



The urgency of reforming the structure of prosecutorial criminal law following the enactment of the national criminal code

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Abstract

The enactment of Law Number 1 of 2023 on the Criminal Code (the National Criminal Code) marks a fundamental shift in Indonesia's sentencing paradigm, moving from a retributive justice model toward corrective, restorative, and rehabilitative justice. This transformation has significant implications for the role of the Public Prosecutor's Office, particularly in its capacity as the executor and supervisor of criminal court judgments. This study aims to analyze the urgency of reforming the legal structure of the Prosecutor's Office in the implementation of the post-National Criminal Code sentencing system. The research employs a normative legal method, using statutory and conceptual approaches. The findings indicate that the introduction of non-custodial sanctions, such as probationary sanctions and community service, necessitates adjustments in prosecutorial authority, enforcement mechanisms, and institutional coordination between the Prosecutor's Office and the Correctional Service (Balai Pemasyarakatan). In the absence of adequate structural reform and clear technical guidelines, the application of the new sentencing system risks generating legal uncertainty and overlapping institutional competencies, thereby undermining the effectiveness of criminal law enforcement.

Keywords: Prosecutor's office, national criminal code, sentencing reform, non-custodial sanctions, legal structure

Introduction

After the enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code) on January 2, 2023, significant changes have occurred in Indonesia's national criminal law. One of the most prominent features is the shift from a retributive justice paradigm^[1]. The retributive justice paradigm in the current criminal sentencing system holds that the imposition of a sentence on a perpetrator of a criminal act aims to deliver a punishment that is just and proportionate to the offense committed. Sentencing under this paradigm provides satisfaction as a means of retribution for the victim, while also fulfilling a sense of personal justice for the victim, as well as justice for their relatives, friends, and society at large regarding the perpetrator's actions^[2].

The realization of the retributive justice paradigm is reflected in the application of types of punishment as stipulated in Article 10 paragraph (1) of the Criminal Code (hereinafter referred to as the CC), which regulates the principal types of penalties, including:

1. Death penalty
2. Imprisonment
3. Confinement
4. Fines
5. Forfeiture

In practice, particularly regarding imprisonment which is intended to serve as a place for rehabilitation and to provide a deterrent effect for offenders the system has not achieved the expected outcomes. In reality, imprisonment tends to generate social stigma, personal suffering, and other negative consequences for the offender^[3].

The retributive justice perspective in criminal sentencing has, however, been viewed by some legal scholars as needing adjustment to better meet the needs of society,

particularly the victims, whose rights are often overlooked in the face of the offender's actions. The National Criminal Code (KUHP Nasional) introduces a modern sentencing paradigm, in which the purpose of punishment is no longer solely retributive, but also aims to achieve corrective justice, restorative justice, and rehabilitative justice^[4]. In principle, the enactment of the National Criminal Code (KUHP Nasional) reflects a shift in criminal sentencing from the classical doctrine to the neo-classical doctrine. The adoption of the neo-classical approach in the KUHP Nasional embodies a more holistic framework, as previously discussed^[5].

In its criminal justice system, the National Criminal Code (KUHP Nasional), according to Edward Omar Sharif Hiariej, emphasizes a primary vision: to shift the paradigm of criminal law from one previously oriented toward retribution and severe punishment to a criminal law framework focused on restoration, rehabilitation, and social reintegration^[6]. According to Edward Omar Sharif Hiariej, the National Criminal Code (KUHP Nasional) first emphasizes corrective justice. Corrective justice aims to reform the behavior of offenders through sanctions that do not necessarily involve severe criminal penalties. In addition to imprisonment, administrative sanctions may also be imposed, depending on the context and nature of the offender's violation^[7]. Corrective justice is intended to provide alternatives to imprisonment, with the aim of transforming the offender into a better, more responsible individual^[8].

