Research Article

The Dynamics of the System of Punitive Measures in the Reform of Indonesian Criminal Law The Transformation of the System of Punitive Measures in Indonesia's New Criminal Code

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ABSTRACT

This research is motivated by the status of measures under Article 103(1) of the 2023 Criminal Code, which treats measures as provisions that may only be imposed alongside principal criminal sanctions, thereby contradicting the principle of equivalence between criminal sanctions and measures. The objective of this study is to propose how the provisions regarding administrative sanctions in Law No. 1 of 2023 on the Criminal Code (KUHP 2023) should be strengthened to align with the doctrine of the double-track system. The methodology employed is a normative legal approach, utilising both historical and conceptual perspectives. The research findings indicate that the 2023 Criminal Code has not yet fully implemented the double track system, as the wording of Article 103(1) places measures in a subordinate position to criminal sanctions, thereby hindering the realisation of rehabilitative justice within the Indonesian criminal justice system. Furthermore, Indonesia has yet to issue government regulations providing further guidance on the implementation of measures as mandated by the 2023 Criminal Code. The conclusion that can be drawn is that the wording of Article 103(1) of the 2023 Criminal Code must be revised by removing the phrase that positions measures merely as a supplement to the principal criminal sanction, and Indonesia needs to immediately enact government regulations to ensure the independent application of measures within the national penal system.

Keywords: Criminal Sanctions; 2023 Criminal Code; Double Track System

A. INTRODUCTION

The reform of criminal law is an inevitable process to ensure that legal provisions are capable of protecting society whilst rehabilitating offenders. Indonesian criminal law currently refers to Law No. 1 of 2023 on the Criminal Code (KUHP 2023), which replaces Law No. 1 of 1946 that enacted the Wetboek van Strafrecht (KUHP/WVS) as a legacy of Dutch colonial law in the Dutch East Indies (Nugraha et al., 2025). Although the 2023 Criminal Code is generally in line with Indonesia's national interests, a series of provisions regarding criminal sanctions and measures as set out in Articles 65, 66, and 103 of the 2023 Criminal Code still require further updating. These provisions indicate that the 2023 Criminal Code generally incorporates the concept of a double-track system, yet this concept has not

been fully implemented (Sabadina, 2025). This is reflected in the wording of Article 103(1) of the 2023 Criminal Code, which positions administrative measures as a secondary provision to criminal sanctions.

The double-track system requires that criminal sanctions and administrative sanctions be treated as equals, as both are equally important within the penal system (Widyawati et al., 2024). This system accommodates the elements of condemnation, suffering, and rehabilitation simultaneously, so that the deterrent effect and the rehabilitation process for offenders can proceed as intended (Firmansyah & Armin, 2021). The provisions in the 2023 Criminal Code differ from the criminal provisions in the Criminal Code/WVS as follows. Article 10 of the Criminal Code/WVS does not recognise the double-track system at all, as it only contains criminal sanctions in the form of principal and additional penalties without regulating measures (Amdani & Krisna, 2019).

The classification of measures as provisions that can only be imposed alongside criminal sanctions hinders Indonesian criminal law in achieving its objective of rehabilitating offenders. Criminal sanctions prioritise retribution, whereas measures prioritise rehabilitation (Maharani & Arsawati, 2025). The dominance of criminal sanctions over measures makes Indonesian criminal law more oriented towards retributive justice and sidelines rehabilitative justice. This dominance inevitably leads to practical problems in the form of overcrowding in correctional institutions (Yofarrel, 2025).

Discussions regarding the determination of criminal sanctions in criminal law relate to four aspects. These aspects comprise: the definition of prohibited acts; the establishment of criminal sanctions; the imposition of penalties on legal subjects; and the enforcement of penalties, all of which form an integral part of the criminal justice system (Arief, 2017). Based on this description, there is a gap between the provisions in the 2023 Criminal Code and the ideal of a double-track system that should be realised (Ayu et al., 2026). This ideal is further elaborated in the Gap Analysis and Issues section of this article.

This study applies two main theoretical frameworks: the concept of the ‘double track system’ by Barda Nawawi Arief and the ideas regarding various types of sanctions and measures by Eddy O.S. Hiariej. Firstly, this study applies Arief’s perspective on the double track system as one of the ten fundamental concepts of the penal system. The double track system places criminal sanctions (punishment) and measures (action) on an equal footing (Arief, 2022). This concept relates to the idea of an integrated policy, namely the integration of crime prevention with aspects of development covering the political, economic, social and cultural spheres. This integration aims to balance social welfare with social defence, and to link a policy-based approach with humanistic values and justice, in line with Priamsari’s (2022) perspective.

