



The Non-Penal Paradigm in Modern Criminal Procedure: A Conceptual Analysis of the Regulation of Actions Beyond the Main Criminal Code in the National Criminal Code

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ABSTRACT

The enactment of the National Criminal Code (Law Number 1 of 2023) introduces a significant conceptual development in Indonesian criminal law through the formal recognition of measures (*maatregel*) as non-penal responses to criminal acts. This study examines the conceptual problem underlying the separation between punishment and measures, questioning whether measures function merely as complementary instruments or represent a paradigmatic reconfiguration of the objectives of criminal law. Using a normative juridical method with statutory and conceptual approaches, this research analyzes the theoretical foundation of measures within the framework of modern penal policy and the dual track system. The study argues that the regulation of measures reflects a structural shift from a retributive orientation toward a model emphasizing correction, rehabilitation, and social protection. Conceptually, measures reposition criminal law as an adaptive mechanism that integrates legal certainty with proportionality and preventive rationality. The novelty of this research lies in clarifying the analytical role of measures as an autonomous conceptual category that reshapes the relationship between culpability, responsibility, and state intervention beyond conventional punitive logic. These findings demonstrate that the new KUHP not only expands judicial discretion but also redefines the function of criminal law in addressing complex social harms.

INTRODUCTION

The development of modern criminal law has shifted from positioning punishment as the sole instrument for addressing crime toward a more comprehensive approach that integrates preventive, rehabilitative, and restorative mechanisms.¹ Conventional criminal justice systems that rely primarily on punitive sanctions such as imprisonment and fines are increasingly considered insufficient to respond to complex social problems. Contemporary criminal law therefore recognizes the need for alternative responses that not only impose punishment but also emphasize social protection, rehabilitation of offenders, restoration of victims' rights, and prevention of future crimes.² This approach is commonly referred to as the non-penal paradigm in modern criminal justice.

¹ Achmad Irwan Hamzani, *Perlunya Reorientasi Sistem Pemidanaan di Indonesia* (Penerbit NEM, 2022), p. 63.

² *Ibid.*

The emergence of the non-penal paradigm is closely related to developments in criminology and victimology, which criticize the traditional criminal justice system for placing excessive emphasis on punishment and state authority while neglecting the recovery of victims and broader social interests.³ Modern criminal policy increasingly views crime as a social phenomenon that requires multidimensional responses, involving not only penal sanctions but also social, administrative, and rehabilitative measures.⁴ In this context, non-penal measures are considered capable of providing more constructive solutions by balancing the interests of perpetrators, victims, and society.

In Indonesia, the reform of criminal law through the enactment of the National Criminal Code (KUHP Nasional) under Law No. 1 of 2023 represents a significant milestone in modernizing the national penal system.⁵ One important reform is the formal recognition of actions (*maatregelen*) as part of criminal law instruments beyond principal punishments. Unlike the previous Criminal Code (*Wetboek van Strafrecht*), which regulated measures in a limited and fragmented manner, the National Criminal Code provides a more systematic framework for the application of actions aimed at rehabilitation, treatment, supervision, and social recovery.⁶ This development reflects a shift from a purely punitive orientation toward a more holistic criminal justice approach that integrates restorative justice principles and preventive objectives.

Globally, the concept of measures beyond principal punishment has long been recognized within modern legal systems, particularly in European jurisdictions that adopt the dual track system separating criminal punishment from treatment-oriented measures.⁷ These measures include rehabilitation programs, psychiatric treatment, confiscation of criminal assets, and other forms of social protection.⁸ The incorporation of similar concepts into the Indonesian National Criminal Code demonstrates an effort to align national criminal law with contemporary developments in modern punishment theory.⁹

Despite this normative development, the regulation of actions outside the principal criminal penalties raises significant conceptual and theoretical issues. The introduction of non-penal measures challenges the traditional understanding of punishment, particularly regarding their legal nature, objectives, and relationship with the principle of legality. Uncertainty remains as to whether such measures should be understood as part of punishment, as administrative instruments, or as an independent category within criminal law policy. The absence of a clear conceptual framework may lead to ambiguity in interpretation and implementation, potentially affecting legal certainty and the protection of human rights.

³ H Siswanto Sunarso, *Viktimologi dalam Sistem Peradilan Pidana* (Sinar Grafika, 2022), p. 140-141.

⁴ Eko Saputra, *Peran Penegak Hukum dalam Sistem Pidana Indonesia* (PT Mafy Media Literasi Indonesia, 2025), p. 7.