Second, the new criminal law system under the National Criminal Code (KUHP Nasional) introduces restorative justice. According to Edward Omar Sharif Hiariej, this principle emphasizes the recovery and reparation for the victim, rather than solely punishing the offender. It serves as a critique of conventional criminal law, which often focuses exclusively on the perpetrator without addressing the social

impact experienced by the victim^[9]. Third, rehabilitative justice. This principle focuses on the restoration and improvement of both the offender and the victim. The offender is not only corrected and sanctioned but also provided with opportunities for personal rehabilitation and reintegration. Similarly, the victim is supported not only in terms of recovery but also with psychological and social assistance to facilitate a better reintegration into society^[10]. The manifestation of the penal reform in the National Criminal Code (KUHP Nasional) is reflected in its dual-track system of sentencing (double-track system). Under this system, an offender may not only be subjected to criminal penalties but may also be subjected to various corrective measures (treatment). This is evident in the revision of the types of sanctions under the KUHP Nasional, which introduces supervisory penalties and community service penalties as part of the principal sanctions. These types of penalties had not previously been imposed under the Indonesian Criminal Code^[11].

Previous Criminal Code – Article 10 (1)	National Criminal Code – Article 65 (1)
Death Penalty	Imprisonment
Imprisonment	Restriction
Detention	Supervision
Fine	Fine
Restriction	Community Service

Source: processed by the author

Conceptually, the changes in the regulation of principal types of criminal sanctions as stipulated in Article 65 paragraph (1) of the National Criminal Code (KUHP Nasional) are expected to have a significant impact on the role of the Prosecutor's Office as the executor and supervisor of court decisions in criminal cases.

The Prosecutor's Office is universally recognized as playing a central role in law enforcement, serving as the *dominus litis* in determining whether a case may be prosecuted in court. In this context, as the *dominus litis* in criminal case handling, the Prosecutor's Office holds a pivotal role in deciding whether a case can be filed or proceed to trial, based on legally admissible evidence under criminal procedural law.^[12] In addition to its function as *dominus litis*, the Prosecutor's Office is also the sole agency responsible for executing and supervising criminal judgments (executive *ambtenaar*)^[13]. As regulated in the Republic of Indonesia Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 on the Indonesian Prosecutor's Office (hereinafter referred to as the Law on the Indonesian Prosecutor's Office), the legal framework reinforces the position and role of the Indonesian Prosecutor's Office as a state institution executing governmental authority in prosecution and execution.

The Prosecutor's Office, in its role as executor and supervisor of criminal judgments (executive *ambtenaar*), is legally empowered under Article 30 paragraph (1) letter c of the Law on the Indonesian Prosecutor's Office, which stipulates that the Prosecutor's Office has the duty and authority to supervise the implementation of conditional sentences, supervisory sentences, and parole decisions. Furthermore, Article 270 of Law Number 8 of 1981 on Criminal Procedure (KUHAP) and Article 54 of Law Number 48 of 2009 on Judicial Power reaffirm that the execution of criminal court decisions is carried out by the Prosecutor.

Considering the role of the Prosecutor's Office as executor and supervisor of criminal judgments, it follows that the enactment of the National Criminal Code (KUHP Nasional) necessitates adjustments in the framework of criminal law enforcement. This is because the changes in the KUHP Nasional are closely linked to the authority of the Prosecutor's Office in implementing and supervising court decisions, particularly regarding supervisory sentences and community service sentences, which are newly introduced forms of criminal sanctions under Article 65 of the KUHP Nasional previously unrecognized in Indonesia's penal system.

Moreover, there is a need for internal technical regulations that govern the procedural relationship between prosecutors and correctional institutions in executing non-custodial penalties. According to Lawrence M. Friedman, the effectiveness of law enforcement is determined by three components or sub-systems: the structure of law, the substance of the law, and legal culture^[14]. In this context, with the introduction of the KUHP Nasional, the Prosecutor's Office, as executor and supervisor of court decisions, should establish internal regulations that organically strengthen its authority, particularly regarding the implementation of supervisory sentences and community service sentences, and regulate the coordination between the Prosecutor's Office and correctional institutions in non-custodial sanctions. Such regulations are essential to prevent overlapping authority between the Prosecutor's Office and correctional institutions, ensure legal certainty, and maintain the effectiveness of law enforcement.