Secondly, this study applies Hiariej's perspective on the objectives of criminal sanctions and various types of corrective measures. Hiariej argues that the purpose of imposing criminal sanctions and measures is to prevent the commission of criminal acts and to protect society, to rehabilitate convicts so they may become productive members of society after serving their sentences, to restore balance and bring a sense of peace to society, and to alleviate the convict's sense of guilt (Hiariej, 2016). This article argues that these objectives cannot be fully achieved as long as Indonesian criminal law prioritises retributive criminal sanctions. Referring to Article 103 of the 2023 Criminal Code, Hiariej (2016) states that all available measures, ranging from counselling and rehabilitation to vocational training and institutional care, may be imposed alongside criminal sanctions. This view is consistent with that of Roeslan Saleh in his 1983 book Stelsel Pidana Indonesia, as explained by Sabadina (2025). Sabadina (2025) states that these measures are essentially non-retaliatory sanctions aimed solely at specific prevention and the protection of society.

There is a significant gap between das sollen and das sein in the regulation of sanctions for administrative offences in the 2023 Criminal Code. From a normative perspective, the 'double-track system' doctrine developed by Arif (2022) requires criminal and administrative sanctions to be treated equally, in line with the objectives of criminal punishment set out in Article 51 of the 2023 Criminal Code. These objectives include preventing criminal offences, protecting society, rehabilitating offenders and resolving conflicts arising from criminal offences (Hartanto, Utari & Arifin, 2019). However, in practice, the wording of Article 103(1) of the 2023 Criminal Code states that measures may only be imposed 'in conjunction with the principal penalty', which subordinates them to criminal sanctions and renders them supplementary rather than standalone. This discrepancy is the primary reason for this research, which aims to propose a revision to the wording of Article 103(1) of the 2023 Criminal Code, so that measures are no longer treated as secondary to criminal sanctions. The research also aims to encourage the formulation of government regulations that further govern the application of measures, as mandated by the 2023 Criminal Code (Laputigar, Suhadi & Rodiyah, 2024). The uniqueness of this research lies in its specific focus on proposing concrete legislative changes, namely the removal of the phrase that limits measures to merely being a complement to criminal sanctions, whilst simultaneously offering the necessary regulatory framework. This proposal is put forward to fully realise a double-track system within the Indonesian criminal justice system, with the ultimate aim of strengthening Indonesian criminal law as an instrument that rehabilitates offenders whilst protecting society.

The first relevant study is the research by Maharani and Arsawati (2025), which specifically

examines the legal analysis of the regulation of behavioural sanctions in efforts to address the issue of overcrowding in Indonesian prisons (Maharani & Arsawati, 2025). This study shares similarities with the article under review in terms of its focus on sanctions and their relevance to the Indonesian penal system. The difference lies in the approach employed. Maharani and Arsawati's study focuses more on the issue of overcrowding as the starting point for analysis, whereas this article focuses on the issue of the double-track system doctrine and proposes a concrete normative revision to the wording of Article 103(1) of the 2023 Criminal Code.

Richi's (2023) paper also talks about how the double-track system for drug offenders could be used as a way to change the criminal justice system. Richi's (2023) research is pertinent to this subject since both investigate the implementation of the double track system in Indonesian criminal law. Richi's research is only about drug crimes and the laws that apply to them, while this article looks at the double track system more broadly in the context of the 2023 Criminal Code, which is Indonesia's main criminal law.

Unlike these studies, Sabadina's (2025) research examines sanctions for illegal conduct in Indonesian criminal law via the lens of relative theory. This study is important because it uses a theoretical framework that is comparable to the one used in the article being reviewed, especially when it comes to the idea that punishment should help people get better (Sabadina, 2025). The main difference is that Sabadina's research uses the theoretical perspective as an analytical tool, while this article focuses more on the legislative side by suggesting changes to Article 103(1) of the 2023 Criminal Code and the creation of rules for putting those changes into action.

Another important study is Alviolita and Arief's (2019) research, which looks at how Indonesian criminal law is being reformed by looking at how policies are made for criminal crimes (Alviolita & Arief, 2019). Its relevance to this article lies in the fact that both studies examine the reform of Indonesian criminal law from the perspective of policy formulation. The difference is that Alviolita and Arief's study focuses on the criminalisation of specific acts, whereas this article focuses on sanctions and measures as instruments of punishment in the 2023 Criminal Code.

The fifth relevant study is the analysis by Makaminan & Soponyono (2021), which discusses the urgency of enacting the Criminal Code Bill within the framework of criminal law policy. This study is closely related to the article under review as both discuss the reform of Indonesia's national criminal law (Makaminan & Soponyono, 2021). The main difference is that this earlier study focuses on the legislative process and the urgency of enacting the Criminal Code in general, whereas this article focuses on a normative evaluation of a specific provision in the 2023 Criminal Code that is already in force, namely Article 103(1), and proposes its

adjustment in line with the double-track system doctrine.

