

Criminal Policy with A Treatment of Offenders Orientation in the New Indonesian Criminal Code

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ABSTRACT: The reform of the Indonesian Criminal Code through Law Number 1 of 2023 signifies a shift in criminal policy toward a more humanistic and rehabilitative approach to punishment. The increasing complexity of crime necessitates crime control policies that go beyond retributive sanctions and emphasize the treatment of offenders. This article aims to analyze how the new Criminal Code reflects a treatment of offenders approach in the functionalization of criminal law, as well as to examine the dynamics between theory and practice in its implementation for crime control in Indonesia. This study employs a normative juridical method by analyzing statutory provisions and criminal law literature. The discussion reveals that the new Criminal Code normatively incorporates treatment of offenders through the formulation of sentencing objectives, individualized sentencing guidelines, and the expansion of non-custodial sanctions. Nevertheless, a significant gap remains between normative ideals and practical implementation due to institutional limitations, resource constraints, and the persistence of a retributive legal culture. Therefore, the effectiveness of criminal policy oriented toward the treatment of offenders depends not only on normative reform but also on consistent implementation and the strengthening of supporting institutional frameworks.

KEYWORDS: criminal policy; new Criminal Code; treatment of offenders; sentencing; crime control.

I. INTRODUCTION

Crime is a dynamic phenomenon. Political, economic, social, cultural, technological, and legal-policy dynamics at the time a crime occurs are factors that influence the emergence of crime itself. Various scholarly studies show a significant evolution in patterns of crime. Traditional forms of crime tended to relate to violations of community norms and local disputes. Premodern societies were essentially social groups divided by tribe, clan, or particular customary community. The concept of crime had not yet been strictly separated from violations of the cultural or customary norms prevailing within these premodern communities.

Evidence for this concept can be seen in research conducted by a Polish anthropologist named Bronislaw Malinowski. He conducted research in the Trobriand Islands, Papua New Guinea, between 1914 and 1918 (his research was interrupted intermittently by World War I). Malinowski found that in the traditional society of the Trobriand Islands, social rules and customary practices created a form of 'law' that governed behavior, including what was regarded as crime and how society reacted to it. Individuals in premodern communities were heavily influenced by the prevailing social structure and customs, so that customary norms became a kind of law applied internally through social mechanisms such as community sanctions, social stigmatization, and collective conflict resolution. Violations of these norms were often understood as threats to social cohesion and communal balance, thereby eliciting a direct social response from members of the community (Malinowski, 1932).

Entering the phase of modernization marked by industrial development and urbanization, new patterns of crime emerged related to urban growth, more complex social interaction, and increasingly stark economic inequality (Widjaja & Jauhanes, 2025). The anonymity of modern social life, combined with greater temptation and opportunity to commit crime, is often used as the basis for explaining the influence of urbanization on crime. Alongside urbanization theory, D.S. Thomas, in *Social Aspects of Business Cycle* (1972), also attempted to find a correlation between trade (economic) activity and various social phenomena such as marriage, birth, death, emigration, poverty, alcoholism, and crime. However, in that study, Thomas ultimately found that both poverty and prosperity could lead a person toward crime (Susanto, 2011).

Thomas's findings make sense when linked to the emergence of white-collar crime (WCC), which began in the mid-twentieth century. The term WCC was first introduced by Edwin Sutherland, an American sociologist, at the American Sociological Association conference in 1939. WCC is a form of crime committed by individuals or groups who exploit their social position or office to obtain economic gain. Forms of WCC include corporate crime, financial crime, corruption, and other complex economic crimes that are difficult for the traditional legal system to detect (Limbong, Dalimunthe, & Sahlan, 2024). These modern crimes have also flourished further in the era of Industrial Revolution 4.0, which continues to move toward Industrial Revolution 5.0. The

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increasingly massive penetration of the internet and technology has caused crime to no longer be confined to physical space but to also spread into digital space, commonly referred to as cybercrime. Examples include online fraud, manipulation of information systems, and malware attacks targeting both public and private sectors (Fairuzzen, Putra, Reihaan, & Prihatini, 2024).

