

THE CRIMINAL LAW POLICY OF SUPERVISION AS AN ALTERNATIVE TO SENTENCING IN THE REFORM OF CRIMINAL LAW

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ABSTRACT

Criminal law reform is essential in creating a more effective, fair, and humane justice system. One crucial aspect of this reform is the legal policy of supervised sentencing as an alternative punishment, which aims to reduce dependence on imprisonment and promote the rehabilitation of offenders. This study seeks to analyze the legal policy behind the establishment of supervised sentencing and its implementation in several countries as a reference for Indonesia. The objective of this research is to examine the political framework behind the establishment of supervised sentencing as an alternative punishment in criminal law reform, as well as its implementation in other countries, with a case study of the Netherlands and South Korea. This study employs a normative legal method, aiming to analyze the issue comprehensively. The research findings indicate that the political formation of supervised sentencing as an alternative punishment in criminal law reform seeks to reduce dependency on imprisonment, promote rehabilitation, and enhance the effectiveness of the criminal justice system. The case studies of the Netherlands and South Korea reveal different approaches in its implementation: the Netherlands emphasizes social rehabilitation through conditional sentencing (*voorwaardelijke straf*), while South Korea enforces stricter supervision using a probation system and electronic monitoring. These findings provide valuable insights for Indonesia in developing supervised sentencing within its New Criminal Code (Law No. 1 of 2023), with the possibility of adopting a hybrid approach combining elements from both countries to create a more flexible and effective sentencing system. Ultimately, this study offers significant recommendations for Indonesia in balancing justice, rehabilitation, and supervision in its criminal justice system.

INTRODUCTION

The criminal law system generally applies punishment with the aim of punishment and deterrence. However, over time many critics and legal practitioners have begun to highlight the fundamental flaws of the criminal justice system in various countries. These weaknesses not only affect the effectiveness of punishment but also contribute to wider social problems. In Indonesia, the punishment system has been centered on imprisonment, which has shown various weaknesses in its application.

Imprisonment is the second main punishment after the death penalty, which consists of life imprisonment and imprisonment for a certain time. There is no specific explanation in the Indonesian Criminal Code, why imprisonment is more

widely used in the imposition of law compared to the death penalty, confinement, and fines. C. Djisman Samonis argues that this is because imprisonment is the only main punishment that allows for planned and directed guidance of the convict. (Lamintang, 1983)

Although the purpose of imprisonment is to provide a deterrent effect and correct criminal offenders, in practice, it is often faced with various problems that have been identified through various studies and expert opinions. One of the main problems is prison overcrowding, which creates very bad conditions for prisoners.

According to data from the Ministry of Law and Human Rights of the Republic of Indonesia, the level of prison overcrowding in Indonesia often reaches 89 percent of its intended capacity, resulting in unhealthy and high-risk prison environments. (Kompas, n.d.) Based on data from the World Prison Brief, Indonesia currently ranks 8th on the list of countries with the highest number of prisoners and detainees in the world. This overcrowding has resulted in increased conflict between prisoners, as well as limited access to rehabilitation facilities and health services.

Another significant problem is the very limited effectiveness of rehabilitation. Research conducted by the Institute for Research and Community Service of the University of Indonesia in 2021 showed that rehabilitation programs in prisons are often inadequate or even nonexistent, so that prisoners do not get sufficient opportunities to improve their behavior and reintegrate into society. This is in line with the opinion of Anton S. Ford, who criticized that the prison system more often exacerbates criminal behavior than improves it. (Anton S. Ford, 2022)

In addition, the imposition of imprisonment in Indonesia often hurts the social and economic well-being of prisoners and their families. Incarceration in prison can also cause significant disruption to the family relationships and social lives of inmates, often affecting the economic stability of the families they leave behind. According to various studies and academic literature, individuals sentenced to prison and ex-prisoners face several complex challenges in social, economic, and psychological dimensions. (Saleh, 1979).