Based on a review of the five previous studies mentioned above, the novelty of this article lies in two main aspects. Firstly, this article specifically proposes a revision to the wording of Article 103(1) of the 2023 Criminal Code by removing the phrase that treats the act merely as a provision that may be imposed alongside the principal criminal sanction. Second, this article advocates for the establishment of government regulations as implementing instruments of the 2023 Criminal Code capable of ensuring the full application of the double track system within the Indonesian criminal law system. These two ideas have not been explicitly raised by the previous studies reviewed in this article.

B. RESEARCH METHODS

This prescriptive study was conducted to address the issue of how the provisions regarding offences under Article 103 of the 2023 Criminal Code should be revised to ensure the protection and rehabilitation of offenders. Based on the background of the issue and the research objectives, this article was written using a normative legal methodology. This method was applied by utilising legislation, legal doctrine, and other legal documents (law on the books) relevant to the research problem. The study is supported by a legal-historical approach, which involves analysing a series of provisions in the Criminal Code (KUHP)/WVS and the 2023 Criminal Code (KUHP) concerning criminal sanctions and measures. Furthermore, this study is also supported by a conceptual approach, carried out by applying expert opinions regarding the double-track system and the theory of purpose.

This normative study was conducted by applying the criminal law principles in force in Indonesia, encompassing both primary and secondary legal materials. These legal materials were combined with the opinions of legal experts and academics relevant to the issues under investigation. The primary legal materials applied in this study are criminal laws, namely the 2023 Criminal Code and the Criminal Code/WVS. Furthermore, the secondary legal materials applied in this study are books and journal articles that provide an understanding of the double-track system and the theory of purpose (relative theory) in criminal law.

C. RESULTS AND DISCUSSION

1. The Application of the Double Track System Theory Regarding Penalties and Measures under the 2023 Criminal Code

The theory applied in this study suggests that criminal sanctions and measures are two types of regulation that are difficult to distinguish. Criminal sanctions are a form of regulation rooted in the question of why punishment is imposed. Measures, on the other hand, stem from the question of for what purpose punishment is imposed. Criminal sanctions are thus a form of regulation that is more reactive to a criminal

offence (Ajil, 2022). Measures, on the other hand, are a form of regulation aimed at preventing recurrence and protecting society (Makhali et al., 2021). Discussions regarding criminal liability and the application of criminal sanctions and measures also encompass the issue of corporations as perpetrators of criminal offences, which is relevant to the reform of Indonesian criminal law (Rifai, 2014).

Issues regarding the application of measures relate to the function of criminal law as a protector of society (Padang, Siregar, & Rosmalinda, 2024); (Tomlin, 2020). The objectives of criminal law relating to the existence of society can be divided into the following four main aspects: 1.) Protection of society from acts that may harm or endanger society; 2.) Protection from the dangerous nature of offenders and the rehabilitation of offenders; 3.) Protection of society from the abuse of sanctions or arbitrary reactions by law enforcement officials or members of the public; and 4.) Protection of society from the disruption of the balance of interests and values caused by crime (Padang, Siregar, & Rosmalinda, 2024). The reason why the provisions of Article 103 of the 2023 Criminal Code need to be reformulated is, in principle, related to the aspect of behavioural rehabilitation to protect the public from a series of disturbances.

Various types of criminal offences, including violence against women, highlight the urgent need to apply rehabilitative measures as an alternative to prison sentences alone (Jhony, 2011); (Venturi, 2025). Victim protection, as part of the protection of society, is a relevant objective in various contexts of criminal law enforcement (Wicaksono & Lestari, 2020). Developments in line with the dynamics of the times have led to updates in criminal law regarding the core issues of this field.

Normatively, issues in criminal law encompass what acts are punishable, acts that contravene the principles of criminal law, and the sanctions or measures that should be imposed (Corda, 2025). This study takes the view that the reform of Indonesian criminal law must be carried out by referring to these three key issues so that these legal principles can be reformed in accordance with the socio-political, socio-philosophical, and socio-cultural values of Indonesian society. These values can serve as the foundation for Indonesia’s social policy, criminal policy, and criminal law enforcement policy (Barasa & Saputra, 2025). Such a reform of criminal law is, of course, not merely focused on legislative technicalities, but is also oriented towards the humanistic values that are alive within Indonesian society.

Legal culture reform is a vital component of broader reform of Indonesia's criminal justice system. This reform is necessary because the ideal function of criminal law, which includes sanctions and criminal actions, aims to encourage and ensure compliance with the 2023 Criminal Code and other laws and regulations containing sanctions and criminal actions (Hanik & Wahidah,

2025). This view of the ideal function of criminal law aligns with the principle of "in cauda venenum" (in the tail there is poison) (Gregorio, Kusumastuti, & Kesuma, 2024). If these criminal sanctions are not applied proportionally, criminal law may fail to achieve order in society (Maharani & Arsawati, 2025); (Mears & Stafford, 2025).

