



Criminalization in the Context of the National Criminal Code: Philosophical and Conceptual Transformations and Their Implications for the Criminal Justice System in Indonesia

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Abstract

This study analyzes the philosophical and conceptual transformation of criminal punishment in the National Criminal Code (KUHP) and its implications for the criminal justice system in Indonesia. The main focus is to identify the paradigm shift from the old Criminal Code, which was retributive in nature, to a more holistic and modern approach in the National Criminal Code. Philosophically, the National Criminal Code combines the objectives of criminal punishment, not only as a means of retribution, but also as a tool for the rehabilitation of offenders and the protection of society, in line with the principle of restorative justice. The research method used is normative, with a regulatory approach to analyze the content and substance of the National Criminal Code, as well as a theoretical approach to examine the philosophical foundations and concepts of modern criminal law. The data obtained is analyzed prescriptively and qualitatively to provide recommendations and guidelines regarding the implementation of these changes in judicial practice.

Keywords: *Punishment; National Criminal Code; Criminal Justice System*

Introduction

The enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code) marked the end of the colonial criminal law era in Indonesia. For more than a century, Indonesia's criminal justice system was based on the *Wetboek van Strafrecht voor Nederlandsch-Indie* (*Staatsblad*), a legal product inherited from the Dutch East Indies Colonial Government, which was translated into the Criminal Code (Remaja, 2019). Although it has been used as a legal basis since independence, the framework of thought and values contained therein are no longer relevant to the social, cultural, and philosophical dynamics of the sovereign Indonesian nation (Paluaran, Purwanda, Kasim, & Jumardin, 2024). The urgency of reforming national criminal law has been a major agenda since the First National Law Seminar in 1963, which emphasized the importance of creating a new Criminal Code as soon as possible. This effort was then continued with the drafting of the Draft Criminal Code in 1970. This long and challenging process finally bore fruit with the passing of the National Criminal Code, which essentially embodies the mission of decolonization of criminal law. This law was designed to replace the legal framework based on Western culture and Western values with the spiritual values of the Indonesian people, a step forward that also contains the mission of criminal law

democratization and "criminal law consolidation." More than just a technical update, the National Criminal Code also adopts the principles of Pancasila, making it a complete manifestation of law that reflects the identity of the nation (Paluarian et al., 2024).

The penal system in the old Criminal Code was dominated by classical thinking that placed the main focus on criminal acts (*daad-strafrecht*). This approach tended to ignore the individual aspects of the perpetrator and the social context behind the crime. As a result, judicial practices often resulted in a mismatch between legal objectives, social reality, and the sense of justice in society. Some of the crucial issues that arise include the issue of prison overcrowding due to the dominance of prison sentences, as well as disparities in judges' decisions, which lead to a loss of public trust. In response to these weaknesses, the National Criminal Code adopted a neo- classical approach that balances objective factors (the act) and subjective factors (the perpetrator) (Dr. Erwin Mangatas Malau, Dr. Parningotan Malau, & Dedy Suryadi, 2024). This shift was also influenced by developments in legal science, particularly victimology, which places great emphasis on fair treatment of crime victims. Through this philosophical foundation, the National Criminal Code attempts to present a more humanistic and holistic legal system. Thus, the fundamental question that is the focus of this study is: "How does the National Criminal Code transform the criminal justice system through a shift in philosophy and concepts, and what are the real implications of these changes for criminal justice practices in Indonesia?"

Method

This study uses normative legal research by analyzing legal doctrines, legislation, and legal theories relevant to the issues under review (Ali, 2021, pp. 1–2). The main object of this study is the new criminal law framework, namely the National Criminal Code (KUHP). Therefore, an in-depth analysis of the legal norms and concepts contained therein is essential to understand the philosophical and conceptual transformation of criminal punishment. To achieve this objective, this study uses two main approaches. *The statute approach* is used to conduct a systematic study of Law Number 1 of 2023 concerning the Criminal Code, with a focus on provisions regarding the objectives of punishment, guidelines for punishment, types of punishment, and special provisions related to the death penalty. Meanwhile, *the theoretical approach* is used to examine legal phenomena from the perspective of established theories, such as theories of the purpose of punishment and theories of criminal responsibility. The use of a combination of these two approaches allows researchers to not only identify normative changes but also analyze the foundations philosophical and theoretical implications of these changes on the criminal justice system in Indonesia (Tan, 2021).