Socially, the process of conviction often marks them with a strong stigma, which exacerbates their isolation and difficulties in rebuilding relationships with family and society. Research shows that ex-prisoners often face significant discrimination in various aspects of life, including seeking employment and gaining access to social services, further exacerbating their social marginalization. (Atmasasmita, 2019)

In the economic aspect, studies show that ex-offenders experience great difficulties in entering the labor market and obtaining a stable income. Criminal records are often a significant barrier in the hiring process, hindering their access to good job opportunities and often leading to limitations in access to financial services and social assistance. (Western & Incarceration, 2010).

Psychologically, it has been shown that ex-prisoners often experience emotional trauma, anxiety disorders, and depression as a result of the incarceration experience. Adaptation to life after prison is often fraught with difficulties in managing stress and psychological distress, as well as challenges in establishing a new identity and returning to productive functioning in society. In many cases, fines or job loss caused by incarceration can exacerbate poverty and social marginalization, creating a cycle of crime that is difficult to break. (Pearse et al., 2016)

As a response to this problem, supervision punishment is present as an alternative punishment that is in line with the spirit of criminal law reform. Supervision punishment is a form of criminal sanction that does not require the offender to undergo imprisonment but places them under supervision by the prosecutor and guidance by correctional mentors. The main purpose of supervision punishment is to provide a second chance for the offender to improve his/her

attitude, prevent the occurrence of repeated criminal offenses, and return the offender to the community.

The concept of supervised release has emerged as a promising alternative. Criminal supervision, also known as probation, allows offenders to serve a probationary period outside of prison under strict supervision. The concept aims to provide an avenue for rehabilitation while reducing the burden on the prison population. Supervision systems can offer a more humane and effective approach in many cases, by allowing law enforcement to assess and deal with individuals in a more individualised and flexible manner (Zimring, 2010).

It also offers the potential to reduce the costs of the criminal justice system and increase the chances of rehabilitation by reducing the stigma associated with incarceration in prison. Some studies have also shown that individuals serving supervised sentences have lower recidivism rates than those serving full prison sentences. (Petersilia, 2023) This suggests that supervised sentences may be a better option in many cases, both in terms of cost and rehabilitation effectiveness.

The enactment of Law Number 1 Year 2023 on the Criminal Code marks a new chapter in the history of Indonesian criminal law. This brings several significant changes, one of which is the strengthening of the principles of restorative and rehabilitative justice. Criminal supervision as a new form of punishment is a progressive step in the enforcement of criminal law in Indonesia.

Nevertheless, the implementation of the supervision penalty in Law No. 1 Year 2023 still faces several challenges. One of them is the absence of implementing regulations that specifically regulate the mechanism, procedure, and implementation of this supervision punishment. Comprehensive implementing regulations are needed to ensure that the implementation of criminal supervision can run by the expected goals of guidance and rehabilitation. Without clear implementing regulations, it is feared that criminal supervision will not be able to be implemented effectively and instead create legal uncertainty in the field.

RESEARCH METHODS

This type of research is normative law, which aims to examine problems with the study of legal documents and uses various secondary data such as laws and regulations, court decisions, legal theories, and opinions of legal experts to find out the legal issues being studied. (Prasetyo, 2020) This research approach is a statutory approach, which is an approach that is carried out by examining all laws and regulations related to the legal issues being addressed. (Setiadi, 2020).

RESULTS AND DISCUSSION

A. Arrangements Related to the Legal Politics of the Establishment of Surveillance Penalties

The politics of criminal law is a policy or direction taken by the state in the formation, implementation, and reformation of criminal law. One of the important aspects of the reformation of criminal law in Indonesia is the concept of supervision punishment as an alternative punishment. Supervision punishment aims to reduce dependence on imprisonment, which is often ineffective in rehabilitating offenders and can cause overcapacity in correctional institutions. Supervision punishment is a form of criminal sanction imposed on criminal offenders with special supervision by the authorities without having to serve the punishment in prison. In this concept, the convict remains in the community but must fulfill certain requirements and obligations set by the court.