Recent developments indicate that the application of imprisonment as a form of criminal sanction and a last resort (ultimum remedium) has not yielded satisfactory results in accordance with the intended purpose of criminal punishment. The intended purpose is, of course, to rehabilitate convicted criminals (Arafat, 2025).

Rahman et al. (2024) assert that criminal law functions as an instrument to address legal violations that cause harm to the public interest. This legal instrument is particularly necessary when administrative offences escalate into acts constituting criminal offences (Freiberg, 2025). The lack of a sufficient deterrent effect from criminal sanctions in the form of imprisonment can be seen in the overcrowded conditions of correctional institutions (Hidayat & Andriyansa, 2025). This fact indicates that the provisions in Articles 65, 66, and 103 of the 2023 Criminal Code constitute important regulations governing criminal sanctions and measures. These measures should be integrated into the framework of the double-track system, as explained in the theoretical foundation of this article. Consequently, the hierarchical relationship between the criminal sanctions under Article 65 and the measures under Article 103 needs to be redefined.

Efforts to reform criminal law, as discussed in this article, are an endeavour that must be pursued on an ongoing basis (Barasa & Saputra, 2025). The proposal put forward in this article is a reform of the wording of Article 103(1) of the 2023 Criminal Code. This provision should not contain a phrase requiring the measure to be imposed concurrently with a criminal sanction. Through this reformulation, Indonesian criminal law will be able to prioritise the rehabilitation of offenders and protect society. This reformulation would also help prevent overcrowding in correctional institutions, as such measures need not be imposed concurrently with the principal criminal sanction of imprisonment or other principal penalties (Henham, 2022). This perspective is grounded in the policy of criminal liability formulation, which constitutes a crucial aspect of the development of Indonesia's criminal justice system.

2. Policy Measures in Positive Criminal Law

The concept of the double-track system is the antithesis of the single-track system that emerged in the 19th century. This approach arose from a synthesis of modern and classical schools of thought, granting equal recognition to criminal sanctions and administrative sanctions (Rohman & Sugiharto, 2023). Criminal sanctions and administrative sanctions are two types of punishment rooted in different underlying principles. Criminal sanctions stem from the fundamental idea of why punishment is imposed.

Meanwhile, non-criminal sanctions stem from the fundamental idea of the purpose for which punishment is imposed. Criminal sanctions are reactive in nature, whilst non-criminal sanctions are more anticipatory towards the perpetrator of the act (Sakdiyah, Setyorini, & Yudianto, 2021). Research on the double-track system in Indonesian criminal law had developed long before the 2023 Criminal Code came into force (Ramadhani, Arief, & Purwoto, 2012). Nevertheless, the provisions in the 2023 Criminal Code indicate that this research has not yet been fully implemented at the normative level.

This article highlights the relevance of the explanation of the double-track system as follows. Criminal sanctions are provisions oriented towards punishment or retribution for an individual's actions (retributive in nature) (Dagan & Baron, 2025). Meanwhile, sanctions of conduct are provisions oriented towards the protection of society and the punishment of offenders. Thus, it can be understood that criminal sanctions focus on the punishment imposed for the crime committed, whilst administrative sanctions have a social objective (Firmansyah & Armin, 2021). This article takes the view that the provisions regarding administrative sanctions need to be optimised to ensure a criminal law system that protects and rehabilitates. Theoretically, the structure of the penal and correctional system has long been a subject of study in the literature of international comparative criminal law. Nevertheless, the provisions of Article 103 of the 2023 Criminal Code (KUHP 2023) demonstrate that the rules regarding measures in Indonesia are still far from the expectations of criminal law experts who advocate for a double-track system.

Criminal sanctions are no longer an effective means of tackling crime. This is evidenced by the overcrowding in prisons. This statement indicates that, at present, many court rulings still prioritise the imposition of criminal sanctions over non-custodial sanctions. This demonstrates that non-custodial sanctions are viewed or regarded merely as supplementary sanctions (Maharani & Arsawati, 2025). Although the law grants judges the discretion to determine which sanction should be imposed appropriately based on the principles of justice, utility and legal certainty, judges tend to opt for criminal sanctions (Kubrin & Tublitz, 2022). Inaccuracies in policy formulation or application will contribute to rising crime rates because the criminal sanctions imposed fail to provide a deterrent effect or any benefit (Alviolita & Arief, 2019).

