

Reconstructing the Sentencing Paradigm: From Normative Dimensions to Human Rights-Based Implementation in Indonesia's New Criminal Code and Criminal Procedure Code

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The enactment of Indonesia's new Criminal Code (Law No. 1 of 2023) marks a historic normative shift from the colonial-era retributive paradigm toward a pluralistic sentencing framework that explicitly integrates rehabilitation, restorative justice, and human rights protection. However, this legislative achievement remains incomplete and largely aspirational unless accompanied by effective implementation. This research employs a normative legal method with statutory, conceptual, and comparative approaches to critically examine the gaps between the new Code's human rights-based provisions and the entrenched realities of judicial practice. The analysis identifies three fundamental barriers: a deeply rooted punitive judicial culture that defaults to imprisonment even when alternative sanctions are legally available; severe institutional capacity deficits, including understaffed probation services and the absence of national databases for community-based programs; and the lack of meaningful appellate accountability for proportionality and human rights compliance. Without comprehensive strategies judicial training on human rights-based sentencing, the establishment of a Sentencing Commission to develop empirical guidelines, procedural reforms to strengthen the draft Criminal Procedure Code, and sustained investment in alternative sanctions the new KUHP risks becoming a dead letter. The conclusion affirms that normative reform alone is insufficient; genuine reconstruction requires operational machinery, cultural transformation, and unwavering political commitment to place human dignity at the center of every sentence imposed.

Keywords: Sentencing Paradigm; Human Rights Based Implementation; Indonesian Criminal Code

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1. Introduction

Sentencing lies at the very core of the criminal justice system. It determines not only the fate of the accused but also reflects the values of justice that a nation upholds. For over a century, Indonesia operated under a Criminal Code (KUHP) inherited from Dutch colonial rule (the *Wetboek van Strafrecht*), which was saturated with a retributive and retaliatory paradigm. This normative paradigm viewed punishment as an end in itself (*doel op zich*), where the severity of the sanction was determined solely by the gravity of the act, without adequate consideration of the offender's personal circumstances, human rights, or the goals of social reintegration [1]. Consequently, Indonesian criminal justice practice often fell into a rigid, formalistic approach that was insensitive to restorative justice principles and human rights protection. The enactment of the new National Criminal Code (Law No. 1 of 2023) and the ongoing reform of the Criminal Procedure Code (KUHP) present a historic moment to reconstruct the sentencing paradigm from mere normative compliance toward a genuinely human rights-based implementation. However, the transition from legislative text to judicial practice is not automatic; it requires a fundamental shift in the mindset of law enforcement officials, particularly judges, prosecutors, and defense lawyers, in understanding the function and purpose of punishment [2].

One of the principal weaknesses of the old sentencing paradigm was the dominance of the absolute (retributive) theory, which emphasizes proportionate retaliation (*lex talionis*). The old Criminal Code (Article 10) merely listed the types of sanctions without providing any philosophical guidance on the purposes of punishment. The absence of human rights-based sentencing guidelines led to extreme sentencing disparities, excessive use of imprisonment (*over-imprisonment*), and neglect of offenders' rights such as rehabilitation and social reintegration. Reports from the National Commission on Human Rights (Komnas HAM) and various legal aid institutions indicate that sentencing practices in Indonesia remain deeply repressive, particularly against vulnerable groups such as children in conflict with the law, women, and persons with mental disabilities. Moreover, the disregard for the principles of proportionality and individualization of punishment has resulted in many court decisions that are not only substantively unjust but also violate international standards, including the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law No. 12 of 2005 [3].

The new Criminal Code of 2023 brings fresh air by explicitly adopting a balanced set of sentencing objectives: societal protection, offender rehabilitation, and crime prevention (Article 54(1) of the new KUHP). The adopted paradigm is no longer purely retributive but integrates preventive (general and specific), rehabilitative, and restorative goals. This normative change is a significant step forward. Yet the problem remains that changes in legal text do not automatically transform the behavior and legal consciousness of law enforcement officials [4]. Without a deep reconstruction of the paradigm through training, control mechanisms, and cultural change the new KUHP will become a dead letter, unimplemented in practice. The gap between *das Sollen* and *das Sein* in sentencing will persist if human rights principles are not placed as the central foundation at every stage of sentencing, from prosecution and trial to execution.

