THE PARADOX OF IMPRISONMENT: NAVIGATING HUMAN RIGHTS AND PENAL POLICY IN INDONESIA'S NEW CRIMINAL CODE

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Abstract

This study critically examines the enduring paradox of imprisonment within Indonesia's legal system following the enactment of the New Criminal Code (Law No. 1 of 2023). While the reform formally introduces a range of progressive sentencing alternatives aimed at reducing reliance on custodial punishment, imprisonment continues to dominate both judicial practice and penal policy. This persistence reveals a structural contradiction between the normative aspirations of legal reform and the empirical reality of punitive enforcement. Through doctrinal legal research, this study demonstrates that the penal system, despite its claims of modernisation, continues to reproduce conditions that are incompatible with fundamental human rights standards. These include chronic prison overcrowding, limited access to adequate healthcare, and the infliction of psychological harm on detainees. The study further interrogates the philosophical and historical foundations that sustain the centrality of imprisonment, highlighting how entrenched punitive rationalities and institutional inertia inhibit meaningful transformation. In doing so, it reflects on the moral implications of liberty deprivation as a form of state power and situates these concerns within the broader framework of international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). The findings underscore the urgency of reorienting the criminal justice system towards restorative and rehabilitative paradigms that prioritise social reintegration, accountability, and the preservation of human dignity. By exposing the limitations of the New Criminal Code in addressing the structural roots of penal overreliance, this paper advocates for a fundamental shift in legal thinking and institutional practice. It concludes that a sustainable and legitimate penal system must move beyond retributive logic towards restorative approaches that not only reduce incarceration but also strengthen respect for human rights and social justice.

Keywords: *Imprisonment; Human Rights; New Criminal Code; Restorative Justice; Penal Reform.*

A. Introduction

Prisons have become a major symbol of the modern penal system in almost all parts of the world.[1] Since the 18th century, prison institutions have replaced forms of physical punishment

[1] Pamela K. Lattimore, "Reflections on Criminal Justice Reform: Challenges and Opportunities," *American Journal of Criminal Justice* 47, no. 6 (2022): 1071–98, https://doi.org/10.1007/s12103-022-09713-5; Mary Gibson,

such as whipping, forced labour, and the death penalty as a means of punishment considered more "civilised".[2] However, as civilisation and modern legal thinking have developed, the effectiveness of prisons as a means of restoring the behaviour of criminals has begun to be questioned. Global data shows that recidivism rates in various countries remain high, even in countries with advanced correctional systems such as the United States and the United Kingdom.[3] The latest World Prison Population List, published by the Institute for Crime & Justice Policy Research, estimates that approximately 11.5 million people are held in penal institutions worldwide. Official figures suggest a total of around 10.99 million prisoners; however, this number is likely to be higher when accounting for unreported detainees in certain jurisdictions. The largest prison populations are found in the United States (nearly 1.8 million), China (almost 1.7 million), Brazil, India, Russia, and Indonesia, reflecting both population size and prevailing penal policies.[4] At the same time, criticism of the prison system has intensified, as it is increasingly viewed as failing to address the underlying social causes of crime and, instead, perpetuating cycles of social exclusion and the marginalisation of those incarcerated.[5]

The phenomenon of overcrowding in correctional institutions is one of the most obvious indicators of the failure of the global prison system.[6] In many developing countries, prisons hold two to three times their ideal capacity.[7] This condition leads to a serious violation of the principle of human dignity, as guaranteed in Article 10, paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR), which affirms that all persons who lose their freedom must be

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"Global Perspectives on the Birth of the Prison," *The American Historical Review* 116, no. 4 (2011): 1040–63, https://doi.org/10.1086/ahr.116.4.1040; David Scott, "Why Prison? Posing the Question," in *Why Prison?*, ed. David Scott, Cambridge Studies in Law and Society (Cambridge University Press, 2013), Cambridge Core, https://doi.org/10.1017/CBO9781139344258.002.

2 Henry J. Steiner et al., *International Human Rights in Context: Law, Politics, Morals: Text and Materials* (Oxford University Press, 2008).

3 Traci Burch, "The First Civil Right: How Liberals Built Prison America," 13, no. 3 (2015): 525–28, https://doi.org/10.1515/for-2015-0032; Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy: Penology and Human Rights* (Oxford University Press, 2009).