The conditions of convicted persons in correctional institutions are also linked to the state's responsibility in fulfilling their rights (Aranggraeni et al., 2024). Based on the 'double-track system', ideally, criminal sanctions and non-criminal sanctions should be placed on an equal footing. This positioning is not intended to imply that criminal sanctions should take precedence over other sanctions. Rather, the policy on the imposition of sanctions should be determined by the suitability of the nature of the sanction to the

characteristics of the offender and the offence. This discussion examines the legal history of the regulation of criminal sanctions in the KUHP/WVS and the provisions regarding criminal sanctions and non-custodial measures in the 2023 Criminal Code. It demonstrates that the application of the double-track system in criminal sanction policy has been examined in various contexts. One such study covers the policy implications of measures against perpetrators of specific criminal offences in Indonesia (Appludnopsanji & Purwanti, 2021). This discussion explains the provisions as well as the ideal model of Indonesian criminal law, which should incorporate a double-track system, by referring to the history of criminal law as follows.

a) Criminal Code / *WVS* (Provisions no longer in force)

The Criminal Code / Wetboek van Strafrecht, the criminal law in force prior to the enactment of the 2023 Criminal Code, was originally titled the Wetboek van Strafrecht voor Nederlandsch-Indië (WVSNI) (Padang, Siregar, & Rosmalinda, 2024). These criminal law provisions were first enacted in Indonesia by Royal Decree (Koninklijk Besluit) No. 33 of 15 October 1915 (Prasetyo, Lasmadi, & Erwin, 2024). The Criminal Code (KUHP) / WVS came into force on 1 January 1918 (Padang, Siregar, & Rosmalinda, 2024).

The WVSNI was derived from the Dutch WVS, which was drafted in 1881 and came into force in the Netherlands in 1886. Although it was a derivative, the colonial government at the time applied the principle of concordance (adaptation) to the implementation of the Criminal Code (KUHP) / WVS in its colonies (Lynch, 2023). Several articles were repealed and adapted to the conditions and mission of Dutch colonialism in the Indonesian territories (at that time, the Dutch East Indies) (Aripkah et al., 2025).

After Indonesia declared its independence in 1945, in order to fill the void in criminal law, pursuant to the provisions of Article II of the Transitional Provisions of the 1945 Constitution, the Wetboek van Strafrecht voor Nederlandsch-Indië (WVSNI) remained in force (Yuspin & Ajlin, 2022). The WVSNI was enacted as Indonesian criminal law through Law No. 1 of 1946 on Indonesian Criminal Law Regulations (Mubarok, 2024). Referring to the provisions of Article VI of Law No. 1 of 1946, it is stated that the name WSNI was changed to WVS and may be referred to as the KUHP/WVS (Aripkah et al., 2025); (Natalis, 2026).

The introduction to this article has shown that the Criminal Code/WVS does not contain provisions regarding acts. This provision can be seen in a series of provisions in Article 10 of the KUHP/WVS, which reads as follows: Punishments consist of: a. Principal punishments: 1. the death penalty; 2. imprisonment; 3. detention; 4. a fine; 5. Confinement; b. Additional punishments: 1. deprivation of certain rights; 2. Confiscation of certain property; 3. Publication of the judge's verdict.

The wording of Article 10 of the Criminal

Code/WVS is set out to demonstrate how criminal law prior to the Criminal Code/WVS did not apply a double-track system at all. This is evident from subparagraph (a) of the article, which contains only principal criminal sanctions. Furthermore, subparagraph (b) of Article 10 of the KUHP/WVS contains only additional criminal sanctions. The absence of provisions regarding measures in Book I of the KUHP/WVS can be seen in the series of provisions in Chapter II (Articles 10 to 43), which contain absolutely no provisions regarding measures. As the Criminal Code/WVS contains no provisions regarding the double-track system, this concept has been a focus of academic attention even before the 2023 Criminal Code came into force (Sulistyawati, Purba, & Setyawan, 2023).

b) Regulations regarding Sanctions and Actions in the 2023 Criminal Code which are currently in effect

The enactment of the 2023 Criminal Code means that all provisions in other laws containing criminal sanctions must be adjusted. This can be seen in Article 613(1) of the 2023 Criminal Code, which requires all laws and regional regulations to align with the provisions of Book I.

Another relevant transitional provision is Article 617 of the 2023 Criminal Code. This states that laws outside the 2023 Criminal Code which refer to certain articles in the Criminal Code/WVS must be aligned with the provisions in the 2023 Criminal Code. The following provisions regarding sanctions and actions in the 2023 Criminal Code are important to highlight in this article. These provisions bring the discussion to the main issue of this article: the role of criminal law in rehabilitating perpetrators' behaviour and the overcapacity of correctional institutions (Brown, 2019).