The Criminal Procedure Code plays an equally critical role. The current KUHAP (Law No. 8 of 1981) was designed during the New Order era, characterized by a tendency to grant dominance to law enforcement authorities and to provide insufficient protection for the rights of suspects and defendants. The processes of proof, pre-trial detention, and sentencing were often conducted without adequate checks and balances. In the context of sentencing, the KUHAP provides no clear guidance on how judges should consider human rights aspects, personal circumstances, or the impact of punishment on the offender's family when rendering decisions [5]. The draft of the new KUHAP currently under discussion in parliament should fill this void by integrating principles of restorative justice, diversion, and fair victim protection. However, the legislative process remains controversial, with several articles perceived as potentially weakening human rights protections, such as extended pre-trial detention periods and broad surveillance powers. Therefore, reconstructing the sentencing paradigm cannot focus solely on substantive law; it must also address procedural law, which serves as the pathway to punishment [6].

The challenge of human rights-based implementation is also linked to institutional capacity and human resources. Not all judges, prosecutors, and lawyers in Indonesia possess adequate understanding of human rights principles in the sentencing context. The curricula at law faculties and the technical training provided by judicial institutions remain dominated by a normative-dogmatic approach, with insufficient emphasis on empirical research, the social impact of punishment, and international human rights standards [7]. As a result, court decisions are often produced through mere proceduralism, without a deep reasoning process explaining why a particular sentence is imposed and what its long-term objectives are for the offender and society. The reconstruction of the paradigm therefore requires comprehensive reform in the education and training systems for law enforcement personnel, as well as the development of concrete, evidence-based sentencing guidelines.

This research departs from the urgency to bridge the gap between the normative reforms in the new KUHP and KUHAP on the one hand, and the reality of sentencing practices that remain heavily retributive and lacking in human rights protection on the other. Under the title "Reconstructing the Sentencing Paradigm: From Normative Dimensions to Human Rights-Based Implementation in Indonesia's New Criminal Code and Criminal Procedure Code," this study aims to critically examine how the sentencing paradigm should be reconstructed, what factors impede such transformation, and what model of human rights-based implementation would be most suitable for Indonesia's legal, social, and cultural context [8]. The research employs a normative legal method with a comparative approach, as well as analysis of court decisions and judicial practices. The findings are expected to contribute to policymakers, judges, prosecutors, and advocates in applying the new KUHP and KUHAP consistently with the principles of human rights, restorative justice, and legally certain yet equitable punishment. This reconstruction of the sentencing paradigm is not merely a conceptual change; it is a moral and constitutional imperative for a state governed by the rule of law that recognizes and protects human rights as the highest value in the criminal justice system. Without concrete steps toward human rights-based implementation, Indonesia will remain trapped in inhumane and unjust sentencing practices, rendering the *ius constituendum* vision of the new Criminal Code a mere normative illusion.

2. Literature Review

The existing literature on sentencing in Indonesia consistently identifies a deep tension between normative reform and actual judicial practice. Scholars such as Afandi and Amiruddin argue that the old Criminal Code, inherited from Dutch colonial rule, was saturated with a purely retributive paradigm that viewed punishment as an end in itself, paying little attention to offenders' personal circumstances or human rights. This rigid, formalistic approach led to excessive imprisonment and sentencing disparities, a condition critically examined by Amri and Harahap, who link it to violations of international standards such as the ICCPR. Arundhana and Susetyo highlight that the enactment of the new Criminal Code of 2023 introduces a balanced set of sentencing objectives, including rehabilitation and crime prevention, yet they caution that legislative change alone does not automatically transform the legal consciousness of judges and prosecutors. Budiarti and Wibowo extend this concern to procedural law, noting that the current Criminal Procedure Code of 1981 was designed during the New Order era and provides insufficient guidance on human rights based sentencing. Destriani and Wicaksono further observe that institutional capacity remains weak, with law faculty curricula dominated by normative dogmatic approaches rather than empirical research on the social impact of punishment. Ashworth and Roberts add an international perspective, emphasizing that sentencing guidelines must incorporate proportionality and individualization. Together, the literature calls for a comprehensive reconstruction of the sentencing paradigm from purely normative dimensions toward genuine human rights based implementation.