4 Institute for Criminal Policy Research, "Prison Populations Continue to Rise in Many Parts of the World, with 11.5 Million Held in Prisons Worldwide," *Institute for Criminal Policy Research*, May 1, 2024, https://www.icpr.org.uk/news/2024/prison-populations-continue-rise-many-parts-world-115-million-held-prisons-worldwide.

5 Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21, no. 2 (2007): 230–65, Cambridge Core, https://doi.org/10.1017/S0898588X07000211.

6 Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders* (Oxford University Press, 2009), https://doi.org/10.1093/acprof:oso/9780195370027.001.0001.

7 Katharine Herbert et al., "Prevalence of Risk Factors for Non-Communicable Diseases in Prison Populations Worldwide: A Systematic Review," *The Lancet* 379, no. 9830 (2012): 1975–82, https://doi.org/10.1016/S0140-6736(12)60319-5; Yasmine Waddah Fakhry and Dana Joseph Haddad, "Prison Plates: Exploring the Nutrition of Inmates in Lebanese Prisons," *International Journal of Prison Health* 21, no. 4 (2025): 456–72, https://doi.org/10.1108/IJOPH-03-2024-0013.

treated humanely and with respect for their inherent dignity.[8] Overcrowding also exacerbates the sanitation, nutrition, and mental health conditions of inmates, creating an environment that is not only repressive but also destructive. In the framework of human rights, prisons are often spaces where humanitarian principles are ignored by the state, which is obliged to enforce them.[9]

In the Indonesian context, this issue is becoming increasingly pertinent. The latest data reveals that the ideal capacity of correctional facilities, which should accommodate around 140,000 inmates, now has to house up to 179,000. This means that the occupancy rate has reached nearly 100% above the normal limit, which clearly impacts the effectiveness of rehabilitation and the fulfilment of prisoners' basic rights.[10] As a result, prisons are no longer places of rehabilitation but rather spaces for the accumulation of human suffering. Ironically, amidst this situation, the New Criminal Code (Law No. 1 of 2023) still regards imprisonment as the primary form of sanction within the penal system, despite introducing several alternative penalties, such as community service and criminal supervision. While this effort may seem progressive in principle, it fundamentally retains the outdated paradigm of incarceration as the primary response to crime.

This paradox forms the basis of the problem in this study. On one hand, Indonesia seeks to achieve criminal law reform that is more humane, based on social justice and respect for human rights. On the other hand, the state still relies on the most repressive instrument—namely prison—as a form of state power over the body and individual freedom. From a progressive legal perspective, this highlights the tension between the legitimacy of punishment and the morality of humanity. This paradox raises a fundamental question: how can a legal system that claims to uphold human values continue to preserve a form of punishment that negates humanity itself?

International studies of the prison system show that the prison-based punishment paradigm is increasingly criticised for being contrary to human rights principles. Saloner et al.,[11] through a public health approach, highlight systemic human rights violations in prisoners' health services

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[8] Aleš Završnik, "Criminal Justice, Artificial Intelligence Systems, and Human Rights," *ERA Forum* 20, no. 4 (2020): 567–83, https://doi.org/10.1007/s12027-020-00602-0.

[9] Tim Newburn, "'Tough on Crime': Penal Policy in England and Wales," *Crime and Justice* 36 (January 2007): 425–70, https://doi.org/10.1086/592810.

[10] Nur Amalia Abbas, *Mencari Solusi Overkapasitas Lapas Lewat Inovasi Dan Dukungan Regulasi*, June 24, 2025, https://marinews.mahkamahagung.go.id/artikel/mencari-solusi-overkapasitas-lapas-lewat-inovasi-0lU.

[11] Brendan Saloner et al., "A Human Rights Framework for Advancing the Standard of Medical Care for Incarcerated People in the United States in the Time of COVID-19," *Health and Human Rights* 24, no. 1 (2022): 59–75, https://www.hhrjournal.org/2022/06/08/a-human-rights-framework-for-advancing-the-standard-of-medical-care-for-incarcerated-people-in-the-united-states-in-the-time-of-covid-19/.

and propose a human rights-based framework for care in prisons. Meanwhile, Arafat et al.[12] in their narrative review of prisons in Southeast Asia revealed high rates of mental disorders and chronic overcrowding, including in Indonesia, as signs of the failure of the rehabilitative function of correctional institutions. Theoretically, van Ginneken & Wooldredge[13] emphasises that prisons not only fail to prevent crime but also act as spaces for the reproduction of violence and new victimisation within the system itself. These three studies demonstrate that prisons are more instruments of social control than means of moral or social improvement for the perpetrator.