Research Methods

The research method employed in this study is the normative legal research method. According to I Made Pasek Diantha, "normative legal research examines law from an internal perspective, with legal norms as its object of study." The essence of a norm, according to H. Kelsen, is a command or obligation (Ought), which encompasses all normative functions of the norm, thereby categorizing legal science as a *sui generis* normative science.

In this type of legal research, law is often conceptualized as what is written in legislation (law in books) or as a set of rules or norms that serve as a benchmark for human behavior deemed appropriate. The use of normative legal research in this study is justified because the object of analysis concerns the absence of detailed regulations regarding the implementation of supervisory sanctions, fines, and community service sanctions within the Prosecutor's Office, as well as the lack of internal technical regulations governing the procedural relationship between prosecutors and correctional institutions in executing non-custodial penalties.

Results and Discussion

1. Regulation of the Implementation System of Criminal Sentencing in the Criminal Code

The term "system" in the general Indonesian dictionary carries two meanings: first, a set of elements that are regularly interconnected, thereby forming a totality; and second, an orderly arrangement of theories, principles, or similar concepts, which can also be interpreted as a "method"^[15]. Based on this understanding of a system, it can be inferred that a system embodies "integration" or "integrality" of several elements or factors that support it, thereby constituting a coherent whole.

Meanwhile, criminal sentencing or the imposition of a penalty by a judge, as stated by Sudarto, originates from the term “punishment” in a narrow sense. Furthermore, it is explained that such “punishment” carries the meaning of a sentence or *Veroordeling*. Criminal sentencing constitutes a mechanism within criminal law involving the imposition of a specific penalty (*een bijzonder leed*) as determined by statute (*het leed, door de strafwet als gevolg aan de overtrading van de norm verbonden*). Sentencing is also understood as a suffering deliberately imposed on the guilty party. Another term occasionally used for this concept is “punishment”^[16].

The mechanism of criminal sentencing or punishment cannot be separated from the role of the judge. A judicial decision is rendered through the sentencing process^[17]. Sentencing, according to Ashworth, constitutes one of the key elements of the criminal justice system, encompassing stages from pre-prosecution through to the court’s judgment and subsequent execution^[18]. Each stage within the criminal justice system has specific objectives aimed at law enforcement, focusing both on preventing the commission of crimes (crime prevention) and imposing punishment on offenders.

In line with this view, Hulsman states that the sentencing system is the body of statutory rules relating to penal sanctions and punishment^[19]. Furthermore, Barda Nawawi Arief explains that if punishment is understood as the “imposition or pronouncement of a penalty,” the concept of the sentencing system can be viewed from two perspectives:

1. **Broad sense (functional perspective):** The sentencing system is seen in terms of its operation or process. From this perspective, the sentencing system can be understood as:
 - a. The entire system of legislation for the functionalization, operationalization, or concretization of criminal penalties;
 - b. The complete legislative framework that governs how criminal law is enforced or operationalized in practice, resulting in an individual being subjected to legal sanctions.
2. **Narrow sense (normative/substantive perspective):** The sentencing system is considered from the standpoint of substantive legal norms. From this perspective, the sentencing system can be understood as:
 - a. The entire system of legislation governing criminal sanctions;
 - b. The complete system of laws regulating the imposition and execution of criminal penalties^[20].

The sentencing system, as part of the criminal law enforcement mechanism, implies that punishment, often understood as the “imposition of a penalty,” is essentially a deliberate “policy process.” This means that the imposition of a penalty is planned to be effectively realized through several stages, which include:

- a. **The legislative stage:** Determination of penalties by the lawmaker;
- b. **The adjudicative stage:** Imposition of penalties by the competent authority; and
- c. **The executive stage:** Implementation of penalties by the authorized enforcement agency^[21].