The existence of conventional crimes such as theft and physical violence, accompanied by economic crime, cybercrime, and, further still, transnational crime, provides real proof that a multidimensional approach is needed to address them. An integrative and collaborative sentencing approach, both nationally and internationally, is key to responding to the challenges of modern crime's complexity. Therefore, a reform of sentencing policy is needed that focuses not only on retribution but also on social restoration, offender rehabilitation, and justice for victims (Situmeang & Meilan, 2025).

Based on the need for this policy reform, criminal policy — which forms part of social defense policy — is then required in order to achieve the ultimate goal of social welfare/social defense. Criminal policy, also known as crime policy, has various definitions. Prof. Sudarto once put forward three meanings of criminal policy: a. In a narrow sense, it is the entirety of the principles and methods that form the basis of the reaction to legal violations in the form of punishment; b. In a broad sense, it is the entirety of the functions of law-enforcement apparatus, including the working methods of the courts and the police; and c. In its broadest sense (which he adopted from Jorgen Jepsen), it is the entirety of policy, carried out through legislation and official bodies, aimed at enforcing the central norms of society (Arief, 2017).

In 2023, Indonesia passed through an important milestone in the development of its criminal policy, namely the enactment of the new Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) through Law Number 1 of 2023. This reform of the Criminal Code is guided by four missions: 1. Recodification of criminal law; 2. Democratization of criminal law; 3. Consolidation of criminal law; and 4. Adaptation and harmonization with various legal developments that have occurred. First, recodification means comprehensively reorganizing the Criminal Code to replace the old Criminal Code (the *Wetboek van Strafrecht/WvS*). The result is a new Criminal Code that is more systematic, consistent, and relevant to the dynamics of national law. Second, democratization in the context of criminal law means a law-making process that is more responsive to broad public aspirations and more respectful of the principles of democracy and human rights (Fadhil, 2023). The criminal-law approach in the new Criminal Code is directed not only to rely solely on repressive enforcement, but also to pay attention to the protection of individual rights, restorative justice, and a more humane preventive dimension. Third, consolidation of criminal law refers to the effort to collect, unify, and organize all criminal-law rules scattered across various pieces of legislation since Indonesia's independence. Before the new Criminal Code was enacted, Indonesian criminal law consisted of the WvS Criminal Code together with many other scattered penal provisions, which caused overlapping norms and legal uncertainty. Fourth, adaptation and harmonization mean that the new Criminal Code is designed to adjust to developments in legal science, the dynamics of social life, and international legal standards recognized by many countries (for example, human rights principles, modern criminal law, and international norms). Adaptation is also necessary because many new crimes have emerged (particularly in the field of cybercrime) that were not addressed by the WvS Criminal Code, so the new Criminal Code must be able to harmonize the various criminal-law norms so that they are aligned and function effectively in law-enforcement practice.

The reformist spirit carried by the new Criminal Code accommodates not only domestic input but also international input. At the international level, the United Nations (UN), through its five-yearly congresses, has actively discussed crime and policies for addressing it. Beginning with the UN's 4th Congress on the Prevention of Crime and the Treatment of Offenders in 1970, the UN began to discuss crime and its development. The UN views crime as a complex social phenomenon that therefore requires adequate approaches in handling it. There are two approaches that form the UN's strategy for crime prevention: 1. An integral approach, covering penal and non-penal measures; and 2. A causative approach. The integral approach is an interesting topic with respect to crime control. The basic nature of integral policies is balance. That balance can then be realized in various forms of handling, including: 1. Balance between criminal policy and social/development policy; 2. Balance between penal and non-penal measures; 3. Balance between symptomatic and causative treatment; 4. Balance between treatment of offenders and treatment of society; 5. Balance between treatment of offenders and treatment of the victim; 6. Balance between individual responsibility and structural/functional responsibility; 7. Balance between the formal (legal) system and the informal/traditional (extra-legal) system; and 8. Balance between a policy-oriented approach and a value-oriented approach. When linked to the new Criminal Code, nonpenal sanctions (for example, supervisory punishment, social-work punishment, and provisions that open the possibility of rehabilitative measures in certain cases) are given greater room. The imposition of the death penalty is also reduced to a last resort whose application is very restricted. These changes open up opportunities for the development of crime-control policy oriented toward treatment, although its implementation remains influenced by the dynamics of punishment politics and social pressure. Based on the background described above, the issues to be discussed in this research article are:

