisonment, this punishment also helps perpetrators avoid negative social stigma and does not restrict their physical freedom. In the old Criminal Code, fines were categorized as a type of principal criminal sanction and ranked third in the criminal hierarchy. Meanwhile, in the new Criminal Code, fines are still recognized as a principal punishment, but their position has shifted to fourth.

Table 6. Disparity in Criminal Fines in the Criminal Code and Law Number 1 of 2023 concerning the Criminal Code

OLD CRIMINAL CODE (Article 30- Article 33, Article 42)	NEW CRIMINAL CODE (Articles 78-84, Article 620)
<ul style="list-style-type: none"> - The fine starts at 3 rupiah 75 cents, with no maximum limit. - Later, it was regulated in Law Number 18 Prp 1960 concerning Amendments to Fines in the Criminal Code and Other Criminal Provisions Issued Before August 17, 1945 (the fines in the Criminal Code were multiplied 15-fold) and Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits of Minor Crimes and Fines in the Criminal Code (the fines in the Criminal Code were multiplied 1,000-fold). - If the fine is not paid, it can be replaced with imprisonment (from 1 day to a maximum of 6 months, with the possibility of a fading sentence of 8 months for concurrent or repeated offenses). - There is no obligation for judges to consider the purpose of sentencing, sentencing guidelines, guidelines for the application of imprisonment with single and alternative formulations, sentence aggravation, and other provisions regarding sentencing. 	<ul style="list-style-type: none"> - The amount of the fine is formulated by category, starting from category I to category VIII, and if no specific minimum is stipulated, a slight fading is determined. If there is a change in the value of the Rupiah in the future, it will be adjusted through Government Regulation. - A fine can be an alternative to imprisonment of less than 5 years. - The judge is required to consider the defendant's ability to pay, taking into account the defendant's actual income and expenses (but this does not apply to reductions in the special minimum fine). - The fine under Article 81 must be paid within the time period specified in the sentencing decision and can be paid in installments. In addition, "if the fine referred to in paragraph (1) is not paid within the specified time period, the convict's assets or income may be confiscated and auctioned by the prosecutor to pay off the unpaid fine." - Article 82 stipulates that "if the confiscation and auction of assets or income as referred to in Article 81 paragraph (3) is insufficient or impossible to implement, the unpaid fine shall be replaced with imprisonment, supervision, or community service, provided that the fine does not exceed a category II fine." - Repeated offenses involving a fine may be subject to supervision for a maximum of 6 months and an increased fine of 1/3 of the amount imposed. - Fines imposed outside this Law that exceed the category VIII fine shall be replaced with a category VIII fine (Article 620). - Judges are required to consider: 1) the purpose of sentencing (Articles 51-52); 2) guidelines for sentencing (Article 53- Article 56); 3)

	<p>guidelines for the application of imprisonment with a single formulation and alternative formulation (Article 57); 4) aggravation of sentences (Article 58- Article 59); - other provisions on sentencing (Article 60- Article 63).</p>
--	--

Based on the criminal purposes of Articles 51-52 of the New Criminal Code, fines are the primary type of criminal sanction that can fulfill them. Furthermore, there are several important points to understand in relation to the criminal purposes of the New Criminal Code, as follows:

1. Fines in the New Criminal Code have been structured based on a categorization system. According to the explanation of the law, this system is designed so that the formulation of criminal provisions in Book II and in laws and regulations outside the Criminal Code simply refers to the fine categories established in Book I, without the need to directly state the fine amount. According to the author, this update is commendable because it reflects adjustments to the dynamic national economic conditions. The fines in the old Criminal Code have become less relevant due to Indonesia's development as a developing nation and the changing value of the rupiah, which is no longer comparable to the colonial era. Furthermore, the new Criminal Code also regulates the mechanism for adjusting future fines through Government Regulations, making the reform process more flexible and efficient compared to the previous mechanism stipulated in Law Number 18 of 1960 concerning the Threat of Criminal Fines and Supreme Court Regulation Number 2 of 2012 concerning Adjustment of the Limits for Minor Crimes.
2. Another positive aspect of the formulation of fines in the new Criminal Code that deserves appreciation is the application of the principle of individualization of punishment for offenders and the provision of flexibility in the form of installment payments. However, if the convict is unable to pay the fine, the prosecutor is authorized to confiscate and auction the convict's assets. This mechanism has the potential to create an imbalance between the value of the fine and the proceeds from the auction, so its application does not fully reflect the "cost and benefit" principle. The concept of confiscation and auction is considered inappropriate for individual offenders, but it could be more relevant for corporations, given that corporations cannot be subject to imprisonment or the death penalty. Furthermore, the confiscation and auction process in Indonesia often faces administrative and technical obstacles, making its implementation challenging. The new Criminal

Code also provides for the possibility of substituting fines for imprisonment, supervision, or community service. However, this provision only applies if the fine imposed does not exceed category II and confiscation or auction is impractical. Based on Book II of the new Criminal Code, most crimes are punishable by fines above category II, making this provision less effective and does not accommodate category III to VIII fines for individual or corporate perpetrators. When associated with crimes committed by corporations, there is the potential for significant losses to the state or society, making the imposition of higher category fines (e.g., category VIII) relevant. Therefore, the determination of fines needs to be formulated more carefully to align with the objectives of punishment while still taking into account the principles of efficiency and proportionality through the application of the "cost and benefit" principle.