⁵ H K M S Herman, Subianta Mandala, and Ananta Vidya, *Pembaruan Hukum Pidana* (Yogyakarta: Ananta Vidya, 2024), p.13.

⁶ Amira Paripurna et al., *Viktimologi dan Sistem Peradilan Pidana* (Yogyakarta: Deepublish, 2021), p. 45.

⁷ Sebastian Nayaka Arella Taufano and Hudi Yusuf, "Reformasi Hukum Pidana untuk Meningkatkan Efektivitas Sistem Peradilan dalam Mengatasi Kriminalitas," *Jurnal Intelek dan Cendekiawan Nusantara* Vol.1, no. No.2 (2024): p. 2495-2509.

⁸ Dijan Widjowati and Cris Kuntadi, "Pengaturan Tindak Pidana Khusus Antara Indonesia dan Belanda," *Jurnal Greenation Sosial dan Politik* Vol.3, No.2 (2025): p. 371-377.

⁹ *Ibid.*

Several previous studies have discussed non-penal approaches in specific contexts, such as digital crime prevention, anti-corruption education, and violence prevention in schools. These studies demonstrate the importance of preventive and rehabilitative strategies in addressing crime. However, existing literature tends to examine non-penal measures only as complementary policy instruments rather than as part of a comprehensive paradigm of modern punishment. There remains limited scholarly discussion that systematically positions non-penal measures as a conceptual framework within the broader structure of Indonesian criminal law reform following the enactment of the National Criminal Code.¹⁰

Furthermore, Mochamad Ramdhan Pratama and Mas Putra Zenno Januarsyah, in their study "Non-Penal Efforts in Eradicating Corruption Crimes," emphasized that social change strategies, particularly through anti-corruption education, have great potential as a means of prevention. Using a criminological and conceptual approach, this study views non-penal efforts as a form of social engineering to instill legal awareness and public morality in eradicating corruption, which has become a systemic disease in Indonesia.¹¹

Research by Faisal and Nursariani Simatupang, in their study "Non-Penal Policy in the Context of Preventing Children as Victims of Physical and Psychological Violence in Schools," highlights a preventive approach to violence against children in the school environment. This study emphasizes that violence is often interpreted as a form of discipline, thus necessitating non-penal policies in the form of education for teachers and students to prevent the perspective of violence from being socially or structurally legitimated.¹²

Based on this research gap, the core problem addressed in this study is the absence of a systematic conceptual framework explaining the position of non-penal measures within modern punishment theory in Indonesian positive criminal law. Although Law No. 1 of 2023 formally recognizes actions outside the principal criminal penalties, questions remain regarding their philosophical foundation, normative construction, and functional role in achieving the objectives of criminal law reform.

Accordingly, this research is guided by the following research questions How are actions outside the principal criminal penalties conceptually regulated in the National Criminal Code (Law No. 1 of 2023)? How can the non-penal paradigm be positioned as a fundamental framework within modern punishment policy? To what extent do non-penal measures reflect the principles of ultimum remedium, restorative justice, and social protection in Indonesian criminal law reform?

This research aims to analyze the conceptual foundation of non-penal measures within the National Criminal Code by positioning the non-penal paradigm as part of modern punishment policy. The study seeks to clarify the theoretical and normative status of actions beyond principal punishment and to evaluate their relevance in strengthening a criminal justice system that is more

¹⁰ Cahya Wulandari, "Kebijakan Kriminal Non Penal dengan Techno Prevention (Analisis Pencegahan Konten Negatif Melalui Internet)," *Pandecta Research Law Journal* Vol.15, No.2 (2020): p. 228-241.

¹¹ Pratama and Januarsyah, "Upaya Non-Penal dalam Pemberantasan Tindak Pidana Korupsi."

¹² Faisal Faisal and Nursariani Simatupang, "Kebijakan Nonpenal dalam Rangka Upaya Preventif Anak sebagai Korban Kekerasan Fisik dan Psikis di Sekolah," *Jurnal Ilmiah Kebijakan Hukum* Vol.15, No.2 (2021): p. 287-304.

adaptive, humane, and oriented toward social justice. By providing a conceptual analysis of the formalization of non-penal measures in Indonesia's positive legal system, this research contributes to the development of modern Indonesian criminal law scholarship, particularly in strengthening the theoretical basis for integrating non-penal instruments into national criminal law reform.