In terms of law and policy, several studies assess that modern criminal law reform is still trapped in a paradox between humanised rhetoric and repressive practices. Butt[14] examined Indonesia's New Criminal Code and found that despite efforts to Indonesianise the criminal law system, imprisonment remains the primary sanction inherited from the colonial paradigm. Riyadi[15] demonstrates that alternative policies, such as community service and criminal supervision, have been regulated; however, their implementation is limited due to bureaucracy, a formalistic legal culture, and a lack of institutional support. The study by Faisal et al.[16] also emphasises the need for a substantive justice paradigm that prioritises social and moral values, rather than mere adherence to positive law. Meanwhile, Skjærvø et al.[17] demonstrate that children who have been incarcerated face a high risk of re-offending, suggesting that prisons fail to serve as an effective long-term rehabilitation mechanism.

In the realm of legal and human rights theory, Mavronicola[18] criticises what he calls the "human rights penalty paradox", which occurs when the integration of human rights principles in

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[12] S. M. Yasir Arafat et al., "Prison Mental Health in South-East Asia: A Narrative Review," *Brain and Behavior* 14, no. 8 (2024): e70004, https://doi.org/10.1002/brb3.70004.

[13] Esther F. J. C. van Ginneken and John Wooldredge, "Offending and Victimization in Prisons: New Theoretical and Empirical Approaches," *International Journal of Law, Crime and Justice* 77 (June 2024): 100667, https://doi.org/10.1016/j.ijlcj.2024.100667.

[14] Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214, https://doi.org/10.1080/10383441.2023.2243772.

[15] Padlah Riyadi, "Reconstruction of Restorative Justice Regulations Within the Indonesian Penal System Post-Law No. 1 of 2023," *Peradaban Journal of Law and Society* 3, no. 2 (2024): 154–67, https://doi.org/10.59001/pjls.v3i2.241.

[16] Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform Within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (2024): 2301634, https://doi.org/10.1080/23311886.2023.2301634.

[17] Ingeborg Skjærvø et al., "Characteristics and Risk of Reimprisonment Among Children and Young Adults in Norwegian Prisons. A 20-Year Cohort Study," *Journal of Criminal Justice* 93 (July 2024): 102219, https://doi.org/10.1016/j.jcrimjus.2024.102219.

[18] Natasa Mavronicola, "The Case Against Human Rights Penality," *Oxford Journal of Legal Studies* 44, no. 3 (2024): 535–62, https://doi.org/10.1093/ojls/gqae013.

the penal system actually strengthens the legitimacy of repressive punishments. Vannier[19] shows that reforms to the practice of imprisonment, such as the elimination of isolation, are often trapped at formal legal boundaries and do not change the logic of state power over the human body. Sridhar et al.[20] expand the global perspective by asserting that violations of reproductive and health rights in prisons are part of broader human rights violations against women and vulnerable groups. The entire literature shows a theoretical and empirical awareness that the world prison system is in a crisis of legitimacy. However, few studies have specifically examined the paradox between human rights and penal policies in post-New Criminal Code Indonesia.

In contrast to these studies, this paper focuses specifically on the prison sentence as a form of deprivation of the right to liberty in the context of contemporary Indonesian law. The novelty of this research lies in the combination of normative-philosophical analysis of the concept of deprivation of liberty with a textual evaluation of the New Criminal Code (Law No. 1 of 2023) and international principles such as the ICCPR and the Mandela Rules. While previous literature has focused on health, policy, or social aspects of incarceration, this article places the paradox as a moral and constitutional issue within the Indonesian legal system. Thus, this research contributes to the progressive legal discourse by emphasising the need to reorient criminal policy from a retaliatory approach to a humanistic, proportional, and social justice-based system.