- A. How does criminal policy in the new Criminal Code represent treatment of offenders in the functionalization of criminal law?
- B. What dynamics occur between theory and practice in the implementation of a criminal policy oriented toward treatment of offenders for crime control in Indonesia?

II. RESEARCH METHODS

This research is a juridical-normative study, which focuses on the concept of law viewed as a systematic and rigid set of legal regulations (Suteki & Taufani, 2022). The approaches used in this research include the statute approach, the conceptual approach, and the analytical approach. This research is descriptive-analytical in nature. The descriptive character embedded in this research method seeks to depict a problem that exists in a particular region or at a particular time. This depiction of conditions cannot then be separated from its analytical character, which involves an in-depth elaboration of the problem under study. The data collection method used is literature study (library research). The data analysis method used in this research is qualitative data analysis. Matthew B. Miles and A. Michael Huberman define the qualitative data analysis method as a series of interactive processes comprising three cycles of activity, namely data reduction, data display, and conclusion drawing/verification (Suteki & Taufani, 2022).

III. DISCUSSIONS

A. Criminal Policy in the New Criminal Code Representing Treatment of Offenders in the Functionalization of Criminal Law

The criminal-policy approach contained in the new Criminal Code shows a shift in normative orientation from punishment that is purely retributive toward treatment and rehabilitation. The new Criminal Code provides room for the concept of treatment of offenders, particularly through provisions on rehabilitative measures and non-penal sanctions. In modern law-enforcement literature, treatment of offenders refers to a series of rehabilitative interventions directed at changing offenders' behavior, psychosocial recovery, and their reintegration into society, with the main goal of reducing recidivism and improving the quality of law enforcement (Vayezi, Nori, Saberi, & Tavana, 2024). This understanding is similar to the definition put forward by Romli Atmasasmita, who states that treatment of offenders is a systematic effort within the criminal-justice system to develop offenders' potential, reduce recidivism, and encourage resocialization (Atmasasmita, 1996). The criminal policy of the new Criminal Code, in the context of treatment of offenders, also shows how the legislature has attempted to balance the need for public security with the need for rehabilitation. This rehabilitative approach is supported by modern law-enforcement theory, which holds that the effectiveness of criminal law is measured not only by the severity of punishment but also by success in reducing recidivism and returning offenders to society as productive members. Such an approach is also in line with studies highlighting the importance of progressive criminal policy that explores alternative sentencing such as restorative justice in order to reduce the limitations of the traditional retributive model (Wibowo, Masyhar, & Widyawati, 2024). For example, research on restorative-justice policy in Indonesia shows that this model supports offender rehabilitation as well as the involvement of the community and victims in the recovery process, which is an integral part of the treatment of offenders. This approach responds not merely to the criminal act but also takes into account the offender's social-psychological context, which is a core principle of treatment of offenders (Pramita, 2025).