METHODS

This research employs a normative or doctrinal legal research method using statutory, conceptual, and limited historical approaches.¹³ Normative research was selected because the primary objective of this study is to conduct an in-depth analysis of the regulation of non-penal measures within the framework of modern criminalization as stipulated in the National Criminal Code (KUHP Nasional), enacted through Law No. 1 of 2023. The statutory approach is applied to examine the legal provisions governing actions outside the principal criminal penalties (*maatregelen*), while the conceptual approach is used to analyze the theoretical foundations of the non-penal paradigm as part of modern punishment policy.

In addition, a limited historical approach is employed to understand the development of the concept of measures from the old Criminal Code (Wetboek van Strafrecht) to the National Criminal Code, particularly in relation to the transformation of the purpose of punishment from a retributive orientation toward a corrective and preventive model. This approach is relevant because the focus of the study does not rely on empirical data, but rather on the systematic examination of legal norms, doctrines, and concepts related to the development of contemporary criminal law. Comparative and case approaches are not applied in this research because the regulation of measures in the National Criminal Code is relatively new and has not yet generated sufficient judicial decisions to be analyzed comprehensively. Furthermore, the primary aim of this study is conceptual clarification rather than evaluation of legal implementation.

According to Soerjono Soekanto, normative legal research aims to study legal principles, norms and rules systematically, so as to be able to provide legal arguments for a problem.¹⁴ In this context, the non-penal paradigm is positioned as an object of study that is analyzed theoretically and normatively, in order to understand the shift in the paradigm of punishment from a repressive orientation to a more corrective and restorative direction. The legal materials used are Primary Legal Materials, namely the National Criminal Code (Law No. 1 of 2023), the old Criminal Code (Wetboek van Strafrecht), related laws and regulations, and academic texts of the National Criminal Code. Then Secondary Legal Materials are criminal law literature, textbooks, legal journals, scientific articles, previous research results, and opinions of legal experts on modern punishment and non-penal measures, and Tertiary Legal Materials consist of legal dictionaries, legal encyclopedias, and other sources that provide additional understanding of the terms and concepts used in this study.¹⁵ Collection of legal materials is carried out through library research.¹⁶

¹³ Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris dan Gabungan* (Unigres Press, 2023), p. 20.

¹⁴ Iman Jalaludin Rifa'i, *Ruang Lingkup Metode Penelitian Hukum* (Sada Kurnia Pustaka, 2023), p. 6.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

DISCUSSION

The Concept of the Non-Penal Paradigm in the Form of Actions in the National Criminal Code as Modern Punishment

In the Indonesian criminal system which was previously regulated in the old Criminal Code (Wetboek van Strafrecht), criminalization was identical to punishment in the form of principal penalties, such as imprisonment, detention, fines, and even the death penalty as regulated in Article 10 of the old Criminal Code.¹⁷ This approach places more emphasis on the aspect of retributive justice, namely providing appropriate retribution for the criminal acts committed by the perpetrator, a principle that is often associated with the principle of *lex talionis*.¹⁸ This type of criminalization model places the state as the executor of retaliation on behalf of society, and the criminal law approach is more repressive (penal approach).

However, with the development of modern criminal law, this paradigm is deemed inadequate for achieving holistic justice. Criminalization is not merely punitive; it must also consider the protection of the perpetrator, the victim, and society as a whole.¹⁹ This concept is known as the non-penal approach, namely dealing with crime through corrective, preventive, curative and restorative actions outside of the main punishment.²⁰ According to Barda Nawawi Arief and Muladi, this approach is part of a broader and more integral criminal policy, and can include administrative, social, or civil measures to prevent and deal with criminal acts effectively.²¹

Conceptually, the recognition of measures (*maatregelen*) in the National Criminal Code raises a fundamental theoretical question regarding their legal nature within the structure of modern punishment. Classical criminal law traditionally distinguishes punishment as a response based on culpability, while preventive or protective measures are often categorized as administrative or social instruments. However, the formulation of measures in the National Criminal Code indicates an attempt to construct an autonomous normative category that is neither purely punitive nor purely administrative. This demonstrates the evolution of criminal law toward a mixed model that integrates elements of retribution, prevention, and social defense within a single penal framework.

Within modern punishment theory, the existence of measures reflects the transformation of criminal law from a guilt-oriented system toward a risk-oriented and welfare-oriented system. Measures are not imposed solely because of moral blameworthiness, but also because of the need to prevent future harm and protect society from potential risks posed by the offender's condition. In this sense, measures represent a shift from retrospective justice to prospective justice, where the focus of criminal law extends beyond judging past wrongdoing to managing future social risks.