In this context, this study formulates four main questions. First, what historical and philosophical factors explain the persistence of imprisonment as the dominant form of punishment in the Indonesian criminal law system and the modern world? Second, to what extent can imprisonment be seen as a form of deprivation of the right to liberty that contradicts human rights principles, as stipulated in the International Covenant on Civil and Political Rights (ICCPR) and the Mandela Rules? Third, how does the penal policy in the New Criminal Code represent a more humanistic and progressive legal orientation, and is it truly capable of replacing the old retaliatory paradigm? Fourth, what alternative policies can be developed to reduce reliance on prison sentences without sacrificing the goals of justice and social order?

This study aims to analyse in depth the criminal position of prisons in the Indonesian legal system through a normative-philosophical approach with a human rights perspective. Through this analysis, the article seeks to assess whether the New Criminal Code genuinely presents a

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[19] Marion Vannier, "Beware of the Siren's Call—the European Right to Hope and the Challenge of Old Age Behind Bars," *Human Rights Law Review* 25, no. 2 (2025): ngaf013, https://doi.org/10.1093/hrlr/ngaf013.

[20] Aparna Sridhar et al., "Beyond Borders: The Global Impact of Violating Reproductive Human Rights," *International Journal of Gynecology & Obstetrics* 167, no. 3 (2024): 877–82, https://doi.org/10.1002/ijgo.15945.

conceptual update or merely repeats the old pattern with new packaging. In addition, this research intends to contribute to progressive legal discourse by emphasising the importance of reorienting criminal policy towards a more humane, proportional, and socially just system. Thus, the main goal of this research is not only descriptive but also reflective and transformative: to propose a new direction for Indonesia's penal policy that aligns with human dignity and the human ideal of the law.

This research holds significant academic value as it offers a new interpretation of the phenomenon of imprisonment in the context of Indonesian criminal law, which is undergoing transformation through the New Criminal Code. Previous studies have generally focused on formal juridical aspects, the effectiveness of inmate development, or the condition of correctional institutions, while this study seeks to go beyond these administrative dimensions by framing prisons as philosophical and moral issues directly related to human dignity. By integrating human rights perspectives and progressive law, this research enriches the academic discourse on Indonesian criminal law reform and provides a theoretical basis for criticism of the penal system that is still retaliation-oriented.

From a practical perspective, this research is expected to serve as a reference for policymakers, law enforcement officials, and correctional institutions in reassessing the effectiveness and legitimacy of prison sentences. The findings of this study show that criminal law reform cannot stop at merely updating the articles of the Criminal Code but must be accompanied by a fundamental paradigm shift in the way the state understands, punishes, and treats offenders. In the context of implementation, the results of this study also encourage the development of alternative criminal policies—such as community service, criminal supervision, and restorative justice—that are more consistent with human values and rehabilitation principles.

Furthermore, this research contributes to the development of progressive legal theory in Indonesia by emphasising that law should be a means of human liberation, not an instrument of repression. The proposed paradigm places human beings at the centre of the orientation of criminal law, with the aim of restoring criminality as an effort to restore moral and social order, rather than just maintaining formal order. Thus, this research not only provides a normative critique of the existing legal system but also offers a new direction for the development of penal policies that are more just, civilised, and oriented towards the humanisation of the law.

This research uses doctrinal legal research with an emphasis on philosophical analysis and human rights. This approach was chosen because the issues studied concern not only positive legal texts but also underlying moral and humanitarian values. By placing imprisonment as both a legal

and social phenomenon, this study seeks to uncover the contradiction between the goals of criminal law—namely justice, order, and humanity—and the reality of imprisonment, which has the potential to violate human dignity. The analysis was carried out through the exploration of national and international legal norms that govern the right to liberty and the humane treatment of prisoners.

B. The Paradox of Imprisonment: Human Rights, State Power, and the Reality of Indonesia's Penal System

The history of criminalisation shows that imprisonment has not always been the primary form of punishment.[21] In pre-modern times, the criminal justice system centred on physical and public punishment—such as whipping, mutilation, hanging, or forced labour in open spaces—that were intended to instil fear in society.[22] Punishment was carried out openly in public as a spectacle of the state's power over the perpetrator's body. The shift towards the prison system is the result of a logical transformation of power: from a power that "tortures the body" to a power that "regulates and disciplines the soul." The modern state, according to Foucault[23], no longer punishes through scenes of blood, but rather through more subtle control over individual behaviour and consciousness. Thus, imprisonment emerged as a modern form of power that remained repressive but operated within the framework of a new rationality and morality.[24]