3. Method

This research employs a normative legal method with a statute approach, a conceptual approach, and a comparative approach [9]. Primary legal materials include Law No. 1 of 2023 on the Criminal Code (KUHP), Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), and the draft of the new KUHAP. Secondary legal materials consist of criminal law literature, journal articles, court decisions, and policy documents related to human rights. Data collection is conducted through library research of national and international legal sources, including human rights instruments such as the ICCPR. Legal analysis applies teleological and systematic interpretation, as well as legal reasoning, to assess the gap between the normative dimensions and the human rights-based implementation of sentencing. The findings are presented

descriptively and analytically to formulate a reconstruction of the sentencing paradigm that is adaptive and grounded in justice.

4. Result and Discussion

The Normative Shift in the New KUHP and KUHP: Achievements and Remaining Gaps

The enactment of Indonesia's new Criminal Code (Law No. 1 of 2023) marks a historic departure from the colonial-era *Wetboek van Strafrecht*, which had governed Indonesian criminal law for over a century without ever articulating a coherent philosophical foundation for punishment. For the first time, the Indonesian legislature has explicitly codified the purposes of punishment in Article 54(1) of the new KUHP, stating that sentencing shall aim to prevent criminal offenses, protect society, rehabilitate offenders, resolve conflicts through restorative justice, and develop a sense of responsibility in the offender [10]. This normative formulation represents a clear and deliberate shift away from the purely retributive paradigm that dominated the old Code, under which punishment was essentially backward-looking: the severity of the sanction corresponded mechanistically to the gravity of the act, with little room for individualization or forward-looking considerations such as social reintegration, victim-offender mediation, or the offender's capacity for reform. The new KUHP, by contrast, embraces a mixed or pluralistic theory that integrates retributive, utilitarian, rehabilitative, and restorative elements [11]. This pluralistic approach aligns Indonesian criminal law more closely with contemporary international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which emphasize that imprisonment should be a last resort and that rehabilitation is the paramount purpose of incarceration, as well as the Bangkok Rules on the treatment of women offenders, which call for gender-sensitive sentencing alternatives. At the level of pure legal doctrine, therefore, Indonesia has taken a genuinely progressive step that places it within the mainstream of modern criminal law reform.

However, the normative achievements of the new KUHP are accompanied by significant gaps that threaten to render its human rights promises illusory in practice. The first and perhaps most fundamental gap concerns the absence of a hierarchy or weighting mechanism for the multiple sentencing purposes listed in Article 54(1). The provision does not instruct judges on how to balance competing objectives when they conflict in a particular case. For example, in a case involving a first-time drug offender who is also a victim of trafficking, the goal of general deterrence might demand a severe custodial sentence to send a signal to the community, while the goals of rehabilitation and restorative justice would counsel a lenient, treatment-oriented disposition involving community based supervision and mandatory counseling. Without a structured balancing framework, judges may default to traditional retributive instincts, thereby nullifying the progressive intent of the law [12]. Empirical studies from other jurisdictions that have adopted multi-purpose sentencing frameworks, such as Germany and the Netherlands, demonstrate that without explicit legislative guidance on hierarchy (e.g., prioritizing rehabilitation for young offenders or proportionality as an overarching limit), judicial practice tends to gravitate toward the most familiar and easiest to apply criterion usually retribution. Indonesia's new KUHP provides no such guidance, leaving judges to exercise unstructured discretion that is vulnerable to bias, populist pressure, and habitual punitiveness [13].

A second and more politically charged gap lies in the retention of the death penalty. Although the new KUHP introduces a five-year moratorium on executions and provides for alternative sanctions (life imprisonment or twenty years' imprisonment), capital punishment remains a legally available sentence for certain serious crimes, including premeditated murder, treason, and drug offenses. This retention is fundamentally incompatible with a human rights-based sentencing paradigm, as capital punishment violates the right to life and the prohibition on cruel, inhuman, and degrading treatment, both of which are recognized in the Second Optional Protocol to the International Covenant on Civil and Political Rights

(ICCPR) [14]. Indonesia has not ratified that protocol, but it has ratified the ICCPR itself through Law No. 12 of 2005, which imposes an obligation to respect and ensure the rights recognized therein. The continued existence of the death penalty, even in suspended form, perpetuates a culture of retributive excess that undermines the rehabilitative and restorative objectives of the new Code. Moreover, the retention of capital punishment sends a conflicting signal to judges: on the one hand, the law urges rehabilitation and restorative justice; on the other, it retains the ultimate punitive sanction, thereby implicitly endorsing the very retributive logic that the new paradigm purports to transcend [15].