The reform of Indonesia's criminal justice system was marked by the enactment of the National Criminal Code through Law No. 1 of 2023. This new Criminal Code explicitly regulates acts (*maatregel*)

¹⁷ Calvin Calvin and Noor Azizah, "Tinjauan Hukum Pidana Islam terhadap Parameter Pemidanaan Hukuman Mati dalam KUHP Nasional," *Mutawasith: Jurnal Hukum Islam* Vol.7, No.1 (2024): p. 17-39.

¹⁸ *Ibid.*

¹⁹ Rasina Padeni Nasution et al., "Penghapusan Hukuman Mati pada Sistem Peradilan Pidana di Indonesia Atas Lahirnya UU No 1 Tahun 2023 tentang KUHP," *Jurnal Hukum, Politik dan Ilmu Sosial* Vol.3, No.1 (2024): p. 225-232.

²⁰ Ramadhan and Ariyanti, *Loc., Cit.*

²¹ *Ibid.*

as a form of punishment distinct from criminal penalties (*straf*). This embodies the double-track system, a dual sentencing system that allows judges to impose both a penalty and an act, or only an act under certain circumstances.²²

The systematic regulation of rehabilitation, institutional treatment, supervision, diversion for children, and corporate measures demonstrates that the National Criminal Code does not merely add technical sentencing options, but constructs a normative structure that recognizes the diversity of offender conditions. The expansion of measures to children and corporations further confirms that modern criminal law no longer focuses exclusively on individual culpability, but also addresses structural and social dimensions of crime.

With the more systematic and comprehensive provisions in the National Criminal Code, the concept of punishment is no longer an adjunct to punishment, but rather an integral part of the penal system itself. The distinction between punishment and punishment is that punishment is imposed to provide retribution for the perpetrator's wrongdoing, while punishment is intended to provide protection, guidance, and rehabilitation, even in situations where the perpetrator cannot be held criminally accountable.²³ Philipus M. Hadjon stated that criminal law is repressive and based on the principle of guilt, whereas actions do not always require guilt in the legal sense.²⁴ This shows that the action is a form of preventive legal response to the social or psychological conditions of the perpetrator that have the potential to cause harm to society, without having to wait for the criminal act to occur.²⁵

The non-penal paradigm in the National Criminal Code reflects the development of criminal law that is more civilized, just, and oriented toward utility. As emphasized by Lilik Mulyadi, this approach is the implementation of an integral and sustainable criminal policy that combines prevention, law enforcement, and social recovery within a modern criminal law system that is responsive to societal developments.²⁶ Thus, the National Criminal Code not only revises old criminal law norms but also introduces a new spirit, positioning criminal law as an instrument of protection, not merely punishment. This measure, as part of a modern penal system, is not intended to weaken criminal sanctions, but rather to expand the space for adaptive and solution-oriented justice to address the complexities of today's social problems.

Therefore, measures in the National Criminal Code should not be understood merely as complementary sanctions, but as part of a conceptual redefinition of punishment itself. The separation between punishment (*straf*) and measures (*maatregel*) reflects the emergence of a dual functional structure of criminal law: punishment serves as a moral response to wrongdoing, while measures function as instruments of social protection and behavioral correction. This confirms that

²² Jarot Yusviq Andito, Alpi Sahari, and T Erwinsyahbana, "Perlindungan Hukum Korban Penyalahgunaan Narkotika Melalui Double Track System," *Legalitas: Jurnal Hukum* Vol.14, No.1 (2022): p. 1-10.

²³ Saputra, *Loc., Cit.*

²⁴ Safrin Salam et al., "Analisis Hukum Tinjauan Kriminologi Terhadap Tindak Pidana Kekerasan Seksual di Kabupaten Buton Tengah," *PUSKAPSI Law Review* Vol.5, No.1 (2025): p. 194-206.

²⁵ Junaidy Andasia, Roy Marthen Moonti, and Ibrahim Ahmad, "Implementasi Fungsi Preventif dan Represif dalam Patroli Kepolisian di Tingkat Polsek," *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* Vol.2, No.2 (2025): p. 327-343.

²⁶ Chandra Matdung, Fauzie Yusuf Hasibuan, and Lilik Mulyadi, "Formulation of Criminal Law Policy Against Influence Trading as A Criminal Act of Corruption," *Jurnal Indonesia Sosial Sains* Vol.5, No.2 (2024): p.165.

the modern penal system is no longer exclusively retributive, but integrative in nature.