The integration of the three stages above constitutes a coherent system, in which the legislative stage determination of penalties plays a crucial role in achieving the objectives of the sentencing system. This stage must involve careful planning, as it provides direction for the subsequent stages, namely the adjudicative stage (imposition of penalties) and the executive stage (implementation of penalties)^[22].

Conceptually, the regulation of the implementation system of criminal sanctions under the Indonesian Penal Code (KUHP) cannot be divorced from the historical development of criminal law during the Dutch colonial period, which has significantly shaped Indonesia’s criminal law and penal system. The KUHP, or *Wetboek van Strafrecht voor de Inlanders in Nederlandsch-Indië*, was enacted in 1872 as a legacy of Dutch legal codification in Indonesia. Historically, the sentencing system under the KUHP has been primarily oriented toward the formal juridical application of prescribed penal sanctions. To date, Indonesian positive law lacks a clear formulation defining the meaning and purpose of sentencing. This absence has produced inconsistencies and overlaps in the classification and forms of criminal penalties, including a conflation of the concepts of sentencing and sanction determination. Throughout its historical development, the determination of penalties under the KUHP has undergone multiple revisions. Records show that more than eight draft versions of the KUHP have been proposed, with certain drafts sharing common features while others present notable differences. This illustrates that the conceptualization of sentencing and the determination of penalties under the KUHP has been subject to continuous evolution over time^[23].

In the 1968 Draft of the Indonesian Penal Code (KUHP), the notions regarding the purpose and objectives of sentencing were articulated as follows:

1. To prevent the commission of criminal acts for the protection of the state, society, and residents.
2. To guide the convicted individual toward repentance and to become a morally upright member of the state.
3. To remove the stains or repercussions caused by criminal acts.
4. Sentencing is not intended to cause suffering and must not demean human dignity.

The objectives of sentencing in this concept were revisited in the 1982 Draft KUHP, as formulated in Chapter III, article 43 of Book One by the Criminal Law Study Team (BPHN 1982/1983), as follows:

1. To prevent the commission of criminal acts by enforcing legal norms for the protection of society.
2. To socialize the convicted person through guidance, thereby turning them into a good and useful individual.
3. To resolve conflicts caused by criminal acts, restore social balance, and bring a sense of peace to the community.
4. To alleviate the sense of guilt in the convicted person.

The 1991/1992 Draft KUHP, in Article 51, similarly stated the purposes of sentencing as:

1. To prevent the commission of criminal acts by enforcing legal norms for the protection of society.
2. To socialize the convicted person through guidance, turning them into a good and useful individual.

3. To resolve conflicts caused by criminal acts, restore social balance, and promote social peace.
4. To relieve the convicted person of the burden of guilt.

Based on the development of the criminal sentencing system in Indonesia, in practice, the country has tended to lean toward the relative theory of punishment. This theory is forward-looking, emphasizing the healing of harm, both on an individual level and within the broader social context^[24]. In addition to the supporting components of the criminal justice system namely the Police, the Prosecutor's Office, the Courts, and the Correctional Institutions the community itself plays a crucial role in achieving the objectives of this theory. Ultimately, it is the community that receives and evaluates the outcomes produced by the criminal justice system; in other words, society determines the success or failure of the resocialization efforts.

Generally, the prevailing criminal sentencing system under the Indonesian Penal Code (KUHP) has been influenced by Western thought on punishment, which specifically defines the objectives of sentencing into three orientations:

1. Educating the offender, rehabilitating them, and assisting their reintegration into society;
2. Serving as a means of isolation or even elimination when the offender is irredeemable;
3. Acting as a deterrent to protect society and instill fear to prevent others from committing crimes.