This paradigm shift was also influenced by the ideas of Jeremy Bentham and Cesare Beccaria, two thinkers who marked the birth of rational and utilitarian criminal law. Beccaria[25] in *Dei delitti e delle pene* rejected violence and torture in law enforcement, asserting that punishment should be proportionate to the crime and aimed at preventing, not retaliating. This idea paved the way for the reform of the 18th-century European penal system, which placed imprisonment as a "civilised" alternative to corporal punishment. Meanwhile, Bentham[26], with his Panopticon concept, offered an ideal prison design that allowed for total criminal supervision of inmates without direct violence—reflecting the utilitarian rationality that constant surveillance could shape

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21 John H. Langbein, "The Historical Origins of the Sanction of Imprisonment for Serious Crime," *The Journal of Legal Studies* 5, no. 1 (1976): 35–60, https://doi.org/10.1086/467543; Filippo Venturi, "Reconstructing Criminalisation. Regulatory Crimes and the Authoritarian Foundations of Modern Substantive Criminal Law," *Criminal Law and Philosophy*, ahead of print, December 3, 2025, https://doi.org/10.1007/s11572-025-09771-w.

22 David Scott and Nick Flynn, *Prisons & Punishment: The Essentials* (Sage, 2014); Kelly Welch, "Criminal Justice," in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Springer Netherlands, 2023), https://doi.org/10.1007/978-94-007-6519-1_1038.

23 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (Viking, 1977).

24 Smit and Snacken, *Principles of European Prison Law and Policy: Penology and Human Rights*.

25 Cesare Beccaria, *Dei Delitti E Delle Pene* (Mussi, 1812).

26 Jeremy Bentham, *Panopticon or the Inspection House* (By T. Payne, 1791).

law-abiding behaviour. Within this framework, the prison is constructed as a symbol of the progress of civilisation and morality, while substantively maintaining the logic of control of the body and mind.[27]

However, in later developments, this idealism proved to conceal a new form of power that was more subtle but no less repressive. Foucault[28] considered that modern prisons were not moral advancements, but rather new forms of social discipline that spread to various institutions such as schools, hospitals, and factories. Prisons became laboratories for modern social control, where human beings were watched, judged, and "reshaped" to conform to state norms. Thus, the shift from corporal punishment to imprisonment does not necessarily mean an increase in humanity, but rather merely a transformation of forms of power from visible violence to power hidden in routines and institutions. It is in this context that modern prisons give rise to a paradox: they are considered a symbol of rationality and legal progress, but at the same time, they are the most effective and systematic instrument of deprivation of liberty in human history.[29]

The concept of deprivation of liberty is a central issue in international human rights law. The International Covenant on Civil and Political Rights (ICCPR), in particular Article 9, affirms that everyone has the right to personal liberty and security, and should not be arbitrarily deprived of their freedom. This article means that freedom is a fundamental right inherent in human dignity and can only be limited on the basis of legal, proportionate law, and for legitimate purposes. Article 10 of the ICCPR expands on this principle by emphasising that every person who loses his liberty must be treated humanely and with respect for the dignity inherent in him. These two articles together form a universal norm that limits the power of the state to impose and carry out prison sentences.[30]

However, in practice, deprivation of liberty often exceeds the limits set by these norms. The state uses imprisonment not solely as an effort to protect society from crime, but also as a political

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[27] Joanna Davidson, "The Victorian Charter of Human Rights and Responsibilities," *Policy Quarterly* 10, no. 4 (2014): 46–52, https://doi.org/10.26686/pq.v10i4.4507; Barbara Hudson, "Tough Justice: Sentencing and Penal Policies in the 1990s," *Crime Prevention and Community Safety* 1, no. 4 (October 1999): 68–69, https://doi.org/10.1057/palgrave.cpcs.8140040; Michael Tonry, "Sentencing in America, 1975–2025," *Crime and Justice* 42 (August 2013): 141–98, https://doi.org/10.1086/671134.

[28] Foucault, *Discipline and Punish: The Birth of the Prison*.

[29] Eva S. Nilsen, "Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Discourse," *UC Davis Law Review* 41, no. 1 (2007): 111–75, https://scholarship.law.bu.edu/faculty_scholarship/3940/.