The Urgency of the Concept of Action Based on the National Criminal Code in Criminal Law Enforcement

The urgency of non-penal measures should not be understood solely in empirical terms, such as prison overcrowding or institutional limitations, but primarily in conceptual terms. The modern penal system increasingly recognizes that punishment based exclusively on proportional retaliation cannot adequately address criminogenic factors rooted in social inequality, psychological vulnerability, or structural risks. Consequently, measures represent a theoretical response to the limitations of classical deterrence theory, by introducing corrective and preventive rationality into the penal framework.

The transformation of Indonesia's penal system requires not only policy changes but also a fundamental reformulation of the criminal law paradigm itself. The dominant retributive paradigm has demonstrated various structural and functional weaknesses, both in terms of preventive effectiveness and reintegrative capacity.²⁷ In this context, the non-penal approach is not only relevant, but urgent as a new direction for modern criminalization in Indonesia, especially as accommodated in Law Number 1 of 2023 concerning the National Criminal Code (KUHP Nasional).

Overcrowding in correctional institutions illustrates the practical limitations of a punishment system that relies predominantly on imprisonment. Data from the Directorate General of Corrections shows that prison capacity in many regions has been exceeded,²⁸ creating conditions that undermine human dignity and reduce the effectiveness of rehabilitation, while simultaneously increasing the risk of recidivism. Muladi argues that an undifferentiated repressive approach may transform prisons into "schools of crime," where offenders reinforce criminal networks rather than reform their behavior.²⁹ From a conceptual perspective, this empirical condition confirms the need for diversification of penal responses through non-penal measures (*maatregelen*) as regulated in Article 103 of the National Criminal Code, not merely as a technical alternative to punishment, but as part of a broader framework oriented toward social protection and offender reintegration.

Theoretically, this approach is also supported by Marc Ancel, who emphasizes the importance of integrating punishment and social efforts. In his theory of the new social defense, Ancel states that the penal system must be preventive, protective, and resocializing.³⁰ Barda Nawawi Arief expressed a similar sentiment, emphasizing that criminalization in the Indonesian context cannot be separated from local values and the objective conditions of the national legal system.³¹ Therefore, actions as an alternative or additional form of the main punishment must be placed within the framework of

²⁷ Hastuti, Sriwidodo, and Basuki, *Loc.*, *Cit.*

²⁸ Wildan Fauzi Muchlis, "Dampak Over Kapasitas Pada Lapas," *OBMBUDSMAN Republik Indonesia*, March 28, 2023, <https://ombudsman.go.id/artikel/r/pwkinternal--dampak-over-kapasitas-pada-lapas>.

²⁹ Abdul Aziz Muhammad, "Ancaman Pidana Mati dalam Prespektif Tujuan Pemidanaan," *Al-Qisth Law Review* Vol.7, No.1 (2023): p. 1-19.

³⁰ Timothy Watupongoh, "Perlindungan Hukum atas Korban Pemerkosaan dalam Proses Penegakan Hukum Pidana," *Lex Privatum* Vol.9, No.8 (2021): p. 17.

³¹ Ramadhan and Ariyanti, *Loc.*, *Cit.*

corrective and humanistic justice.

The National Criminal Code explicitly promotes a double-track system, where the principal penalty can be imposed simultaneously with certain actions (Article 103 paragraph (1)). These actions include counseling, rehabilitation, job training, institutional care, and reparations for the consequences of the crime. This reflects the idea that punishment cannot be uniform, but must be tailored to the personal and social conditions of the perpetrator. On the other hand, Article 103 paragraph (2) opens up space for the application of actions against legal subjects who are physically or mentally incapable of being punished, such as people with mental and intellectual disabilities, as detailed in Articles 38 and 39. In this context, actions such as rehabilitation, surrender to someone, or treatment in a mental hospital are concrete forms of the principle of penal substitution that is oriented towards care, not retribution.³²

Within this framework, the National Criminal Code also reflects significant developments. As Tony Marshall put it, restorative justice is a process in which all parties involved in an offense come together to collectively address the consequences of the offense and its future implications.³³ The Criminal Code now opens up avenues for resolution through restitution, peace, and reconciliation, particularly in minor criminal cases. As noted by Lilik Mulyadi, this approach marks a shift from state-centered punishment to victim-offender-community reintegration, which is more participatory and contextual.³⁴

Furthermore, the modern penal system requires an individualized approach (individualisering van de straf), namely a system that takes into account the complexity of the perpetrator's motivations, social background, and psychological condition.³⁵ For example, for criminals driven by substance addiction, mental illness, or psychosocial stress, rehabilitation is far more appropriate than imprisonment. According to Sudarto, ideal punishment should take into account the perpetrator's personality, motives, and the level of danger of their actions.³⁶ Articles 105 to 110 of the Criminal Code regulate various forms of treatment, including medical and psychosocial rehabilitation, job training, and treatment in mental institutions and hospitals. These provisions reflect the spirit of not treating all perpetrators equally, but rather prioritizing the principle of a treatment-based approach.³⁷ especially for perpetrators who experience mental disorders or dependence on addictive substances.