The implementation of treatment of offenders can be evaluated using a rehabilitation-based model called Risk-Need-Responsivity (RNR). The risk principle asserts that the intensity of treatment services must be adjusted to the offender's level of risk of recidivism. High-risk offenders receive more intensive intervention, while low-risk offenders receive only minimal programs, so that resources are used efficiently and counterproductive effects are avoided. This matters because interventions that are too intensive for low-risk offenders can actually increase the likelihood of recidivism (Fazel, Hurton, Burghart, DeLisi, & Yu, 2024). Recent research applying the RNR principle to design a treatment system for narcotics offenders found that adjusting intervention to risk level helps make rehabilitation more effective (Sinambela & Anwar, 2024). Next, the need principle links the main focus of treatment of offenders to offenders' criminogenic needs, namely the causal factors that contribute to criminal behavior (for example, antisocial attitudes, lack of social skills, and psychological problems). Interventions that address these needs are more effective in reducing the likelihood of recidivism than interventions focused solely on punishment or on noncriminogenic needs (for example, self-esteem). This principle ensures that treatment of offenders is not merely 'general handling' but is also targeted at factors relevant to the crime committed. Finally, the responsivity principle concerns how treatment of offenders must take into account offenders' individual characteristics. Interventions must be designed to fit the learning style, motivation, skills, and personal character of the offender in order to increase their effectiveness. Approaches such as cognitive-behavioral therapy are often considered the most effective because they can increase offenders' engagement in changing their behavior. This principle plays an important role because an intervention that is appropriate in substance but delivered without responsiveness to individual character can fail to achieve rehabilitative goals.

The criminal policy in the new Criminal Code that represents treatment of offenders in the functionalization of criminal law is spread across several of its articles, namely:

1) Article 51 letters b and d: The

purposes of sentencing are:

b. to reintegrate the convicted person into society by providing guidance and mentoring so that he or she becomes a good and useful person; (...)

d. to cultivate a sense of remorse and free the convicted person from feelings of guilt; 2)

Article 52:

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Sentencing is not intended to demean human dignity; 3)

Article 54:

- (1) In sentencing, the following must be considered:
 - a. the form of the offender's fault;
 - b. the motive and purpose of committing the criminal act;
 - c. the offender's state of mind;
 - d. whether the criminal act was premeditated or not;
 - e. the manner in which the criminal act was committed;
 - f. the offender's attitude and conduct after committing the criminal act;
 - g. the offender's life history, social condition, and economic condition;
 - h. the effect of the sentence on the offender's future;
 - i. the effect of the criminal act 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 living within society.
- (2) The minor nature of the act, the offender's personal circumstances, or the circumstances at the time the criminal act was committed and circumstances arising afterward may be used as grounds for not imposing a punishment or not imposing a measure, having regard to considerations of justice and humanity;

4) Article 64:

Punishment consists of:

- a. principal punishment;
 - b. additional punishment; and
 - c. punishment of a special nature for certain criminal acts as determined by law; 5) Article 65:
- (1) Principal punishment as referred to in Article 64 letter a consists of:
 - a. imprisonment;
 - b. confinement (*pidana tutupan*);
 - c. supervisory punishment;
 - d. fines; and
 - e. social-work punishment.
 - (2) The order of punishment referred to in paragraph (1) determines the severity of the punishment; 6)

Article 66:

- (1) Additional punishment as referred to in Article 64 letter b consists of:
 - a. revocation of certain rights;
 - b. confiscation of certain goods and/or claims;
 - c. announcement of the judge's decision;
 - d. payment of compensation;
 - e. revocation of certain permits; and
 - f. fulfillment of local customary obligations.
 - (2) The additional punishment referred to in paragraph (1) may be imposed where imposition of the principal punishment alone is insufficient to achieve the purposes of sentencing.
 - (3) The additional punishment referred to in paragraph (1) may be imposed as one or more types.
 - (4) Additional punishment for attempt and complicity is the same as the additional punishment for the underlying criminal act.
 - (5) Additional punishment for members of the Indonesian National Armed Forces who commit a criminal act in a case of connexity is imposed in accordance with the statutory provisions applicable to the Indonesian National Armed Forces; 7)
- Article 67:

The special punishment referred to in Article 64 letter c is the death penalty, which is always threatened as an alternative sanction;

8) Article 70:

- (1) While still taking into account the provisions referred to in Articles 51 through 54, a sentence of imprisonment should, as far as possible, not be imposed where the following circumstances are found:
 - a. the defendant is a Child;
 - b. the defendant is over 75 (seventy-five) years of age;
 - c. the defendant has committed a criminal act for the first time;
 - d. the victim's loss and suffering are not too great;
 - e. the defendant has paid compensation to the victim;
 - f. the defendant was unaware that the criminal act committed would cause substantial loss;
 - g. the criminal act occurred as a result of very strong incitement by another person;

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- h. the victim of the criminal act encouraged or instigated its occurrence;
 - i. the criminal act is the result of circumstances that are unlikely to recur;
 - j. the defendant's personality and conduct convincingly indicate that he or she will not commit another criminal act;
 - k. imprisonment would cause great suffering to the defendant or the defendant's family;
 - l. guidance outside a correctional institution is expected to succeed for the defendant;
 - m. imposing a lighter sentence would not diminish the seriousness of the criminal act committed by the defendant; n. the criminal act occurred within a family; and/or
 - o. the criminal act occurred due to negligence.
- (2) The provisions referred to in paragraph (1) do not apply to:
- a. criminal acts punishable by imprisonment of 5 (five) years or more;
 - b. criminal acts subject to a special minimum sentence;
 - c. certain criminal acts that are highly dangerous or harmful to society; or
 - d. criminal acts that harm state finances or the state economy; 9) Article 71:
- (1) If a person commits a criminal act that is punishable only by imprisonment of under 5 (five) years, while the judge is of the opinion that imprisonment need not be imposed after considering the purposes of sentencing and the sentencing guidelines referred to in Articles 51 through 54, that person may be sentenced to a fine.
- (2) The fine referred to in paragraph (1) may only be imposed if:
- a. there is no victim;
 - b. the victim does not object; or
 - c. it is not a repeat offense.
- (3) The fine that may be imposed under the provisions referred to in paragraph (1) is a fine of not more than Category V and not less than Category III.
- (4) The provision referred to in paragraph (2) letter c does not apply to a person who has previously been sentenced to imprisonment for a criminal act committed before reaching the age of 18 (eighteen) years; and 10) Article 98:
- The death penalty is threatened as an alternative sanction as a last resort to prevent the commission of criminal acts and to protect society.

B. Dynamics between Theory and Practice in the Implementation of Criminal Policy Oriented toward Treatment of Offenders for Crime Control in Indonesia

Theoretically, treatment of offenders (based on the Risk-Need-Responsivity/RNR principles) requires measurable interventions in the form of risk assessment, interventions targeting criminogenic needs, and methods suited to offenders' individual characters. The new Criminal Code normatively includes room for a rehabilitative approach and non-custodial sanctions, indicating a direction of criminal policy that supports treatment. In reality, however, the implementation of this concept on the ground still shows a significant gap between the legal text and implementation practice, so that the goals of reducing recidivism and social reintegration have not yet been optimally achieved (Nugraha, Rohaed, Kusnadi, & Abid, 2025).

The factors causing this dynamic between theory and practice in the implementation of criminal policy oriented toward treatment of offenders for crime control in Indonesia include:

- a. Institutional capacity and resources: rehabilitation programs require facilities, trained personnel (psychologists, therapists, and social workers), and budget. Many correctional institutions in Indonesia still experience overcapacity and limited rehabilitative services, so that programs are often merely formalistic or are not run intensively. Conditions of overcapacity and limited infrastructure weaken the implementation of treatment of offenders (Anggraeny & Kristiaga, 2025);
- b. Legal culture and sentencing orientation: a more retributive law-enforcement culture (a tendency to emphasize deterrence) remains strong among law-enforcement officials, judges, and part of the public. Political pressure for harsh punishment for certain crimes (for example, narcotics, corruption, and terrorism) causes the space for treatment of offenders to easily erode in practice (Hidayat & Andriyansa, 2025);
- c. Policy fragmentation and inter-agency coordination: effective treatment of offenders requires synergy among the police, the prosecution service, the courts, social-welfare agencies, health agencies, and correctional institutions. The lack of an integrated referral mechanism, uniform risk-assessment standards, and coordinated funding channels causes the implementation of RNR/rehabilitation to be inconsistent. Recommendation-oriented studies emphasize the need for an integrative model spanning from the investigation stage through to reintegration (Tajuddin, Darmawati, & Putri, 2025);
- d. Limitations of technical legal instruments: although the new Criminal Code provides normative legitimacy for alternative sanctions (supervisory punishment, social-work punishment, and rehabilitative measures), the implementing technical instructions, risk-assessment guidelines, and operational monitoring mechanisms still need to be developed through implementing regulations and institutional policy so that the principle of treatment of offenders can be translated into practice (Dharmawan & Ramadanti, 2024).

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Concrete examples that illustrate the obstacles to implementing treatment of offenders can be seen in narcotics cases, restorative justice, and problems within correctional institutions and recidivism. In narcotics cases, the new Criminal Code opens the option of rehabilitation for addicts, but its implementation depends on the availability of rehabilitation facilities and referral procedures. Research on narcotics correctional institutions shows that RNR implementation is potentially beneficial but is constrained by capacity and lack of program standardization (Afrizal, Nelwitis, & Kurniawan, 2024). In restorative-justice cases/alternative sentencing, there has been an increase in the adoption of restorative-justice principles in some court decisions and local policies, but the practice is still sporadic because it has not yet been nationally integrated and faces resistance from a retributive legal culture (Apriliawan, Wirogioto, & Saefullah, 2025). Evaluative studies of guidance programs show that skills development and educational programs have the potential to reduce recidivism if implemented intensively and continuously. However, many programs remain ad hoc and do not yet follow the responsivity principle in relation to individual needs (Enggarsasi & Sa'diyah, 2025).

IV. CONCLUSIONS

Based on the discussion presented above, it can be concluded that the criminal policy in the new Criminal Code (KUHP) has, normatively, represented an approach of treatment of offenders in the functionalization of criminal law in Indonesia. This is reflected in the shift in sentencing orientation, which is no longer purely retributive in character but instead prioritizes the goals of rehabilitation, resocialization, and the recovery of offenders through the regulation of sentencing purposes, individualized sentencing guidelines, and the expansion of non-custodial sanctions such as supervisory punishment and social-work punishment. Thus, the new Criminal Code demonstrates a more humanistic and progressive direction of criminal policy, in line with developments in modern criminal-law thought as well as the principle of balance between the protection of society and the treatment of offenders.

Nevertheless, the dynamics between theory and practice in the implementation of criminal policy oriented toward treatment of offenders still show a fairly significant gap. Although the new Criminal Code has normatively provided a legal basis for a rehabilitative approach, its implementation on the ground still faces various structural and cultural obstacles. Limited institutional capacity, human resources, and rehabilitation facilities, coupled with the strength of a retributive-oriented legal culture and the fragmentation of policy among law-enforcement agencies, mean that the principle of treatment of offenders has not yet been optimally realized in crime-control practice.

Therefore, the success of a criminal policy oriented toward treatment of offenders within the new Criminal Code is determined not only by the quality of its normative formulation, but also depends heavily on consistency in implementing policy, the strengthening of technical regulations, the enhancement of law-enforcement officials' capacity, and a paradigm shift in sentencing toward an approach that is more rehabilitative and based on offenders' individual needs. Without such efforts, the progressive orientation of the new Criminal Code risks remaining at the normative level and not yet fully contributing to the goal of effective, just, and sustainable crime control in Indonesia.

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