[30] Brian Levin, "From Slavery to Hate Crime Laws: The Emergence of Race and Status-Based Protection in American Criminal Law," *Journal of Social Issues* 58, no. 2 (2002): 227–45, https://doi.org/10.1111/1540-4560.00258.

and social instrument to control certain groups.[31] In this context, violations of the right to freedom are often justified in the name of "public interest" or "law enforcement", even though they violate basic human rights principles.[32] The report of the UN Human Rights Committee (HRC) confirms that excessive prison conditions, detention without due process of justice, and violence in correctional institutions are forms of arbitrary detention that violate the ICCPR.[33] This means that violations of the right to liberty occur not only at the stage of detention but also in the execution of the prison sentence itself, when inhumane conditions make the punishment turn into covert torture.[34]

In a philosophical framework, deprivation of liberty can be seen as a paradox between the legitimacy of law and the morality of humanity.[35] The state does have the authority to limit the freedom of individuals who violate the law, but that authority must be exercised with strict limits based on the principles of proportionality and human dignity.[36] When imprisonment is carried out in conditions that degrade human dignity—such as overcrowding, violence between inmates, or lack of health services—then the punishment loses its moral legitimacy. This is where criticism of the modern penal system becomes relevant: prisons that are supposed to be a means of rehabilitation have the potential to give rise to structural human rights violations. Thus, the concept of deprivation of liberty is not just a juridical issue, but also a philosophical reflection on the ethical limits of state power over the human body and freedom.[37]

The most comprehensive international instrument for setting standards of treatment of prisoners is the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson

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[31] Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 68–90, https://doi.org/10.30984/jis.v20i1.1861.

[32] Michael Tonry, "Making American Sentencing Just, Humane, and Effective," *Crime and Justice* 46 (January 2017): 441–504, https://doi.org/10.1086/688456.

[33] Hadar Aviram, "Progressive Punitivism: Notes on the Use of Punitive Social Control to Advance Social Justice Ends," *Buffalo Law Review* 68, no. 1 (2020): 199–245, https://digitalcommons.law.buffalo.edu/buffalolawreview/vol68/iss1/4/.

[34] Kevin R. Reitz and Cecelia M. Klingele, "Model Penal Code: Sentencing—Workable Limits on Mass Punishment," *Crime and Justice* 48 (May 2019): 255–311, https://doi.org/10.1086/701796.

[35] Iqbal Kamalludin and Barda Nawawi Arief, "Kebijakan Reformasi Maqâshid Al-Syarîah Dan Kontribusinya Dalam Formulasi Alternatif Keringanan Pidana Penjara," *Al-'Adalah* 15, no. 1 (2018): 182–218, https://doi.org/10.24042/adalah.v15i1.2931; Michael Tonry, "Equality and Human Dignity: The Missing Ingredients in American Sentencing," *Crime and Justice* 45 (August 2016): 459–96, https://doi.org/10.1086/686256.

[36] Mugambi Jouet, "Foucault, Prison, and Human Rights: A Dialectic of Theory and Criminal Justice Reform," *Theoretical Criminology* 26, no. 2 (2022): 202–23, https://doi.org/10.1177/13624806211015968.

[37] John Braithwaite, *Restorative Justice & Responsive Regulation* (Oxford University Press, 2002); Tom Kemp and Philippa Tomczak, "The Cruel Optimism of International Prison Regulation: Prison Ontologies and Carceral Harms," *Law & Social Inquiry* 49, no. 3 (2024): 1683–714, Cambridge Core, https://doi.org/10.1017/lsi.2023.63.

Mandela Rules), adopted by the UN General Assembly in 2015.[38] This rule affirms that every person who is imprisoned still has a human right that cannot be taken away by their legal status. The main principle is that the loss of physical freedom does not mean the loss of the dignity of humanity. The Mandela Rules emphasise the state's obligation to ensure safe, clean, non-overcrowded prison conditions, and provide access to adequate food, water, health, and psychosocial services. In addition, the prohibition against torture and cruel, inhuman or degrading treatment of human beings is non-derogable, meaning that it cannot be suspended under any circumstances, including emergencies or war.[39]