The regulation of supervision punishment in the Indonesian criminal law system can be found in several regulations, among others:

1. Criminal Code (Law No. 1 of 2023)
In the New Criminal Code (Law No. 1 Year 2023), supervision punishment is recognized as one of the main forms of punishment, in addition to imprisonment, fines, and community service. Supervision punishment aims to provide an alternative punishment for criminal offenders who meet certain requirements, with certain restrictions on freedom outside the correctional institution. The New Criminal Code provides a strong legal basis for the implementation of supervision punishment, as well as affirming the principles of restorative justice and rehabilitation in the Indonesian punishment system.
2. Law No. 12 of 1995 on Corrections
Law No. 12/1995 on Corrections regulates the system of guidance and social reintegration for prisoners. Although it does not directly mention criminal supervision, this law supports the concept through the mechanisms of assimilation, parole, and pre-release leave, where prisoners remain under state supervision while serving their sentence outside of prison. Criminal supervision in the New Criminal Code is in line with the correctional principle in this law, which emphasizes rehabilitation and social reintegration rather than mere imprisonment.
3. Government Regulation No. 31 of 1999 concerning the Guidance and Mentoring of Prisoners of Correction.
Government Regulation (GR) No. 31 Year 1999 further regulates the guidance system for prisoners, including guidance for those who have the right to serve their sentence outside prison. This regulation emphasizes that prisoners who receive parole or assimilation remain under the supervision of the Correctional Center. This concept has similarities with the supervision punishment in the New Criminal Code, which also requires convicts to undergo supervision with certain obligations.
4. Regulation of the Minister of Law and Human Rights No. 3/2018 on the Terms and Procedures for Granting Remission, Assimilation, Leave of Absence, and Parole.
This regulation provides a technical basis for the implementation of assimilation and parole, which is a form of reduction in criminal period by continuing to supervise prisoners outside prison. The supervision mechanism stipulated in this regulation contributes to the implementation of supervision punishment in the New Criminal Code, especially in terms of periodic reporting, restriction of freedom, and obligation to participate in rehabilitation programs.
5. Regulations that Support Criminal Supervision in Indonesia.
In addition to the main regulations above, various other policies support the implementation of supervision punishment, such as regulations related to correction and human rights protection and policies on reforming the punishment system. The implementation of supervision punishment in Indonesia requires support from various sectors, including supervision infrastructure, strengthening the role of the Correctional Center (Bapas), and integration with the rehabilitation and restorative justice system. With supporting regulations, supervised punishment can be an effective solution to reduce overcapacity in correctional institutions and improve the effectiveness of the criminal justice system in Indonesia.

B. The Legal Politics of the Establishment of Surveillance Penalties and Their Application in the Netherlands and South Korea

1. Political Legal Arrangement of Supervision of Penal Establishments and Its Implementation in the Netherlands and South Korea.

The Netherlands and South Korea have different criminal supervision policies, tailored to their respective legal systems and criminal policies. The Netherlands prioritizes social rehabilitation and reintegration through conditional punishment (*voorwaardelijke straf*), which allows convicts to serve their sentence with certain restrictions without having to go to prison. In contrast, South Korea emphasizes strict supervision through the probation system and electronic monitoring, especially for sex offenders and recidivists. Although different in approach, both aim to reduce the use of imprisonment and increase the effectiveness of the criminal justice system.

2. Implementation of Supervision Punishment in the Netherlands and Opportunities for Implementation in Indonesia.

In the Netherlands, supervision punishment is implemented through a conditional punishment system, where first-time or minor offenders are given a sentence with certain conditions, such as reporting regularly and participating in a rehabilitation program. *Reclassering Nederland* acts as the main institution in supervising the implementation of this punishment. The opportunity for implementation in Indonesia is quite large, especially in the context of implementing restorative justice and reducing overcapacity in correctional institutions. By strengthening the role of the Correctional Center (Bapas), as in the Netherlands, Indonesia can optimize supervision punishment as a more humanist punishment solution.

3. Implementation of Supervision Punishment in South Korea and Opportunity to Apply it in Indonesia.

South Korea uses a probation system and electronic monitoring to ensure that convicted offenders remain under the supervision of the state. Electronic monitoring is used for perpetrators of serious crimes, such as sexual crimes and domestic violence, by installing electronic bracelets to track their movements in real time. Opportunities for implementation in Indonesia are still open, especially in the use of monitoring technology for certain criminals, such as those involved in corruption and sexual crimes. However, its implementation requires infrastructure readiness and clear regulations to ensure effectiveness and protection of human rights.