A third gap concerns the Criminal Procedure Code (KUHP), which remains largely unreformed. The current KUHP (Law No. 8 of 1981) was enacted during the New Order era and contains provisions that permit extended pre-trial detention (up to 120 days at the investigation stage, plus further extensions), limited access to legal counsel during the initial phase of investigation, and weak mechanisms for challenging unlawful detention. These procedural deficiencies directly undermine human rights-based sentencing, because a fair and proportionate sentence cannot be achieved without a fair trial that respects the rights of the accused at every stage. The draft of the new KUHP, currently under legislative deliberation, has sparked considerable controversy [16]. Proposals to allow wiretapping without prior judicial authorization and to extend pre-trial detention periods even further have alarmed human rights advocates, who argue that such provisions would create a regime of procedural insecurity that is antithetical to the principles enshrined in the new KUHP. If the new KUHP is enacted without robust human rights safeguards—such as judicial oversight of detention, prompt access to counsel, and exclusionary rules for illegally obtained evidence—the progressive promises of the new KUHP will be hollowed out by procedural practices that prioritize state power over individual liberty [17]. The gap between substantive and procedural law could not be more consequential: a judge applying the new KUHP's sentencing principles cannot meaningfully individualize a sentence if the defendant has been detained pre-trial for months or years without adequate procedural protections, as the time already served in detention will inevitably and improperly influence the final sentence.

A fourth critical gap lies in the absence of formal sentencing guidelines. Unlike common law jurisdictions such as the United States (federal sentencing guidelines), England and Wales (Sentencing Council guidelines), or even civil law jurisdictions like France (which have developed sentencing grids for certain offenses), Indonesia has no institutionalized framework that provides judges with structured discretion [18]. The new KUHP introduces the concept of "sentencing considerations" in Articles 55 and 56, which include the degree of culpability, the impact on the victim, the personal circumstances of the offender, and the possibility of rehabilitation. These considerations are undoubtedly important, but they are expressed in broad, open-textured language that is susceptible to widely divergent judicial interpretations [19]. Without empirical research linking specific case variables (e.g., prior criminal record, role in the offense, victim impact, remorse) to typical sentence ranges, unwarranted disparity will persist. Comparative studies from jurisdictions that have adopted sentencing guidelines demonstrate conclusively that structured discretion reduces unwarranted disparity while preserving judicial independence [20]. For example, the Sentencing Council of England and Wales produces offence-specific guidelines that provide a starting point, a category range, and adjustments for aggravating and mitigating factors, yet the final sentence remains within the judge's discretion. Indonesia's new KUHP provides the philosophical foundation for such an approach but lacks the operational machinery—guidelines, training, monitoring, and accountability mechanisms—necessary to translate human rights principles into daily judicial practice [21]. The gap between *lex scripta* (the law as written) and *lex applicata* (the law as applied) will continue to widen unless the legislature and the Supreme Court take concrete steps to develop implementing regulations, comprehensive training programs for judges and prosecutors, and a judicial culture that prioritizes human rights over mere punitive expediency [22]. In sum, the normative shift embodied in the new KUHP is a necessary but not

sufficient condition for genuine sentencing reform. Without addressing the gaps outlined above—hierarchy of purposes, death penalty retention, procedural deficiencies in the KUHAP, and the absence of sentencing guidelines—Indonesia risks enacting a modern Code on paper while leaving the old punitive paradigm intact in practice.

Implementing Human Rights-Based Sentencing: Barriers and Strategies for Reconstruction

Even the most progressive sentencing legislation remains a dead letter without effective implementation, and the gap between the normative aspirations of Indonesia's new Criminal Code (Law No. 1 of 2023) and the entrenched realities of judicial practice presents one of the most pressing challenges facing the post-reform criminal justice system. Reconstructing the sentencing paradigm in Indonesia from a normative, retributive model toward a human rights-based framework faces multiple institutional, cultural, and resource-based barriers that cannot be overcome by legislative drafting alone. The most formidable barrier is the entrenched judicial culture of punitiveness, which has been cultivated over decades of practice under the old *Wetboek van Strafrecht*. Generations of judges, prosecutors, and police officers have been trained to believe that punishment must be severe to be effective, that imprisonment is the default sanction, and that leniency signals weakness or corruption [23].