Furthermore, the National Criminal Code also addresses responses to child perpetrators and corporations as subjects of criminal law. Article 113 regulates diversionary measures for children, with various alternatives such as return to parents, care, formal education, and training. Meanwhile,

³² Antonius Aditya Pratama, "Kewajiban Rehabilitasi Bagi Pecandu Narkotika Berdasarkan Putusan Hakim," *Jurnal Hukum, Politik dan Ilmu Sosial* Vol.1, No.1 (2022): p. 13-28.

³³ Gholin Noor Aulia Sari et al., "Tinjauan Filosofis Keadilan Restoratif dalam Lensa Teori Keadilan," *Hukum dan Politik Dalam Berbagai Perspektif* Vol.3, No.1 (2024): p. 7.

³⁴ Matdung, Hasibuan, and Mulyadi, *Loc., Cit.*

³⁵ Muladi, *Loc., Cit.*

³⁶ Petrus Meirio Mamoh, "Paradoks Pidana Denda dan Kurungan Pengganti dalam Tindak Pidana Korupsi," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* Vol.4, No.3 (2025): p. 370-383.

³⁷ Rifkah Mufida, "Penerapan Prinsip National Treatment dalam Kasus Sengketa Impor Daging Ayam Antara Brasil dengan Indonesia," *Justitia et Pax* Vol.38, No.1 (2022): p. 40.

Article 123 regulates actions against corporations as perpetrators of criminal acts, including takeovers, supervision, and corporate guardianship. This emphasizes the expansion of the scope of non-penal measures beyond individual perpetrators to modern legal entities, in line with the increasingly complex dynamics of corporate crime. According to Eddy OS Hiariej, the reform of the Criminal Code by including corporations as subjects in the criminal accountability system marks a significant advancement in modern Indonesian criminal law, which has been overly anthropocentric and neglectful of structural crimes.³⁸

Therefore, the non-penal paradigm represents a systemic response to the multidimensional crisis in Indonesia's penal system. This approach is theoretically rooted in the principles of correctionalism, rehabilitative justice, and restorative integration, and has gained strong normative legitimacy in the National Criminal Code.³⁹ Placing criminal justice as an integral part of the penal system is not merely symbolic, but rather represents a concrete adaptation of national criminal law to contemporary legal theory that is more humane, contextual, and evidence-based. From a public policy perspective, this represents a progressive step toward substantive and sustainable criminal law reform.

From a conceptual perspective, the integration of measures within the penal system reflects the principle of functional differentiation in modern criminal law. Punishment is no longer expected to simultaneously achieve retribution, deterrence, rehabilitation, and social restoration, as these objectives often operate with different rationalities. Measures therefore function as specialized instruments designed to address criminogenic needs that cannot be effectively resolved through imprisonment alone. This indicates that modern punishment is characterized by diversification rather than uniformity.

Criticism and Challenges of Implementing Actions in the National Criminal Code

Although the non-penal paradigm has gained normative legitimacy in the National Criminal Code as part of a more progressive reform of the penal system, its implementation still presents significant challenges. Criticism of the application of the concept of action (*maatregelen*) in the Indonesian criminal law system arises from various normative, structural, and cultural dimensions, which collectively hinder the actualization of the non-penal paradigm as a primary instrument in modern penal law.

Conceptually, the main challenge in implementing measures lies in maintaining the balance between flexibility and legal certainty. Because measures are not always based on culpability, their application risks expanding state intervention beyond the traditional limits of criminal law. This raises concerns regarding the potential erosion of the principle of legality and proportionality, particularly if measures are applied without clear criteria. Therefore, the conceptual legitimacy of non-penal measures depends on the ability of the legal system to clearly define their objectives, limits, and

³⁸ Ika Oktaviani Oktaviani and Agusmidah Agusmidah, "Pembaharuan Hukum dan Rasa Keadilan Masyarakat yang Religius: Pengaturan Tindak Pidana Zina dalam KuHP Terbaru," *Law Jurnal* Vol.3, No.2 (2023): p. 183-193.