4. Comparison of the Criminal Code of the Netherlands, South Korea, and Indonesia.

The Dutch Criminal Code has long adopted supervision punishment through conditional punishment (*voorwaardelijke straf*), while the South Korean Criminal Code does not explicitly regulate supervision punishment but applies it through the probation system and electronic monitoring. The new Indonesian Criminal Code (Law No. 1 Year 2023) includes supervision punishment as a principal punishment, making it a more flexible form of punishment. While the Netherlands focuses on rehabilitation and South Korea on technology-based supervision, Indonesia tries to adopt a combinative approach that combines rehabilitation and supervision of convicts outside of prison.

5. The Difference between Supervision Punishment in the Netherlands, South Korea, and the One to be Implemented in Indonesia.

The Netherlands emphasizes social rehabilitation and community guidance, where minor offenders can receive conditional punishment under certain conditions. Meanwhile, South Korea prioritizes technology-based supervision, especially for serious offenders, using electronic monitoring and probation systems. Indonesia, in the New Criminal Code, tries to combine these two approaches by providing supervision punishment for certain offenders but has not implemented electronic

monitoring technology as in South Korea. These differences reflect each country's strategy in balancing justice, rehabilitation, and supervision of offenders.

Table 1. The Difference between Supervision Punishment in the Netherlands, South Korea, and Indonesia

Aspects	Netherlands	South Korea	Indonesia
Legal Basis of Criminal Supervision	<i>The Wetboek van Strafrecht</i> (Dutch Criminal Code) has recognized <i>Voorwaardelijke Straff</i> (conditional punishment) since the early 20th century. This system allows for conditional sentences with certain supervision and obligations.	<i>The Korean Penal Code</i> does not recognize supervision punishment explicitly but uses the probation system and electronic monitoring to supervise offenders outside of prison.	The New Criminal Code (Law No. 1 Year 2023) introduces supervision punishment as one of the main punishments aimed at reducing dependence on imprisonment.
Purpose of Criminal Surveillance	Emphasizes rehabilitation and social reintegration for first-time or minor offenders.	The main focus is the prevention of recidivism (reoffending) with electronic monitoring systems and restrictions on freedom.	Reduce overcrowding in prisons and promote restorative justice approaches.
Supervisory Institution	Reclassering Nederland (Dutch Probation Service) is responsible for the supervision and guidance of offenders.	The Korean Probation and Parole Office supervises offenders who are on probation or electronic monitoring.	The Correctional Centre (Balai Pemasyarakatan or Bapas) is responsible for supervising offenders undergoing supervision.
Implementation Mechanism	The judge can impose a conditional sentence with certain obligations, such as participating in a rehabilitation program or social work. If violated, the convicted person may be sentenced to a harsher punishment.	Probation is given to minor offenders or first-time offenders with close supervision. Electronic monitoring is applied to sex offenders and recidivists.	Supervision punishment is given in the judge's decision with obligations such as reporting periodically, undergoing rehabilitation, or not travelling to certain places. If violated, the sentence can be changed to imprisonment.

CONCLUSIONS

The position of press offenses in the implementation of Law No. 40 of 1999 on the Press has not been able to accommodate problems related to press offenses due to the emergence of misperceptions about whether the press law is included as a *lex specialist* or not and even in Article 5 paragraph (2) of Law No. 40 of 1999 regarding the right of reply. In addition, the demands of Law No. 40 of 1999 cannot be applied as '*Lex Specialis*' because there are still so many press offenses that are not regulated in the law.

Mechanisms for resolving press coverage disputes that often occur include: these disputes are resolved by taking the route of state administrative law (for entrepreneurs or media owners, administrative sanctions are related to the licenses granted by the Indonesian government to the media entrepreneurs), criminal law (investigation, arrest, detention, search, confiscation, and court processes), and out-of-court settlement by utilizing the press council, negotiation, mediation, conciliation, facilitation, independent appraisal, and arbitration.

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