This understanding aligns with Herbert L. Packer's (1968) perspective in *The Limits of the Criminal Sanction*, in which he identifies "the three basic problems of substance (as opposed to procedure) in criminal law: 1) What conduct should be designated as criminal. 2) What determinations must be made before a person can be found to have committed a criminal offense. 3) What should be done with persons who are found to have committed criminal offenses"^[25].

Substantively, the legal construction within the Indonesian Penal Code (KUHP) reflects the classical criminal law tradition. This is closely linked to the overarching purpose of the penal system, which is designed to protect societal interests. To safeguard these communal interests, an offender is to be subjected to punishment without regard to the subjective circumstances of the perpetrator at the time of the act, and law enforcement is often characterized by strong social reactions from the community. Legal enforcement remains largely within a rigid, positivistic paradigm, operating mechanically and without selective discretion, emphasizing retribution and procedural justice.

The objectives of punishment are conceptually reflected in the legislative policy on sentencing within the KUHP, particularly in the general provisions of criminal law in Book I and the formulation of penal sanctions in Books II and III. The formulation of criminal sanctions in Book I of the KUHP adheres to the penal norms as provided in Article 10, which classify sanctions as follows:

a. Principal punishments

1. Capital punishment;
2. Imprisonment;
3. Confinement;
4. Fines;

5. Custodial penalties.

b. Additional punishments

1. Revocation of certain rights;
2. Confiscation of certain property;
3. Public announcement of judicial decisions.

The provisions in Book I are consistently applied throughout the penal norms in Books II and III. The general provisions in Book I serve as a guideline for both the formulation of penal sanctions and their implementation. In conceptualizing the norms of criminal law and the formulation of penalties, three primary objectives are pursued through the enforcement of criminal law in society:

- a. To establish or achieve an ideal societal order;
- b. To maintain and uphold the community's core moral values;
- c. To protect and reinforce what is considered good (ideal) and widely accepted by society through the use of negatively formulated norms^[26].

Based on the explanation above, the objectives of imposing criminal sanctions under the KUHP are influenced by the underlying justifications for threatening and imposing punishment. In this context, the rationale for criminalization consists of retribution, utility, and a combination of retribution with a purpose meaning punishment is imposed on the offender either as an act of retribution or with specific objectives in mind.

2. Reform of the Prosecutor's Office Legal Structure in the Implementation of the Penal System under the National Criminal Code (KUHP)

In the implementation of the penal system under the National Criminal Code (KUHP Nasional), the Prosecutor's Office functionally holds a pivotal role in criminal law enforcement, particularly in exercising its authority to execute and supervise court decisions. As stipulated in Article 30 paragraph (1) letter b of the Law on the Prosecutor's Office (UU Kejaksaan RI), in the field of criminal matters, the Prosecutor's Office has the duty and authority to "execute the determinations of judges and court decisions that have obtained permanent legal force." Furthermore, in addition to executing court determinations or decisions, the Prosecutor's Office is also tasked with "supervising the implementation of conditional sentences, supervisory sentences, and parole decisions," as set forth in Article 30 paragraph (1) letter c of UU Kejaksaan RI.

In principle, the establishment of a penal execution agency constitutes a consequence of the Concept of an Integrated Criminal Justice System. The creation of this agency aims to integrate all authorities relating to the execution of court-imposed criminal penalties that have obtained permanent legal force. This agency represents the final stage of the integrated criminal justice system and is tasked with executing the functions of criminal penalty enforcement. Additionally, it consolidates all aspects of execution, thereby ensuring synchronization in the implementation of court decisions. The existence of a penal execution agency is a practical manifestation of an integrated criminal justice system, which anticipates the future administration of criminal justice. As mentioned, the authority to execute court decisions resides with the Prosecutor.