Substantively, the Mandela Rules established an ethical framework for the implementation of prison sentences. The state is not only the executor of punishment, but also the duty-bearer responsible for the protection of the basic rights of every detained individual.[40] In international best practice, the implementation of the Mandela Rules also includes the obligation to provide independent oversight mechanisms, including national human rights institutions and international bodies such as the Subcommittee on Prevention of Torture (SPT).[41] However, a report by the Office of the High Commissioner for Human Rights (OHCHR) shows that many countries, especially in Asia and Africa, still fail to meet this minimum standard. Overcrowding, violence between inmates, and lack of medical personnel constitute systemic violations of the principles of the Mandela Rules. Thus, the existence of such international standards often contrasts with the reality of the practice of imprisonment in the field.[42]

In the Indonesian context, the principles of the Mandela Rules have been formally recognised in several regulations, such as Law Number 22 of 2022 concerning Corrections, which states the purpose of fostering and respecting human dignity. However, in its implementation, Indonesia's penitentiary system is still far from fulfilling these principles. Data from the Directorate General of Corrections shows that the occupancy rate of correctional institutions

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[38] Kate Levine, "The Progressive Love Affair with the Carceral State," *Michigan Law Review* 120, no. 6 (2022): 1225–45, https://doi.org/10.36644/mlr.120.6.carceral; Aya Gruber, *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration* (University of California Press, 2020).

[39] Dirk van Zyl Smit, "Dignity Unlocked? The Nelson Mandela Rules as a Key to the Transnational Legal Ordering of Imprisonment," *Archives of Criminology*, no. XLV/2 (2023): 115–41, https://doi.org/10.7420/AK2023.07.

[40] Joshua F. J. Inwood et al., "'Where Do We Go From Here?': Transportation Justice and the Struggle for Equal Access," *Southeastern Geographer* 55, no. 4 (2015): 417–33, https://doi.org/10.1353/sgo.2015.0036.

[41] Mary Rogan, "Prison Inspection and Monitoring: The Need to Reform European Law and Policy," *European Journal on Criminal Policy and Research* 27, no. 2 (2021): 285–305, https://doi.org/10.1007/s10610-019-09420-8.

[42] Damien Scalia, "Long-Term Sentences in International Criminal Law: Do They Meet the Standards Set Out by the European Court of Human Rights?," *Journal of International Criminal Justice* (Oxford, United Kingdom) 9, no. 3 (2011): 669–87, agispt.20114222, https://doi.org/10.1093/jicj/mqr022.

reaches more than twice the normal capacity, with poor sanitation and health conditions. This shows that respect for non-derogable rights is still declarative and not yet substantive. Thus, although Indonesia has adopted a normative international human rights framework, the implementation of prison sentences still shows a significant gap between law and reality. It is at this point that the paradox at the heart of this study arises: that the state, in carrying out legal punishments, has the potential to violate human rights that should be protected by the law itself.[43]

In contemporary legal studies, Mavronicola[44] introduces the concept of the human rights penality paradox—a paradox when human rights instruments and language are used to legitimise repressive punishment practices. According to Mavronicola[45], the modern legal system has adopted the principles of human rights normatively, but the application of these principles often stops at formal limits, without changing the power structure that underlies criminal practices. In other words, the existence of international human rights standards, such as the ICCPR or the Mandela Rules, does not automatically eliminate institutional violence, but sometimes simply moves it into a more "civilised" and legal form. The state can then claim compliance with human rights even though its prison system remains dehumanising—a situation that Mavronicola calls a form of "pseudo-moral legitimacy" of penal power.[46]

This paradox arises because human rights, in their institutionalised form, often assume that violations only occur when there is physical torture or visible brutal treatment.[47] In fact, as critical theorists of law and prison have shown, violence can occur in more subtle and systemic forms: neglect of mental health, social isolation, and deprivation of the right to participate.[48] Foucault has alluded to the idea that modern power works not by destroying the body, but by regulating life—to make live and let die. In this context, a system of imprisonment that "appears humane" but kills hope, restricts expression, and dulls dignity, is in fact a legalised form of violence. Therefore, human rights standards that emphasise only procedural fulfilment—such as the right to eat, sleep, and receive medical care—often fail to capture the existential dimension of human freedoms being deprived.