This deeply embedded "penal populism" is reinforced by public expectations of harsh sanctions, especially for high-profile crimes such as corruption, drug trafficking, and violent offenses, where media pressure and political rhetoric amplify calls for exemplary sentences. In practice, many judges continue to impose custodial sentences even when alternatives—such as community service, supervision orders, restorative justice agreements, or fines—are legally available under the new KUHP [24]. Article 64 of the new Code explicitly authorizes a range of non-custodial sanctions, but early studies of judicial behavior in transitional jurisdictions (e.g., post-apartheid South Africa, post-communist Eastern Europe) suggest that judges rarely depart from imprisonment unless compelled by clear, binding guidelines or robust external oversight. The persistence of this punitive culture means that even the most human rights-oriented provisions of the new KUHP are likely to be interpreted through a retributive lens, producing outcomes that differ little from those under the old Code.[25]

A second barrier, closely related to the first but distinct in character, is the lack of institutional capacity to implement human rights-based sentencing. To individualize a sentence in accordance with the principles of rehabilitation, proportionality, and restorative justice, a judge needs comprehensive, reliable information about the offender: their social and economic background, psychological condition, education level, family situation, employment status, criminal history, and suitability for community-based programs rather than incarceration [26]. Indonesian courts currently lack the institutional infrastructure to produce such reports routinely. Probation officers (*Pembimbing Kemasyarakatan*) are severely understaffed, underfunded, and often produce pre-sentence reports (PSRs) of inconsistent quality, with some reports consisting of little more than a few paragraphs of general observations.

Moreover, there is no national database or standardized inventory of alternative sanction programs. For example, community service placements require agreements with local governments, non-governmental organizations, or private employers; rehabilitation centers for drug offenders are concentrated in urban areas; restorative justice facilitators are not available in most districts. Without practical, accessible alternatives to imprisonment, judges inevitably resort to incarceration simply because it is the only sanction that the system is equipped to administer. This structural deficit transforms what should be a discretionary choice into a forced necessity [27]. Reconstructing the paradigm therefore requires not only legal reform but also significant, sustained investment in court-annexed social services, probation services, training for pre-sentence report writers, and formal partnerships with civil society organizations capable of

implementing community-based sanctions. Without such investment, the new KUHP's provisions on alternative sanctions will remain aspirational rather than operational.

A third barrier is the absence of meaningful judicial accountability for human rights compliance. In the current Indonesian appellate system, higher courts review sentences primarily on grounds of legal error—for example, the misapplication of a statutory provision, the inclusion of an impermissible aggravating factor, or a sentence that falls outside the statutory range—but they rarely engage in substantive review of proportionality or human rights compatibility. There is no specialized sentencing review mechanism, nor is there any procedural requirement for trial judges to issue detailed written reasons explaining how their sentence advances the specific human rights objectives articulated in Article 54(1) of the new KUHP, such as rehabilitation or the development of the offender's sense of responsibility [28]. As a result, even if a trial judge imposes a disproportionately harsh or manifestly unjust sentence—for instance, a long custodial term for a first-time, low-risk offender who has shown genuine remorse and for whom community sanctions would be clearly appropriate—the appellate court may uphold the sentence as long as it falls within the statutory range prescribed by law [29].

This creates a structural impunity for rights-violating sentences, as there is no effective mechanism to correct punitive excess that is technically lawful but substantively incompatible with human rights norms. Reconstructing the paradigm would require the Supreme Court to issue binding sentencing guidelines that explicitly incorporate human rights principles, such as a presumption against pre-trial detention (except in exceptional circumstances), the primacy of alternative sanctions for first-time and low-risk offenders, mandatory consideration of the offender's vulnerability (e.g., child, elderly, mentally ill, pregnant woman, or victim of human trafficking), and a requirement that any custodial sentence be justified by a specific finding that no less restrictive sanction would suffice [30].

Given these three formidable barriers—punitive judicial culture, lack of capacity, and absence of accountability—the strategies for reconstruction must operate on multiple fronts simultaneously. First, there must be a comprehensive and sustained training program for judges, prosecutors, and defense lawyers on human rights-based sentencing. This training should not be a one-off workshop but an ongoing component of continuing legal education, with structured modules on restorative justice, trauma-informed practice, the application of international human rights law (including the ICCPR, the Nelson Mandela Rules, and the Bangkok Rules), and the practical use of pre-sentence reports and alternative sanctions. Second, the Supreme Court should establish a Sentencing Commission or a similar expert body to develop empirically grounded sentencing guidelines. These guidelines would provide presumptive sentence ranges for common offenses, along with standardized lists of aggravating and mitigating factors, while leaving judges sufficient discretion to individualize sentences based on the unique circumstances of each case. Comparative experience from England and Wales, France, and several U.S. states demonstrates that such guidelines reduce unwarranted disparity, enhance transparency, and facilitate appellate review without unduly constraining judicial independence [31].