Supervision and social work penalties in the New Criminal Code

Other important criminal sanctions to examine are supervision and community service. These two types of sanctions are alternatives to imprisonment, emphasizing rehabilitation rather than imprisonment. According to Muladi, supervision (exploration) is a system aimed at rehabilitating criminals by reinstating them into society under a specific supervision period. This system allows offenders to continue interacting with their social environment while undergoing counseling to prevent reoffending. Meanwhile, community service orders (CSOs) are a form of sanction that require offenders to engage in social activities determined by the competent authorities. The goal is to enable offenders to improve themselves through real contributions to society and foster a sense of social responsibility. Thus, these two types of sanctions reflect the humanistic and restorative approach to the penal system regulated in the new Criminal Code.¹²

Table 7. Criminal supervision and social work penalties Law Number 1 of 2023 concerning the Criminal Code

Criminal Supervision (Articles 75-77)	Community Service (Article 85)
- Supervision is an alternative to imprisonment, which carries a	- Community service is a substitute for imprisonment punishable by less than five

¹² Ghufon Lutfi Siham, "Studi Komparatif Sanksi Pidana Pokok Antara KUHP Dan RKUHP 2019," *Reasearchgate*, no. April (2022).

<p>maximum penalty of five years, and is subject to Articles 52, 54, and 70.</p> <ul style="list-style-type: none"> - This penalty is imposed with a maximum penalty of three years, and carries a maximum penalty of five years. - This sanction must be imposed with the general condition that the convict will not commit another crime (if this general condition is not met, the perpetrator must serve the prison sentence as prescribed). It may also be accompanied by specific conditions, such as compensating for all or part of the losses incurred as a result of the crime and/or performing or abstaining from performing certain actions without compromising religious or political freedom. If these specific conditions are not met, a proposal will be made to serve the convict in prison or to extend the supervision period. - A convict's good behavior may influence the prosecutor to propose a reduction in the supervision period. - Supervision is still implemented if it is imposed in conjunction with a criminal sanction other than the death penalty or imprisonment. - There is an obligation for judges to pay attention to 1) the purpose of sentencing (Article 51- Article 52); 2) sentencing guidelines (Article 53- Article 56); 3) guidelines for the application of imprisonment with a single formulation and alternative formulation (Article 57); 4) aggravation of sentences (Article 58- Article 59); 5) other provisions regarding sentencing (Article 60- Article 63). 	<p>years. The judge can impose a maximum of six months' imprisonment or a fine of the highest category II.</p> <ul style="list-style-type: none"> - This punishment is imposed for a minimum of eight hours and a maximum of 240 hours (a maximum of eight hours per day and can be carried out for a maximum period of six months), taking into account various aspects stipulated in Article 85 and may not be traded. Therefore, the decision regarding the sentence must include the full duration of the intended community service. - The judge is responsible for considering the following: <ol style="list-style-type: none"> 1) the purpose of the sentence (Articles 51-52); 2) guidelines for imposing sentences (Articles 53-56); 3) guidelines for imposing prison sentences using single and alternative formulations (Article 57); 4) sentence aggravation (Articles 58-59); 5) other provisions related to sentencing (Articles 60-63).
---	--

These two types of criminal sanctions are the main forms of punishment newly introduced in the revised Criminal Code. Based on the objectives of punishment as stated in Articles 51–52 of the new Criminal Code, supervision and community service are included in the category of sanctions capable of achieving the goal of punishment, namely reforming the perpetrator without completely restricting their freedom. These two types of punishment also serve as alternatives to imprisonment with sentences of less than five years. However, for their effective implementation, further development of their formulation and application is required, including the establishment of systems, institutions, and other technical aspects that support their implementation. Furthermore, the implementation of supervision and community service must take into account the capacity and capabilities of law enforcement agencies to avoid creating an excessive administrative burden.

Furthermore, the application of these two types of sanctions must also consider the "cost and benefit" principle, so that they can be implemented realistically and have a positive impact on both the perpetrator and the community. Thus, supervision and community service are expected to become more than just legal concepts, but can be implemented effectively in future criminal justice practices. In addition to the analysis of the various principal sanctions above, the provisions contained in Article 57 of the new Criminal Code also need to be observed for the application of principal sanctions in the future, namely "If a criminal act is threatened with alternative principal sanctions, the imposition of lighter sanctions must be prioritized if it is considered appropriate and supports the achievement of the objectives of punishment." In the explanation of the article it is stated that "Although judges have a choice in dealing with the formulation of alternative sanctions, in making this choice, judges always focus on the objectives of punishment, prioritizing lighter sanctions if they are considered to fulfill the objectives of punishment." It is important that the principle of *ultimum remedium* is maintained, because criminal sanctions are not the solution for all criminal cases, so if there is still the possibility of using lighter sanctions, why choose the heavier or even the most severe.