³⁹ Bisdan Sigalingging, *Loc., Cit.*

safeguards.

One fundamental criticism that deserves attention is the unclear norms regarding the types of crimes that can be subject to punishment. Article 104 of the Criminal Code states that in imposing punishment, judges must consider the provisions of Articles 51 to 54. However, these four articles only provide general guidelines regarding sentencing parameters (standards of sentencing), such as the severity of the consequences of the crime, the perpetrator's motivation, and the perpetrator's level of responsibility. There are no explicit provisions in the National Criminal Code that categorically regulate which crimes are worthy of punishment and which are not. This lack of clarity creates ambiguity that risks eroding the principle of legality (*nullum crimen sine lege, nulla poena sine lege*), a fundamental principle of modern criminal law.⁴⁰

According to Surachman, the ambiguity of norms in regulating actions has the potential to create inconsistencies in judicial practice, where judges have too much interpretative discretion without rigid normative guidance.⁴¹ This not only opens up room for excessive subjectivity but can also lead to inequities in sentencing for similar types of offenses. In this context, the lack of a catalog of crimes that are or are not subject to prosecution constitutes a systemic gap requiring further regulatory correction.

In addition to normative weaknesses, institutional capacity to support the implementation of interventions also poses a serious structural challenge. Implementing interventions such as rehabilitation, job training, and institutional care requires adequate social and institutional infrastructure. However, in practice, many regions in Indonesia lack adequate supporting facilities. Sajira's thesis reveals that most rehabilitation institutions, halfway houses, and development centers in the regions still face budget constraints, a shortage of professional staff, and weak inter-agency coordination.⁴² This inequality creates a gap between norms and reality, where actions only become ideal choices on paper, without strong applicative power in the field.

Furthermore, the implementation of measures also depends heavily on the perceptions and paradigms of law enforcement officials, which to date remain dominated by a punitive orientation. Satjipto Rahardjo emphasized that legal reform cannot succeed without a shift in the legal culture of law enforcement itself.⁴³ In many cases, police, prosecutors, and even judges still view imprisonment as the only concrete form of justice. This attitude often leads to the punishment being perceived as "light punishment" or "lenient discretion," poorly reflecting society's sense of justice. In fact, in modern criminal justice concepts, it is designed as a more proportionate, rehabilitative, and contextual intervention.

Another challenge that cannot be ignored is the lack of technical guidelines (judicial guidelines/technical guidelines) and the lack of sufficient jurisprudence regarding the

⁴⁰ Calvin and Azizah, *Loc., Cit.*

⁴¹ Surachman, *Peran Jaksa dalam Sistem Peradilan Pidana di Kawasan Asia Pasifik* (Sinar Grafika, 2022), p. 32.

⁴² Sajira Sajira, "Pembinaan Anak Jalanan di Rumah Singgah Dinas Sosial Kota Palu" (Universitas Islam Negeri Datokarama Palu, 2023).

⁴³ William Chandra and Marcellius Kirana Hamonangan, "Hukum sebagai Alat Rekayasa Sosial: Gagasan Roscoe Pound dan Relevansinya bagi Reformasi Hukum di Indonesia," *Jurnal Hukum Lex Generalis* Vol.5, No.10 (2024): p. 15.

implementation of these measures. This leaves judges uncertain about imposing sanctions, particularly for crimes not explicitly designated as minor or special offenses. In this regard, the development of implementing regulations that clarify the indicators for imposing sanctions, the classification of crimes, and the evaluation scheme for the success of these measures is an urgent need to support the principle of legal certainty and the effectiveness of norm enforcement.

To strengthen the effectiveness of the non-penal paradigm in the national criminal justice system, it is necessary to develop recommendations that are not only normative but also concrete and based on best practices that have been implemented in various countries. Although normatively, the National Criminal Code already accommodates non-penal approaches in the form of measures, such as rehabilitative, educational, and corrective measures outside of the main criminal penalties, their success is largely determined by the readiness of the legal and social systems that support them. In this context, policy reformulation must be directed at establishing clear legal instruments regarding the limits and mechanisms for implementing these measures, strengthening institutional capacity, and internalizing progressive legal values among law enforcement officials.