Results and Discussion

Philosophical and Conceptual Transformation of Punishment

Philosophically, the National Criminal Code marks a significant paradigm shift from a retributive approach focused on punishment to a criminal justice system that also adopts corrective, rehabilitative, and restorative approaches (Irmawanti & Arief, 2021). An official statement from the Ministry of Law and Human Rights confirms that the new Criminal Code abandons an approach that places too much emphasis on imprisonment in favor of accommodating conflict resolution based on restorative justice. The restorative justice approach focuses on restoring relationships between perpetrators, victims, and the community, as well as repairing the damage caused by criminal acts. This is in line with the theory of guidance and balance promoted by Indonesian criminal law experts, who seek to create a gender-equitable legal system based on the values of Pancasila. This shift is not only theoretical, but also a pragmatic response to factual problems. For example, the adoption of this concept directly aims to reduce the chronic overcapacity problem in Indonesian correctional institutions, which hinders the rehabilitation

process of prisoners and triggers other social problems. Thus, punishment is no longer seen only as a means of retribution, but also as an instrument for restoring individuals and society (Hidayat, 2023, pp. 3–4).

The most fundamental difference between the old Criminal Code and the National Criminal Code lies in the doctrine of criminal liability. The old Criminal Code adhered to the monistic doctrine, which combined the elements of criminal acts (*strafbaar feit*) and criminal liability (*schuld*). This meant that if the elements of a criminal act were proven, the perpetrator was automatically considered liable. In contrast, the National Criminal Code explicitly adopts a dualistic doctrine, which separates the two concepts. The implications of adopting a dualistic doctrine are enormous for judicial practice. The judicial decision-making system must now go through two separate stages of evidence: first, evidence of criminal acts and justifications; second, evidence of criminal liability and excuses. This more logical and detailed structure of the verdict allows judges to make more careful and fair decisions. Furthermore, Article 53 of the National Criminal Code explicitly states that if there is a conflict between legal certainty and justice, judges must prioritize justice. This is known as the Standard Priority doctrine, which gives judges broad authority to achieve substantive justice, beyond rigid normative considerations. Although this authority can be key to more humanistic decisions, there is also the challenge of potential disparities in decisions if not balanced with strong guidelines. However, the adoption of This doctrine as a whole reflects a systematic effort to bring moral and social values back into the criminal justice process. The table below summarizes the comparison of the philosophies and concepts of punishment between the Old Criminal Code and the National Criminal Code:

Table 1. Comparison of the philosophies and concepts of punishment between the Old Criminal Code and the National Criminal Code

Aspect	Old Criminal Code (<i>Wetboek van Strafrecht</i>)	National Criminal Code (Law No.1/2023)
Philosophy	Classical (<i>daad-strafrecht</i>)	Neo-classical (<i>daad-dader strafrecht</i>)
Focus of Punishment	Act/Fact	Act & Perpetrator
Doctrine of Responsibility	Monoistic	Dualistic
Type of Legal Subject	Natural persons	Natural persons & corporations
Purpose of Punishment	Retributive	Combined (Retributive, Corrective, Rehabilitative, Restorative)

A fundamental shift in Indonesia's criminal justice system is reflected in the philosophical transformation from the old Criminal Code (*Wetboek van Strafrecht*) to the National Criminal Code. Philosophically, the old Criminal Code adhered to classical teachings (*daad-strafrecht*) that emphasized criminal acts as the sole focus, so that criminal responsibility was monistic and retributive in nature. This doctrine views criminal law as a mechanism to punish crimes that have been committed, without considering the personal characteristics of the perpetrator or corrective objectives. The main focus of punishment is on the facts of the act itself, and the subject of the law is limited to natural persons. This paradigm has resulted in a rigid punishment system that is often ineffective in preventing recidivism (Wulandari, 2023). In contrast, the National Criminal Code adopts a neo-classical philosophy (*daad-dader strafrecht*) that recognizes the importance of both the criminal act and the perpetrator. This shift is reflected in the doctrine of responsibility, which is now dualistic, separating criminal acts from criminal responsibility. This change opens up space for judges to consider the personal circumstances, motives, and background of the perpetrator in imposing sanctions (Bakhri, 2011). In addition, the National Criminal Code recognizes corporations as subjects of criminal law, a significant breakthrough in line with the development of modern crime. The most crucial change is that the purpose of punishment is now a combination of retributive, corrective, rehabilitative, and restorative measures, emphasizing the rehabilitation of perpetrators, protection of victims, and restoration of social harmony, rather than mere

retribution. This transformation demonstrates a more humanistic, comprehensive, and adaptive approach to the socio-cultural dynamics in Indonesia (Darmadi, n.d.).