CONCLUSION

Based on the analysis of the various principal criminal sanctions above, it can be concluded that each principal criminal sanction examined (in both the old and new Criminal Codes) has similarities and differences, as follows:

1. Although the implementation of the death penalty is certain, conceptually, this punishment is inconsistent with the values of Pancasila, does not fulfill the objectives of punishment as outlined in Articles 51-52 of the new Criminal Code, is widely rejected by various international organizations and countries, and lacks an element of individualization in the punishment.
2. Imprisonment sentences align with the objectives of punishment as stated in Articles 51-52 of the new Criminal Code, and individualization of punishment is already in place. However, numerous problems arise in the application of imprisonment based on the law in effect until 2019, and several suggestions regarding new provisions in the new Criminal Code have been made. Therefore, it is important to carefully and wisely consider solutions to these problems, including the regulation of specific minimum prison sentences and alternative punishments that replace imprisonment of more than 5 years up to 20 years, before they become applicable law in the future.
3. Imprisonment is in line with the objectives of sentencing as outlined in Articles 51-52 of the new Criminal Code. However, imprisonment has been removed in the new Criminal Code.
4. Fines have been well-designed into categories (from Category I to Category VIII), in line with the objectives of sentencing as outlined in Articles 51-52 of the new Criminal Code. They can be paid in installments, and individualization of sentences is provided. However, the concept of confiscation and auction of unpaid fines can be problematic when implemented by prosecutors in Indonesia. Therefore, determining fines that align with the objectives of sentencing and consider the "costs and benefits" principle is crucial.
5. Supervision and community service are regulated as alternatives to imprisonment under five years, in line with the objectives of sentencing as outlined in Articles 51-52 of the new Criminal Code. However, there needs to be thorough development in the formulation and implementation (including systems, institutions, and other important matters) of both types of punishment that take into account the capacity and capabilities of law enforcement agencies (i.e., to avoid excessive workloads) and that also consider the principle of "costs and results." This is important so that these two new penalties can be implemented effectively and not just be included in positive law articles in the future.

REFERENCES

- AR, Suhariyono AR Suhariyono. "Perumusan Sanksi Pidana Dalam Pembentukan Peraturan Perundang-Undangan." *Perspektif* 17, no. 1 (2012): 20-30. <http://jurnal-perspektif.org/index.php/perspektif/article/view/91>.
- Arief, Barda Nawawi. *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*. Edited by Genta Publishing. Yogyakarta, 2010.
- — —. *Tujuan Dan Pedoman Pemidanaan*. Edited by Badan Penerbit Universitas Diponegoro. Semarang, 2009.
- Benuf, Kornelius, Siti Mahmudah, and Ery Agus Priyono. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Masalah Hukum Kontemporer." *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145-60.
- Ghufron Lutfi Siham. "Studi Komparatif Sanksi Pidana Pokok Antara KUHP Dan RKUHP 2019." *Reasearchgate*, no. April (2022).
- Gunawan, Teng Junaidi. "Ius Constituendum Criminal Law Sanction System with Double Track System Principle in the National RKUHP." *Sasi* 28, no. 4 (2022): 532. <https://doi.org/10.47268/sasi.v28i4.1038>.
- Latue, Salmon, Juanrico Alfaromona Sumarezs Titahelu, and Erwin Ubwarin. "Penjatuhan Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi Dimasa Pandemi Covid-19." *MATAKAO Corruption Law Review* 1, no. 2 (2023): 151-61. <https://doi.org/10.47268/matakao.v1i2.11542>.
- Mulyono, Galih Puji, and Barda Nawawi Arief. "Upaya Mengurangi Kepadatan Narapidana Dalam Lembaga Pemasyarakatan Di Indonesia." *Law Reform* 12, no. 1 (2016): 1. <https://doi.org/10.14710/lr.v12i1.15838>.
- Nurhayati, Yati, Ifrani, and MYasir Said. "METODOLOGI NORMATIF DAN EMPIRIS DALAM PERSPEKTIF ILMU HUKUM Jurnal Penegakan Hukum Indonesia (JPHI)." *Jurnal Penegakan Hukum Indonesia (JPHI)* 2, no. 1 (2021): 1-20.
- Rommelink, J. *Pengantar Hukum Pidana Material 3 Hukum Penitensier*. Edited by Maharsa. Yogyakarta, 2017.
- Sahetapy, J. E. *Pidana Mati Dalam Negara Pancasila*. Edited by PT Citra Aditya Bakti. Bandung, 2017.
- Samosir, C. Djisman. *Penologi Dan Pemasyarakatan*. Edited by Nuansa Aulia. Bandung, 2016.