One concrete solution that can be used as a reference is the implementation of conditional cautioning in the UK, where prosecutors are given the authority to offer non-penal alternatives to perpetrators of minor crimes.⁴⁴ Under this scheme, offenders are not immediately brought to the formal justice process but are instead required to participate in training programs, rehabilitation programs, or victim restitution. This policy has proven effective in reducing recidivism rates and easing the burden on correctional institutions. This model provides an important lesson: the success of the non-penal paradigm depends heavily on integrating the justice system with social programs that support offender recovery and community protection.

Similarly, the Netherlands has long implemented the Het ALternatief (HALT) program, which is a social or educational action program for young offenders who violate minor laws.⁴⁵ Police and prosecutors have the discretion to refer offenders to this program without having to go through the conventional judicial process. This program is not only effective in preventing the criminalization of juveniles but also instills the value of social responsibility from an early age. Based on this example, Indonesia can design similar programs tailored to local characteristics, particularly within the context of customary law and Indonesian social values.

As a concrete step, regulators can draft Government Regulations derived from the National Criminal Code that detail the forms of non-penal measures, crimes that fall under these categories, indicators for their implementation, and procedures for evaluating their effectiveness. Furthermore, transforming the paradigm of criminal justice is also an essential aspect. Law enforcement must be able to move beyond a retributive mindset focused solely on punishment, toward a reintegrative approach that emphasizes restoration and reconciliation. Therefore, a national campaign is needed to encourage a paradigm shift in legal education institutions, law enforcement training, and

⁴⁴ Rian Prayudi Saputra, "Perbandingan Hukum Pidana Indonesia dengan Inggris," *Jurnal Pahlawan* Vol.3, No.1 (2020): p. 47-61.

⁴⁵ Jamin Ginting, "Sanksi Kerja Sosial sebagai Alternatif Bentuk Pemidanaan dalam Sistem Hukum di Indonesia," *Law Review* Vol.19, No.3 (2020): p. 247.

community outreach. Without this paradigm shift, non-penal policies will remain ineffective legal texts in practice.

Thus, the success of the non-penal paradigm is not solely determined by its presence in legislation, but also depends heavily on the design of applicable derivative policies, institutional readiness, and profound changes in legal culture. Without fulfilling these requirements, non-penal measures will remain merely normative instruments that lose their substantive relevance in shaping a just, humane, and adaptive penal system to the challenges of the times.

Ultimately, the debate on non-penal measures reflects a broader theoretical transformation in modern criminal law, namely the shift from a monolithic concept of punishment toward a pluralistic model of social defense. The success of this paradigm depends not only on institutional readiness but also on conceptual clarity regarding the normative boundaries between punishment, prevention, and social regulation. Without such clarity, the non-penal paradigm risks becoming an indeterminate category that weakens legal certainty rather than strengthening justice.

CONCLUSION

The reform of Indonesian criminal law through the enactment of the National Criminal Code (Law No. 1 of 2023) signifies not merely a technical expansion of sentencing options, but a deeper conceptual transformation in the philosophy of punishment. The recognition of non-penal measures (*maatregelen*) within the double-track system reflects an effort to reconstruct the structure of modern punishment by introducing a normative category that operates beyond the traditional retributive logic of criminal sanctions. In this framework, punishment is no longer exclusively oriented toward retrospective blame for wrongdoing, but also toward prospective protection of society through corrective, preventive, and rehabilitative interventions.

This study demonstrates that non-penal measures conceptually function as an integrative mechanism bridging the principles of culpability with the social function of criminal law, thereby positioning modern punishment as a pluralistic system that accommodates both moral accountability and social defense. The incorporation of measures applicable to individuals, children, and corporations indicates that the National Criminal Code recognizes the complexity of contemporary legal subjects and the limitations of a uniform punitive response. Consequently, the non-penal paradigm should be understood as part of a broader rationalization of criminal law, in which the objectives of justice are pursued through differentiated legal responses proportionate to the nature of harm, the condition of the offender, and the needs of social protection.

However, the conceptual legitimacy of non-penal measures ultimately depends on the clarity of their normative boundaries and the consistency of their interpretation within legal practice. Without a coherent operational framework, the expansion of measures risks generating uncertainty regarding the limits of criminal law intervention and the relationship between punishment, prevention, and administrative regulation. Therefore, the significance of the non-penal paradigm lies not only in its formal recognition in legislation, but in its capacity to redefine punishment as a balanced instrument of legal policy that harmonizes legal certainty, justice, and social utility. In this

sense, the National Criminal Code reflects an ongoing transition toward a modern penal system that is more adaptive, contextual, and oriented toward substantive justice, while still requiring continuous theoretical clarification to ensure that the development of non-penal measures remains consistent with the fundamental principles of criminal law.

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