In the context of criminal law reform under the National Criminal Code, it is necessary for the Prosecutor's Office to undertake appropriate adjustments in executing its authority. The paradigm of criminal sanctions has shifted with the National Criminal Code, from a retributive system to an alternative-based system. This is reflected in the inclusion of supervisory sentences, fines, and community service as alternatives to imprisonment. In comparison, the previous KUHP did not provide alternatives to imprisonment, which remained the dominant form of criminal sanction. Therefore, the Prosecutor's Office should consider these alternatives as requiring formal adjustment, particularly because Article 30 paragraph (1) letters b and c of UU Kejaksaan RI currently only refer to the execution and supervision of conditional sentences, supervisory sentences, and parole decisions. The same issue applies under Law No. 22 of 2022 on Corrections, which continues to focus exclusively on imprisonment.

New forms of punishment, such as community service and supervisory sanctions, also require clear determination regarding the executing and supervising authorities, the scope of powers conferred on them, and the legal framework governing their implementation. At the international level, the Tokyo Rules constitute an international human rights instrument that provides minimum standards to be observed when imposing non-custodial sentences. The Tokyo Rules represent a significant step in enhancing the effectiveness of society's response to crime, as non-custodial penalties play a crucial role within criminal justice systems that operate under varying legal cultures. The drafters of the Tokyo Rules recognized the advantages of an individualized sentencing approach, which considers the specific needs of each offender. This approach has proven more effective in enabling offenders to maintain freedom and reintegrate into daily life allowing them to continue working, studying, or maintaining family relationships while still fulfilling the objectives of criminal justice^[27].

The Tokyo Rules emphasize the importance of non-custodial sanctions as a method or approach in dealing with offenders^[28]. The Tokyo Rules aim to promote the widest possible use of non-custodial sanctions while ensuring that their implementation is fair and respects the rights of offenders. The provisions of the Tokyo Rules apply to all individuals who are under prosecution, undergoing trial, or have been sentenced. Although non-custodial sanctions are often referred to as "alternative" penalties, this designation does not imply that imprisonment is the primary form of punishment or that non-custodial sanctions are secondary or less important^[29].

Avoiding imprisonment under the Tokyo Rules is intended to enhance the likelihood of better reintegration of offenders into society and foster the internalization of social values. In contrast, incarceration severs the offender's connection with the community and impedes reintegration. The distinctive feature of non-custodial sanctions is that they allow the state to exercise its authority in responding to crime while simultaneously enabling the offender's behavior to evolve or change under natural and normal conditions. This approach provides offenders the opportunity to develop a sense of responsibility, reduces the likelihood of recidivism, and assists them in becoming productive and socially responsible members of society^[30].

The enactment of the National Criminal Code (KUHP Nasional) in Indonesia seeks, at minimum, to introduce non-custodial sanctions alongside primary punishments such as imprisonment. This reflects a shift from a criminal law paradigm previously oriented toward retribution and severe punishment to a system emphasizing restoration, rehabilitation, and social reintegration. The reform is intended to encourage greater prudence among law enforcement officers, particularly the police, prosecutors (in the field of prosecution), and judges, in the application of criminal law.

- a. As regulated under Article 51 of the National Criminal Code, the objectives of sentencing are to: prevent the commission of criminal acts by upholding legal norms to protect and safeguard society;
- b. socialize offenders through guidance and correction so they may become good and productive members of society;
- c. resolve conflicts arising from criminal acts, restore social balance, and foster a sense of security and peace within the community; and
- d. cultivate remorse and relieve the offender's sense of guilt.

Furthermore, under Article 54 of the National Criminal Code, sentencing must take into account:

- a. the nature of the offender's culpability;
- b. the motives and purposes of the criminal act;
- c. the offender's state of mind;
- d. whether the act was planned or spontaneous;
- e. the method of commission;
- f. the offender's behavior after committing the act;
- g. the offender's life history, social conditions, and economic circumstances;
- h. the effect of the sentence on the offender's future;
- i. the impact of the criminal act on the victim or the victim's family;
- j. forgiveness granted by the victim and/or their family;
- k. and/or the prevailing legal norms and sense of justice within society.