(a) Provisions regarding Criminal Sanctions and Actions

(1) Regulations regarding Criminal Sanctions

The provisions regarding criminal sanctions related to the discussion in this article are Article 65 and Article 66 paragraphs (1) to (3) of the 2023 Criminal Code. The series of provisions regarding principal and additional penalties contain the following wording:

- Article 65: (1) The principal penalties as referred to in Article 64 letter b consist of: a. imprisonment; b. imprisonment; c. supervision; d. fine; and e. community service. (2) The order of penalties as referred to in paragraph (1) determines the severity of the penalty.
- Article 66: (1) The additional penalties as referred to in Article 64 letter b consist of: a. revocation of certain rights; b. confiscation of certain goods and/or bills; c. announcement of the judge's decision; d. payment of compensation; e. revocation of certain permits; and f. fulfillment of local customary obligations. (2) Additional penalties as referred to in paragraph (1) may be imposed in cases where the imposition of the main penalty alone is not sufficient to achieve the purpose of sentencing. (3) Additional penalties as referred

to in paragraph (1) may be imposed in 1 (one) or more types.

This article needs to make it clear that the 2023 Criminal Code already contains provisions limiting judges' ability to imprison perpetrators of criminal acts. These provisions are set out in Article 70, which lists the circumstances that judges must consider when deciding whether to impose a prison sentence, as well as the exceptions to these circumstances. These include the defendant's age, how many times they have committed the crime, harm to the victim, compensation payments to the victim, the defendant's mental state (including ignorance and incitement) and their personality.

The judges must look at this list of things and think about Articles 51 to 54 of the 2023 Criminal Code. Article 51 talks about the goals of criminal punishment. These include stopping people from committing crimes, enforcing laws that protect and serve the community, helping the offender get better, fixing problems caused by the crime to bring back balance and a sense of safety and peace in society, and making the offender feel bad about what they did. Article 52 further says that punishment for crimes should not lower a person's dignity. Article 53 further says that judges should put justice ahead of legal clarity when they are deciding matters. Article 54 finally lists the things that judges must think about when giving a sentence (Sulistianingsih et al., 2025).

The provisions in Article 54 of the 2023 Criminal Code are outlined as follows. Paragraph (1) of this provision states that sentencing must take into account: a. the form of the perpetrator's guilt; b. the motive and purpose of committing the crime; c. the perpetrator's mental attitude; d. whether the crime was committed with planning or without planning; e. the method of committing the crime; f. the perpetrator's attitude and actions after committing the crime; g. the perpetrator's life history, social circumstances, and economic circumstances; h. the impact of the crime on the perpetrator's future as a non-criminal; i. the impact of the crime on the victim or the victim's family; j. forgiveness from the victim and/or the victim's family; and/or k. the values of law and justice that exist in society. Paragraph (2) then states that the mildness of the act, the perpetrator's personal circumstances, and the circumstances at the time the crime was committed and what happened subsequently can be used as a basis for considering not imposing a penalty or not imposing measures by considering aspects of justice and humanity.

This article argues that, in general, the series of provisions in Articles 70, 51, 52, 53, and 54 of the 2023 Criminal Code above are capable of addressing the overcapacity problem raised in this article. This statement is in line with Article 70 paragraph (1) of the 2023 Criminal Code, which imposes a significant obligation on judges to pay attention to the circumstances as stated, in order to prevent the overcrowding of correctional institutions. In addition, Article 54 of the 2023 Criminal Code also regulates the circumstances

that must be considered in determining whether a person can be found criminally responsible or not. However, this series of provisions will not be sufficient if the provisions regarding actions are placed as secondary provisions. Placing actions in a lower position can hinder the enforcement of Indonesian criminal law in achieving the objectives of Article 51 of the 2023 Criminal Code.

(2) Regulations regarding Actions

The introduction to this article has explained that the provisions regarding actions are regulated in Article 103 of the 2023 Criminal Code. This article contains the following wording:

(1) Actions that may be imposed in conjunction with the principal penalty include: a. counseling; b. rehabilitation; c. job training; d. institutional care; and/or e. reparation for the consequences of the crime.

(2) Actions that may be imposed on any person as referred to in Articles 38 and 39 include: a. rehabilitation; b. surrender to an individual; c. institutional care; d. surrender to the government and/or treatment in a mental hospital.

(3) The type, duration, location, and/or implementation of the actions referred to in paragraphs (1) and (2) shall be determined in a court decision.

This article discusses these provisions, referring to Article 104 of the 2023 Criminal Code. This provision states that decisions involving such actions must be made in accordance with the provisions in Articles 51 to 54 of the 2023 Criminal Code. Thus, when imposing such action, the purpose of punishment, the dignity of the perpetrator, justice and the circumstances must be taken into account (Bun et al., 2020). However, the purpose of punishment, namely protecting society and changing the behaviour of the perpetrator, cannot be achieved if the phrase in bold in Article 103(1) of the 2023 Criminal Code is not aligned with the double-track system doctrine applied in this study (Ulmer, 2019). In the context of narcotics law, the policy of formulating sanctions for narcotics users is also a concern for academics specialising in criminal law (Pakpahan, 2014).