Reform of the Criminal Justice System and New Types of Crimes

a. Double-Track System and Alternative Punishments

The National Criminal Code introduces a double-track system, which separates sanctions into two main categories: criminal (punishment) and measures (for perpetrators who are not fully accountable, such as those with mental or intellectual disabilities). This reform is also reflected in the types of basic penalties regulated in Article 65. The types of basic penalties now consist of (Alin, 2017):

- 1) Imprisonment
- 2) Detention
- 3) Probation
- 4) Fines
- 5) Community Service

Probation and community service are new types of punishment that serve as alternatives to short-term imprisonment. Community service can be imposed for crimes punishable by less than five years in prison, with the main objective of addressing prison overcrowding and facilitating the rehabilitation of offenders in the community. The implementation of this punishment involves social work that benefits the community, such as in hospitals, orphanages, or schools. By providing offenders with the opportunity to contribute positively, this system shifts from isolation to integration, while strengthening restorative and rehabilitative goals (Nasution, Ali, & Lubis, 2024).

b. Additional Punishments and Accommodation of Living Law

In addition to basic penalties, the National Criminal Code also expands the types of additional penalties, which explicitly include compensation payments and customary obligations. The regulation of customary obligations is a tangible form of recognition and accommodation of living law as stipulated in Article 2. This allows judges to impose sanctions in accordance with the norms and sense of justice in the local community, a step that is very important in the mission of decolonizing Indonesian criminal law. The table below lists the types of principal and additional penalties regulated in the National Criminal Code.

Table 2. The types of principal and additional penalties regulated in the National Criminal Code

Category	Type of Crime
Primary Criminal Offenses	Imprisonment, Detention, Probation, Fines, and Community Service
Additional Penalties	Revocation of certain rights, confiscation of certain property and/or bills, Publication of the judge's decision, Payment of compensation, Fulfillment of customary obligations
Special Penalties	Death penalty

Source: National Criminal Code

The penal system in the National Criminal Code brings significant changes by classifying crimes into three main categories: primary crimes, additional crimes, and special crimes. The primary crime category includes five types of sanctions, namely imprisonment, confinement, supervision, fines, and community service. The addition of community service is an important innovation that reflects a

corrective and rehabilitative approach, providing an alternative to punishment that does not always have to involve physical detention (Slat, 2020). In addition, the National Criminal Code also regulates more varied additional penalties. These penalties serve to complement the principal penalties with specific objectives, such as revocation of certain rights, confiscation of goods and/or bills, announcement of court decisions, payment of compensation, and, most uniquely, fulfillment of customary obligations. The recognition of the fulfillment of customary obligations demonstrates the flexibility of national criminal law in accommodating local values and wisdom. Finally, the death penalty is categorized as a special penalty and is placed outside the main penalties. This placement confirms that the death penalty is a special sanction and is only applied in certain circumstances, indicating a philosophical shift towards limiting its use (A. Barlian & Arief, 2017).

The Regulation of the Death Penalty: A Nuanced Middle Ground

The regulation of the death penalty in the National Criminal Code is one of the most progressive breakthroughs. The new Criminal Code no longer places the death penalty as the main punishment, but rather as a special punishment and an alternative to life imprisonment or a maximum of 20 years imprisonment. This position indicates that the death penalty is considered a last resort (*ultimum remedium*) for very serious crimes (extraordinary crimes), such as terrorism, corruption, and narcotics. The National Criminal Code introduces a death penalty mechanism with a 10-year probation period, as stipulated in Article 100. This probation period is granted by considering: a) the defendant's remorse and hope for rehabilitation, or b) the defendant's role in the crime. If the convict demonstrates commendable attitude and behavior during the probation period, the death penalty can be commuted to life imprisonment through a Presidential Decree after consideration by the Supreme Court. Conversely, if the convict shows no improvement, the execution can be carried out on the orders of the Attorney General (Anugrah & Desril, 2021).

This arrangement is a legal and political compromise between abolitionists (supporters of the abolition of the death penalty) and retentionists (supporters of the application of the death penalty). Although *de jure* the death penalty is maintained, the probation mechanism *de facto* makes execution very difficult to carry out. This policy also has retroactive implications;

Death row inmates who have been awaiting execution for more than 10 years prior to the enactment of the National Criminal Code may also apply for an assessment for a change in their sentence. This demonstrates a strong humanistic orientation, which places humanitarian considerations above the certainty of execution, a manifestation of the philosophy of protection contained in Pancasila.