By comparison, in the Netherlands, the paradigm shift toward non-custodial sanctions has produced significant outcomes, particularly in reducing prison overcrowding. A notable example is the implementation of Reclassering (Probation Service), which has been effective in managing offenders while supporting their reintegration into society^[31].

Reclassering is an independent agency funded by the Dutch Ministry of Justice and Security, established under the Reclasseringsregeling (Stb. 199 No. 875). The agency carries out three primary functions.

- 1. Execution and supervision of non-custodial sanctions:** this includes social work sentences and special conditions attached to conditional penalties, as stipulated under Article 14c of the Dutch Criminal Code.
- 2. Providing recommendations to prosecutors and judges:** Reclassering advises on appropriate measures and sentencing for suspects and defendants. According to the official Reclassering website, such advice appears to be given upon request from a prosecutor or

judge; however, it remains unclear whether Reclassering may also provide advice on its own initiative.

3. Supervision of parolees: monitoring individuals released on conditional terms to ensure compliance with imposed obligations.

This structure enables a functional separation of supervisory, advisory, and enforcement roles, allowing non-custodial sanctions to be implemented effectively while supporting offender reintegration^[32].

In Indonesia, the Reclassering model can be conceptually aligned with the Correctional Agency (Badan Pemasyarakatan, Bapas) under the Ministry of Law and Human Rights. The functional similarity between Reclassering and Bapas has become increasingly evident following the enactment of the National Criminal Code (KUHP Nasional), due to the introduction of two new types of sanctions: community service penalties and supervisory penalties. The KUHP Nasional assigns Bapas a role in guiding the implementation of community service penalties and also obliges Bapas to provide recommendations to the Prosecutor, which are then submitted to the Judge regarding the implementation of supervisory penalties, mirroring the advisory and supervisory functions of Reclassering in the Netherlands.

In the Dutch system, the execution of non-custodial sentences gives the Public Prosecution Service specific authority in their implementation and supervision. First, conditional sentences in the Netherlands are regulated under Articles 14a to 14l of the Dutch Penal Code, encompassing forms such as suspended imprisonment, probation, and imprisonment with conditions. Conditional sentences may be applied where the prison term is less than two years, for non-standard detention, or through social work or fines. For sentences ranging from two to four years, part of the term up to two years may be suspended. The Dutch Public Prosecution Service is responsible for ensuring compliance with both general and specific conditions of conditional sentences and has supervisory authority to act promptly if there is a serious concern that the offender may reoffend. This centralized oversight ensures that the implementation of non-custodial penalties is both effective and responsive to risks posed by offenders^[33].

Second, regarding community service penalties, in the Netherlands, community service is regulated under Article 9(1)(a)(3) and Articles 22b–22k of the Dutch Penal Code. The procedural implementation of community service is further detailed in Governmental Decree (Staatsblad) No. stb-2001-33 dated 15 January 2001. This decree sets out the rights and obligations of the offender, the executing bodies namely, the correctional agency for adult offenders and the child protection agency for juvenile offenders and the procedure for filing objections by offenders if violations occur during the execution of community service. The execution of community service is under the authority of the Public Prosecution Service, which includes the following powers:

1. Collecting information from the correctional agency regarding the execution of community service orders;
2. Modifying the type of community service to be carried out;

3. Ordering the offender to serve a prison sentence if the community service order is not properly executed.

If the Prosecutor determines that the offender fails to comply with the community service order, the sentence may be converted into imprisonment ranging from 1 day to 4 months, with a conversion ratio of 2 hours of community service equating to 1 day of imprisonment. The offender has the right to appeal to the Judge to review whether the substitution of imprisonment is justified, and the court may amend the Prosecutor's decision if the offender's objection is deemed valid^[34].

In addition to the Public Prosecution Service, the correctional agency also holds an important role in the implementation of community service penalties. The Dutch correctional agency ensures that the offender performs the type of community service appropriate to the offense committed. Correctional officers are obliged to report the execution of community service by the offender. If the offender fails to comply, the system automatically sends a reminder to the central office of the correctional agency. Should the central office report that the community service order has not been fully completed, it may submit a claim to the court requesting that the community service be replaced with imprisonment^[35].