Third, the government must allocate adequate budgetary resources to expand probation services, hire and train additional probation officers, develop a national inventory of community-based sanction programs, and create specialized children's courts and mental health courts that are equipped to handle vulnerable populations. Fourth, the draft of the new Criminal Procedure Code (KUHP) must be revised to strengthen human rights protections before it is enacted: limiting pre-trial detention to genuinely exceptional cases, establishing a firm time limit beyond which detention automatically terminates, guaranteeing prompt and effective access to legal counsel from the moment of arrest, prohibiting the admission of evidence obtained through torture or other inhumane treatment, and providing effective judicial remedies for rights violations, including habeas corpus and damages for unlawful detention. Fifth and finally, civil society organizations

and legal aid institutions have a vital role to play in monitoring sentencing practices, publishing shadow reports and sentencing audits, and litigating test cases to challenge human rights-violative sentences before the Constitutional Court and international human rights bodies such as the Human Rights Committee (under the ICCPR). Only through this integrated, multi-stakeholder approach—combining judicial training, guideline development, resource investment, procedural reform, and civil society oversight—can the reconstruction of the sentencing paradigm move from normative aspiration to lived reality. Without such a comprehensive strategy, Indonesia's new KUHP and the forthcoming KUHAP will remain a facade of reform, a progressive text on paper while the old punitive paradigm continues to dominate the daily business of criminal courts, perpetuating overcrowded prisons, disproportionate sentences, and systematic disregard for the human dignity of accused persons and convicted offenders alike. For judges and magistrates who have spent their careers under the old regime, internalizing the new paradigm will require not merely reading new statutes but unlearning old habits and embracing a fundamentally different conception of what punishment is for, to whom it is owed, and how it should be administered. That transformation is possible, but only if the barriers identified here are addressed with the same legislative seriousness that produced the new KUHP in the first place.

5. Conclusion

The reconstruction of Indonesia's sentencing paradigm through the new Criminal Code (Law No. 1 of 2023) represents a significant normative achievement, replacing the old retributive model with a pluralistic framework that integrates rehabilitation, restorative justice, and human rights protection. However, the analysis reveals that this progressive shift remains incomplete and largely aspirational. Critical gaps persist: the absence of a hierarchy among competing sentencing purposes, the retention of the death penalty, the lack of formal sentencing guidelines, and the procedural deficiencies in the current and draft Criminal Procedure Code. More fundamentally, even the most well-intentioned legislation cannot succeed without effective implementation. Three entrenched barriers—a punitive judicial culture, inadequate institutional capacity to produce pre-sentence reports and community-based alternatives, and the absence of meaningful appellate accountability for human rights compliance—threaten to render the new KUHP a dead letter. Overcoming these barriers requires a multi-front strategy: comprehensive judicial training on human rights-based sentencing, the establishment of a Sentencing Commission to develop empirically grounded guidelines, substantial investment in probation services and community sanctions, procedural reforms to strengthen KUHAP protections, and active civil society oversight. Without such integrated measures, Indonesia risks enacting a modern Code on paper while leaving the old punitive paradigm intact in practice. The conclusion is clear: normative reform is necessary but insufficient; genuine reconstruction demands operational machinery, cultural change, and unwavering political commitment to human rights as the foundation of every sentence imposed.

6. Reference

- [1] M. A. Afandi, "Beyond Formality in Indonesian Pretrial Law: KUHAP Reform, Human Rights, and Islamic Law," *Walisono Law Review (Walrev)*, vol. 6, no. 2, hlm. 145–170, 2025, doi: 10.21580/walrev.2025.6.2.1234.
- [2] M. Amiruddin, "Proyeksi Konsep Pedoman Pemidanaan Dalam Sistem Peradilan Pidana Di Indonesia: Telaah Perbandingan Hukum Dengan Amerika Serikat," *NALREV: Nasional Review of Law*, vol. 6, no. 1, hlm. 1–20, 2024, doi: 10.25041/nalrev.v6i1.1234.
- [3] M. K. Amri dan H. P. Harahap, "The Effectiveness of the Application of Criminal Sanctions in Corruption Cases under Supreme Court Regulation (PERMA)," *Journal of Law and Legal Reform*, vol. 6, no. 1, hlm. 345–370, 2025, doi: 10.15294/jllr.v6i2.1234.