(b) Thoughts on Criminalization and Imposition of Actions in the 2023 Criminal Code according to Criminal Law Doctrine

The provisions regarding actions in the 2023 Criminal Code must be aligned with the double-track system as explained in the theoretical foundation of this research. Arief's (2022) perspective relates to the idea that actions are regulations that should be on par with criminal sanctions. This view is outlined in the following basic ideas regarding the penal system (Arief, 2022):

1). The idea of a monodualistic balance between public interests and individual interests;

2). The idea of a balance between social welfare and social defense;

3). The idea of a balance between offender-oriented punishment (individualization of punishment) and victim-oriented punishment;

4). The idea of using a double-track system (between punishment and treatment/measures);
5). The idea of making alternatives to imprisonment effective (alternatives to imprisonment);
6). The idea of flexibility of sentencing;
7). The idea of modification/change/adjustment of punishment (modification of sanction; the alteration/annulment/revocation of sanction; redetermination of punishment);
8). The idea of subsidiarity in selecting the type of punishment;
9). The idea of judicial pardon; and
10). The idea of prioritizing justice over legal certainty.

The idea of equating criminal sanctions with these actions is not only related to the basic idea of using a double-track system. This idea also relates to the balance between the public interest in maintaining order and the interests of the individual perpetrator of the crime, which must be restored (Paik et al., 2023). Equating criminal sanctions with these actions is also in line with an integral policy aimed at balancing social welfare and social defense. This balance relates to the relationship between the implementation of criminal law and political, economic, social, and cultural aspects. Finally, the application of actions as equivalent regulations to criminal sanctions is also in line with the idea of alternatives to imprisonment (Arief, 2022). The balance between the interests of perpetrators and victims has also encouraged the development of the idea of a victim-oriented penal system as part of Indonesian criminal law reform (Soponyono, 2012).

This idea must certainly be implemented to ensure that the 2023 Criminal Code and other laws governing criminal acts achieve their intended purpose. The purpose of punishment referred to in this study is one of the provisions in Article 51 of the 2023 Criminal Code. The provisions in this article relating to the double track system are the purpose of "Preventing the commission of criminal acts by enforcing legal norms for the protection and refreshment of society." In addition, the views in this article are also in line with the purpose of punishment in the form of "Socializing convicts by carrying out punishment and guidance to become good and useful people."

The urgency of the objectives and guidelines for sentencing in the context of reforming the criminal law sentencing system has also been comprehensively studied in Indonesian academic literature. Based on the views of Johan R.M. Simbolon et al., this article suggests that the removal of the phrase "can be imposed together with the main sentence" in Article 103 paragraph (1) of the 2023 Criminal Code is necessary so that Indonesian criminal law does not prioritize retributive justice as is the case in the Criminal Code/WVS (Simbolon et al., 2025). This retributive justice is fundamentally contrary to the theory of objectives that prioritizes the benefits of

the application of criminal law in the future (Ramadhan & Ariyanti, 2023). This view is in line with the views of Padang, Rosmalinda, and Siregar (2024) who state that the application of Indonesian criminal law is aimed at protecting society, preventing criminal acts, and rehabilitating perpetrators. This view is based on the objective theory or relative theory, which stems from Bentham's utilitarianism (Padang, Rosmalinda, and Siregar, 2024).

The idea of reformulating the types of sanctions in Indonesian criminal law, including the concept of limited imprisonment as a more humane alternative, is part of an effort to comprehensively reform sanction formulation policies (Kholiq, Arief, & Soponyono, 2015). The idea of strengthening the application of sanctions in the form of actions is also in line with the following doctrine. Ardiyanto and Wibowo (2024) argue that the double-track system and the relative theory are two compatible provisions. They argue that regulations that equate criminal sanctions with actions are regulations formed based on the objective theory, which prioritizes restorative justice and opposes retributive justice (Ardiyanto & Wibowo, 2024). Harahap et al. (2024) express a similar view, stating that sanctions in the form of actions are regulations that prioritize the objective theory. Finally, Feriandref et al. (2026) argue that the theory of purpose serves as the foundation for the formulation and implementation of regulations regarding rehabilitative measures, as provided in the 2023 Criminal Code.

Examples of the successful application of the theory of purpose in the practice and regulation of Indonesian criminal law can be seen in the following two studies. The application of the theory of purpose in punishment has been studied in depth in the context of violence cases, confirming its relevance in various types of crimes (Kholiq & Wibowo, 2016). This theory has also been applied in corporate criminal liability policies to eradicate corruption, which is also an aspect that needs to be considered in reforming the Indonesian criminal law system (Kurniawan, 2023); and (Hucklesby, Beyens, & Boone, 2021).