The urgency of implementing non-custodial penalties within the context of the reform of the sentencing system under the National Criminal Code (KUHP Nasional) is fundamentally aligned with the objectives of sentencing as stipulated in Article 51 of the KUHP Nasional. Moreover, the introduction of non-custodial penalties as alternatives to principal sanctions such as supervision orders and community service has the potential to shift the orientation of the criminal justice system, particularly for law enforcement officers.

Traditionally, police officers have seldom exercised their discretionary powers, prosecutors have often pursued indictments with excessive rigor, and judges appear to impose imprisonment sentences hastily. This practice has fostered a perception among law enforcement that detention is obligatory once someone is designated as a suspect, or that the higher the number of people imprisoned, the greater the measure of success. The inclusion of non-custodial penalties aims to correct these tendencies and encourage a more balanced, rehabilitative, and socially responsive approach to sentencing^[36].

Furthermore, the introduction of non-custodial penalties specifically supervision orders and community service should serve as a strategic solution for law enforcement to avoid the phenomenon of penal populism and the persistent overreliance on imprisonment, which has historically contributed to prison overcapacity. These non-custodial sanctions are intended to achieve the dual objectives of deterrence and the effective rehabilitation of offenders, in contrast to traditional punitive measures that often result in suffering, stigma, and other negative consequences for the convicted individual.

Conceptually, in the context of reforming the prosecutorial legal structure for the implementation of the sentencing system under the KUHP Nasional, several points warrant attention, given the Prosecutor's Office's role as executor and supervisor of court decisions:

- a. The Prosecutor's Office should promptly revise existing prosecutorial guidelines, particularly regarding the

- obligation to appeal decisions that deviate from the charges submitted by the prosecutor;
- b. Prosecutors should exercise careful case selection, adhering strictly to statutory provisions regarding which cases require detention, without unduly considering the circumstances of the case or the defendant;
 - c. Prosecutors must coordinate with the Correctional Guidance Agency (Bapas) regarding social reports on suspects and the criminal acts committed;
 - d. In cases involving drug users and victims, prosecutors should be able to accept medical reports from non-TAT medical teams, provided such reports are reliable and do not disregard health assessments from authorized TAT practitioners;
 - e. The Prosecutor's Office should improve coordination and communication with Bapas concerning probationers to ensure proper guidance by social rehabilitation officers, as mandated by law;
 - f. The Prosecutor's Office should develop guidelines for prosecutors to pursue non-custodial sentences, including clear criteria and considerations for imposing such sanctions ^[37].

Conclusion

The reform of the Prosecutor's Office legal structure in the implementation of the sentencing system under the KUHP Nasional should be regarded as an essential requirement. Structural adjustments by the Prosecutor's Office are necessary, given its duties and authorities, particularly as executor and supervisor of court decisions, as stipulated under Article 30 paragraph (1) letters b and c of the Indonesian Prosecutor's Office Law (UU KEJAKSAAN RI). Moreover, the enactment of the KUHP Nasional obliges the Prosecutor's Office to develop guidelines for prosecutors regarding the prosecution of non-custodial penalties, specifying the conditions and circumstances under which such sanctions such as supervision orders and community service, previously unknown in the Indonesian penal system may be imposed. Furthermore, effective coordination and communication between prosecutors and the Correctional Guidance Agency (Bapas) are necessary concerning social reports on suspects and their offenses in relation to non-custodial penalties under the KUHP Nasional. Comparatively, in the Netherlands, the roles of the Public Prosecution Service and Reclassering (probation services) significantly influence the execution and supervision of court decisions, particularly regarding conditional sentences and community service penalties, highlighting the importance of integrated institutional collaboration in implementing non-custodial sanctions.

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