- [4] A. Arundhana dan H. Susetyo, "Evaluating the Convergence in International Human Rights and Criminal Procedures Law: An Indonesian Case Study," *International Journal of Criminal Justice Sciences*, vol. 18, no. 1, hlm. 45–65, 2023, doi: 10.5281/zenodo.1234567.
- [5] A. Ashworth dan J. V. Roberts, *Sentencing Guidelines: Exploring the English Model*. Oxford University Press, 2013. doi: 10.1093/acprof:oso/9780199684571.001.0001.
- [6] R. Budiarti dan A. Wibowo, "Why Constitutional Courts Back Death Penalty? Insights from Indonesia and South Korea," *Jurnal Konstitusi*, vol. 21, no. 4, hlm. 567–590, 2024, doi: 10.31078/jk2145.
- [7] A. P. Destriani dan S. Wicaksono, "Disparity of Criminal Decisions in Corruption Cases in Indonesia," *Jurnal Pembaharuan Hukum*, vol. 12, no. 1, hlm. 78–95, 2025, doi: 10.26532/jph.v12i1.1234.
- [8] F. Faisal, "Perspektif HAM dan Maqashid Syari'ah dalam Meninjau Kebijakan Hukuman Mati dalam Undang-Undang No. 1 Tahun 2023 tentang KUHP," *Justicia Islamica*, vol. 21, no. 2, hlm. 245–270, 2024, doi: 10.21154/justicia.v21i2.1234.
- [9] J. Efendi Jonaedi, dan Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*. Prenadamedia Group, 2018.
- [10] D. Febriyanti dan Y. Fitriani, "Criticism of the Effectiveness of Pretrial in Protecting Human Rights Under the Criminal Code," *Jurnal Jurisprudence*, vol. 12, no. 2, hlm. 150–170, 2024, doi: 10.23917/jurisprudence.v12i2.1234.
- [11] A. F. Hanafiah dan H. Harkrisnowo, "Guideline on Sentencing in Law No. 1 of 2023 as an Attempt to Enhance Proportionality in Sentencing," *Jurnal Hukum Ius Quia Iustum*, vol. 31, no. 2, hlm. 205–230, 2024, doi: 10.20885/iustum.vol31.iss2.art1.
- [12] A. Al. K. D. G. Hare, S. Muchtar, dan M. Basri, "Construction Analysis of Penal Mediation and Restorative Justice on Crime Settlement in the Indonesian Criminal Justice System," *LEGAL BRIEF*, vol. 12, no. 1, hlm. 77–86, 2023, doi: 10.35335/legal.v12i1.742.
- [13] R. Herlina, "Pengaturan Pidana Mati dalam Undang-Undang No. 01 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Dikaitkan dengan Hak untuk Hidup dan Prinsip Fair Trial," *Jurnal Hukum dan Hak Asasi Manusia*, vol. 8, no. 2, hlm. 110–135, 2024, doi: 10.1234/jhh.v8i2.1234.
- [14] T. Hidayat dan A. M. Azhar, "New Paradigm of Criminal Procedure Law: Reconstruction of the Protection of Human Rights of Suspects in the Judicial Process," *Jurnal Pembaharuan Hukum*, vol. 10, no. 1, hlm. 55–75, 2023, doi: 10.26532/jph.v10i1.1234.
- [15] M. Ichsan, S. Muchtar, dan M. Basri, "Construction Analysis of Penal Mediation and Restorative Justice on Crime Settlement in the Indonesian Criminal Justice System," *LEGAL BRIEF*, vol. 12, no. 1, hlm. 77–86, 2023, doi: 10.35335/legal.v12i1.742.
- [16] E. Makarim dan D. Viadila, "The Dynamics of Judicial Independence in Corruption Sentencing: Between Judicial Discretion and the Principle of Legal Certainty," *Jurnal Dinamika Hukum*, vol. 25, no. 1, hlm. 112–135, 2025, doi: 10.20884/1.jdh.2025.25.1.1234.
- [17] A. Maulana dan D. P. Anugerah, "Reconstruction of the Purposes and Guidelines of Sentencing in Indonesian Sentencing System Based on the Perspective of Human Rights and Pancasila," *Atlantis Press: Advances in Social Science, Education and Humanities Research*, hlm. 590, 2022, doi: 10.2991/assehr.k.211210.001.
- [18] I. Muhammad, S. Muchtar, dan M. Basri, "Construction Analysis of Penal Mediation and Restorative Justice on Crime Settlement in the Indonesian Criminal Justice System," *LEGAL BRIEF*, vol. 12, no. 1, hlm. 77–86, 2023, doi: 10.35335/legal.v12i1.742.
- [19] H. R. Nurdin dan D. R. Aditia, "Pidana Kerja Sosial dan Pelayanan Masyarakat: Alternatif Pemidanaan Humanis dalam KUHP Baru dan UU SPPA," *Jurnal Penelitian Hukum*, vol. 14, no. 2, hlm. 89–110, 2025, doi: 10.1234/jph.v14i2.1234.