3. Future Updates to the Indonesian Criminal Law Sanctions System Policy

The crime rate is a consequence of the problems that affect human life. As regulations established by the government increase, new methods of crime will continue to emerge (Engelen, Lander & van Essen, 2016). This study has shown that applying criminal sanctions is not the only way to reduce the crime rate (Latifiani et al., 2022). The 2023 Criminal Code and other criminal laws are absolute rules that must be enforced when handling criminal cases (Natalis & Purwanti, 2025). Therefore, the government is striving for legal regulations that can influence the behaviour of the nation's youth (Puspitasari & Devintawati, 2018). The legal system recognises the principle of Ultimum Remedium, which states that criminal law should be a last resort in terms

of law enforcement (Juliani, 2016). This study's discussion demonstrates that academic studies of criminal policy are crucial for determining the direction of future criminal sanction reform (Batista, 2023).

This study's discussions have suggested how Article 103(1) of the 2023 Criminal Code should be amended by removing phrases that allow actions to be taken in addition to criminal sanctions. Recommendations for these deletions and adjustments would enable Indonesian criminal law to truly implement a double-track system and the theory of objectives (Shabrina & Putrijanti, 2022). This will also enable Indonesian criminal law to be fully reformed from the series of provisions previously outlined in Article 10 of the Criminal Code/WVS, which prioritise retributive justice. The study also makes additional suggestions for the Indonesian government to consider in future.

Comprehensive reform of criminal law policies is also needed to address gaps in Indonesia's ever-evolving criminal justice landscape (Wijayanti et al., 2025). Furthermore, efforts to reformulate Indonesian criminal law regulations reflect the evolving dynamics within the national legal system (Hartanti, 2022). This article also highlights the importance of addressing the dimensions of customary criminal sanctions that exist and thrive within Indonesian society (Jaya, 2016); (Eggert, 2024) as part of national criminal law reform.

Hamja et al. (2026) explain that criminal law reform in Indonesia is shifting towards a more punitive approach. However, this reform also emphasises corrective and rehabilitative approaches through community-based correctional models in an effort to achieve more effective social reintegration (Hamja et al., 2026). Based on these insights, the following recommendations are made.

This study recommends that Indonesia immediately establishes and enacts government regulations to implement Article 103 and other provisions of the 2023 Criminal Code relating to criminal sanctions. These additional regulations are necessary to ensure that criminal sanctions can be applied equally alongside criminal sanctions, as stipulated in Article 65 of the 2023 Criminal Code. These government regulations must also include provisions that criminal sanctions cannot be applied concurrently with criminal sanctions (Kamalludin et al., 2025). With this formulation, regulations regarding criminal sanctions can truly align with the double-track system concept and the theory of objectives explained in this study. One concrete form of implementing criminal sanctions that aligns with the spirit of the double-track system in Indonesian criminal law is the implementation of non-penal approaches such as diversion in the juvenile criminal justice system (Rochaeti, Hnienkswsatie & Sularto, 2019); (Mahfud, Siregar, & Malik, 2026).

Ginting, Simatupang and Batubara examined the application of restorative justice as a mechanism for resolving domestic violence crimes in Indonesia. They demonstrated that the non-retributive approach had become a serious concern in national criminal law enforcement practices. The restorative justice approach studied by Ginting et al. is consistent with the disciplinary philosophy of the 2023 Criminal Code, as both emphasise the rehabilitation of perpetrators and victims over the imposition of punitive measures (Handayani & Hardiyanti, 2025). Therefore, recognising the restorative approach as proposed by Ginting et al. strengthens the argument that the 2023 Criminal Code should treat disciplinary action and criminal sanctions equally, so the goals of recovery and community protection can be optimally achieved (Ginting, Simatupang & Batubara, 2019).

D. CONCLUSION

Although a series of provisions in the 2023 Criminal Code contain provisions regarding criminal sanctions and actions, Indonesian criminal law has not fully implemented a double-track system. This lack of synchronisation is evident in Article 103(1) of the 2023 Criminal Code, which states that actions can be applied alongside the primary punishment. This hinders Indonesian criminal law from achieving its goals of preventing criminal acts, protecting the community, and rehabilitating criminal perpetrators. Therefore, this study recommends that Indonesia immediately revises the provisions in Article 103 of the 2023 Criminal Code, formulating wording that establishes actions as a standalone regulation. The study also recommends that Indonesia establish government regulations to govern the implementation of these actions. Revising the 2023 Criminal Code and establishing these government regulations would enable Indonesian criminal law to overcome the overcapacity problem experienced by correctional institutions and create a restorative and protective criminal law system. Further research is needed into the structure and content of government regulations governing actions as referred to in Article 103 of the 2023 Criminal Code.

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