Guidelines for Sentencing and Individualization of Punishment in Judicial Decisions

Criminal individualization is a principle that requires judges to consider the nature and personal circumstances of the perpetrator when imposing sanctions. This concept is a concrete manifestation of the *daad-dader strafrecht* philosophy, which balances the act and the perpetrator (Indah, 2014). The aim is to ensure that criminal judgments are not only universally fair, but also relevant and effective for each individual case, so that they can serve as a standard for judges to explore substantive justice. To implement the principle of individualization, Article 54 of the National Criminal Code requires judges to consider 11 sentencing standards. These standards include both objective and subjective factors and provide a comprehensive framework for judges in handing down verdicts.

Table 3. The table below details the 11 sentencing guidelines that judges must consider based on Article 54 of the National Criminal Code:

No	Aspects Considered in Sentencing
1	The form of the offender's criminal act.
2	Motives and purposes for committing crimes.
3	The perpetrator's inner attitude when committing a crime.
4	Whether the crime was premeditated or not.
5	The method or means of committing the crime.
6	The attitude and actions of the perpetrator after committing the crime.
7	The perpetrator's background, social status, and economic conditions.
8	The impact of the criminal offense on the perpetrator's future.
9	The impact of the crime on the victim or the victim's family.
10	Forgiveness from the victim and/or the victim's family.
11	The values of law and justice that exist within society.

Source: National Criminal Code

These guidelines are an effort to reduce disparities in sentencing without limiting the independence of judges. However, some experts have highlighted potential challenges, namely the need for a change in mindset among judges and law enforcement officials from a rigid and formalistic approach to a more holistic and justice-oriented approach. Thus, the effective implementation of these guidelines requires massive socialization and training for all law enforcement officials. The philosophical transformation from the old Criminal Code to the National Criminal Code is concretely reflected in the list of aspects considered in sentencing. Whereas previously the focus of sentencing was on the act (facts), the National Criminal Code broadens the scope of assessment by including factors related to the perpetrator and the social impact of the crime. This list shows a fundamental shift towards a more humanistic and individualistic approach (Irmawanti & Arief, 2021).

Based on the table provided, there are eleven key aspects that judges must consider when imposing sanctions. The first five aspects, ranging from the type of offense, motive, to the perpetrator's inner attitude, focus on the mental state and intent of the perpetrator when committing the crime. This allows judges to assess more deeply the quality of intent or negligence, which is not limited to physical actions alone. Furthermore, the sixth to eighth aspects, such as the perpetrator's attitude and actions after the crime and their life history, emphasize that judges need to consider the perpetrator's post-crime behavior, socio-economic background, and potential for rehabilitation. The last two aspects, namely the impact of the crime on the victim and forgiveness from the victim/family, are very important because they embody the principle of restorative justice. By considering these factors, the judicial system focuses not only on retribution against the perpetrator, but also on restoring the victim's losses and damaged social relationships. Finally, the aspect of legal values and justice that exist within society demonstrates the National Criminal Code's recognition of customary law and local values, making the punishment system more adaptive and relevant to the social context in Indonesia. Thus, the guidelines for punishment in the National Criminal Code are not only intended to punish, but also to reform and restore.

Conclusion

The National Criminal Code is the embodiment of a comprehensive and monumental criminal law reform. There are four main pillars in the transformation of punishment offered by this law. First, a

philosophical shift from a rigid and retributive approach to a humanistic, corrective, and restorative system that balances the act and the perpetrator. Second, the adoption of the dualistic doctrine and the Standard Priority of Justice provides a solid theoretical foundation for a more structural and substantive criminal justice system, which gives judges the space to prioritize justice over legal certainty. Third, the criminal justice system is enriched with a dual track system and new types of punishment, such as probation, community service, and customary obligations. This innovation is not only a pragmatic response to the problem of overcrowding in correctional institutions, but also strengthens rehabilitative and restorative goals by reintegrating offenders into society. Fourth, the regulation of conditional death penalty reflects a smart compromise between the demands of legal certainty and respect for human rights, showing that the National Criminal Code is oriented towards humanity as the highest value. Overall, the National Criminal Code is not merely a recodification, but a statement of legal identity that marks a new era in the enforcement of criminal law in Indonesia, based on the values of Pancasila and oriented towards achieving a balance between certainty, justice, and benefit.

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