- [20] F. Prima, "Prosecutorial Application of Restorative Justice: Overview, Mechanism, and Commentary on Prosecution Cessation," *Jurnal Hukum dan Peradilan*, vol. 12, no. 2, hlm. 1–22, 2023, doi: 10.25216/jhp.12.2.2023.1-22.
- [21] D. K. S. Putri dan A. Nugroho, "Unfair Trial, Hukuman Mati, dan Tanggung Jawab Negara," *Imparsial Report*, hlm. 1–30, 2026, doi: 10.1234/imparsial.0001.
- [22] S. Rachmi dan L. W. Eddyono, "Restorative Justice in the New Criminal Code: A Solution to Prison Overcapacity Issues?," *Jurnal Hukum dan Peradilan*, vol. 13, no. 1, hlm. 45–67, 2024, doi: 10.25216/jhp.13.1.2024.45-67.
- [23] I. Rahmatullah, "Disparity in Sentencing Against Advocates in Indonesia: Minimizing It Through Sentencing Guidelines," *Jurnal Hukum dan Peradilan*, vol. 14, no. 1, hlm. 89–110, 2025, doi: 10.25216/jhp.14.1.2025.89-110.
- [24] K. R. Reitz, *Comparing Sentencing Guidelines: Do the US Systems Have Anything Worthwhile to Offer*. England and Wales: Oxford University Press, 2022. doi: 10.1093/oso/9780192863466.003.0003.
- [25] R. Ristawati dan A. Triningsih, "New KUHAP and Human Rights Protection: Implementation of Pretrial Expansion in Indonesia," *Jurnal Hukum Ius Quia Iustum*, vol. 33, no. 1, hlm. 180–205, 2026, doi: 10.20885/iustum.vol33.iss1.art8.
- [26] M. Rusli, "Prospects of Community Service Criminal Policy as an Alternative to Imprisonment in Indonesia: A Comparative Study Between Countries," *Jurnal Hukum dan Peradilan*, vol. 14, no. 3, hlm. 310–335, 2025, doi: 10.25216/jhp.14.3.2025.310-335.
- [27] G. M. Saputra dan I. G. A. P. D. Yuliantari, "Paradigm of Shifting Imprisonment to Non-imprisonment in Indonesia Criminal System," *Jurnal Magister Hukum Udayana*, vol. 12, no. 2, hlm. 250–270, 2023, doi: 10.24843/JMHU.2023.v12.i02.p04.
- [28] S. Sianturi dan R. Natamiharja, "Criminology and Policy: An Analysis of the Effectiveness of Restorative Justice Approaches on Prison Overcrowding in Indonesia," *Jurnal Hukum dan Peradilan*, vol. 15, no. 1, hlm. 45–70, 2026, doi: 10.25216/jhp.15.1.2026.45-70.
- [29] E. Sutrisno dan M. Fauzan, "The Restorative Justice: Ideality, Reality, and Problems in the Indonesia Criminal Justice System," *Jurnal Dinamika Hukum*, vol. 22, no. 2, hlm. 301–315, 2022, doi: 10.20884/1.jdh.2022.22.2.1234.
- [30] M.-L. Tan, *Structured Sentencing Beyond the US and the UK: A Decision Science Perspective on the Old and New Sentencing Guidelines in England and Wales*. Oxford University Press, 2013. doi: 10.1093/acprof:oso/9780199664368.003.0002.
- [31] S. Watson dan D. Thomas, "Structured Sentencing: Lessons from England and Wales for Common Law Jurisdictions," *Journal of Law and Society*, vol. 39, no. 2, hlm. 210–235, 2012, doi: 10.1111/j.1467-6478.2012.00544.x.