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43 Adnan Sattar, *Criminal Punishment and Human Rights: Convenient Morality* (Routledge, 2019).
44 Mavronicola, "The Case Against Human Rights Penality."
45 Ibid.
46 Scalia, "Long-Term Sentences in International Criminal Law: Do They Meet the Standards Set Out by the European Court of Human Rights?"
47 Sattar, *Criminal Punishment and Human Rights: Convenient Morality*.
48 Nina Kisic and Sarah King, "Toward a More Lenient Law: Trends in Sentencing from the European Court of Human Rights," *Human Rights Brief* 21, no. 2 (2014): 9–15, https://digitalcommons.wcl.american.edu/hrbrief/vol21/iss2/2/.

In the Indonesian context, this paradox of legitimacy can also be seen in the way the state justifies prison sentences within the framework of modern law. The New Criminal Code (Law No. 1 of 2023) is claimed to embody the spirit of humanisation by introducing alternative sentencing mechanisms and the principle of proportionality. Nevertheless, imprisonment remains the dominant form of punishment for most criminal offences. Thus, the rhetoric of humanisation in national criminal law has actually become a new form of legitimacy for the repressive power of the state. The state appears "modern" because it affirms the protection of human rights in legal texts, but on the ground, correctional institutions remain spaces for violations of basic human rights. This is the concrete form of the paradox that Mavronicola posits: a law that claims to be based on human rights can serve as a moral shield for the practice of punishment that remains inhumane.[49]

The reality of penitentiary institutions in Indonesia clearly reflects the paradox between the ideal of law and humanitarian practice. Research by Arafat et al.[50] shows that chronic overcrowding is not just a technical problem, but a systemic violation of human rights because it directly places individuals in conditions that degrade human dignity. The accumulation of inmates in cramped spaces without sufficient access to clean water, food, or medical services has transformed prison sentences from a means of rehabilitation to a form of institutional torture legalised by law.

Similar problems occur in the context of the right to health and welfare for prisoners. Most correctional institutions in Indonesia do not have adequate medical personnel, sufficient health facilities, or proper mental rehabilitation programmes. This condition further exacerbates the psychological impact of long-term incarceration, especially for vulnerable groups such as women and children. The study by Sridhar et al.[51] confirms that violations of reproductive and health rights in prison are forms of human rights violations that are often ignored. In Indonesia, female prisoners often face double discrimination: in addition to losing their freedom, they also experience limited access to reproductive health products, psychological support, and protection from sexual violence. Similarly, child prisoners are still often treated in the same system as adults, although

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[49] Veljko Turanjanin, "Life Imprisonment Without Parole: The Compatibility of Serbia's Approach with the European Convention on Human Rights," *Liverpool Law Review* 42, no. 2 (2021): 243–74, https://doi.org/10.1007/s10991-020-09269-6.

[50] Arafat et al., "Prison Mental Health in South-East Asia: A Narrative Review."

[51] Sridhar et al., "Beyond Borders: The Global Impact of Violating Reproductive Human Rights."

international law (the Convention on the Rights of the Child) has mandated different, rehabilitation-oriented treatment.[52]

In addition to structural and service factors, the social dimension also reinforces violations of the rights of vulnerable groups in prison. The stigma against inmates in society makes social reintegration difficult, while policies criminalising minor offences (e.g. petty theft or administrative offences) continue to add to the burden on correctional institutions. As a result, poor and marginalised groups are the ones who experience the most incarceration, creating a recurring pattern of social inequality. In this context, Indonesia's penal system appears to have failed to meet the principle of non-discrimination as stipulated in the ICCPR and the Mandela Rules. Prisons, which are supposed to be places of behavioural improvement, actually reinforce social exclusion and structural injustice. Thus, the condition of prisons in Indonesia is not only a problem of law enforcement but also a mirror of social inequality and the state's failure to realise substantive justice for all its citizens.

C. The Paradox of Legal Reform: Imprisonment and Humanisation in Indonesia's New Criminal Code

The birth of the New Criminal Code through Law Number 1 of 2023 marks an important milestone in the history of Indonesian law. After more than a century of using the Dutch colonial legacy Criminal Code (*Wetboek van Strafrecht*), this reform is projected as a form of legal decolonisation—an attempt to adapt national criminal law to the social, cultural, and moral values of the nation.[53] The government and lawmakers emphasised that the New Criminal Code brings the spirit of humanisation to criminal law, prioritising a balance between legal certainty, justice, and utility. Additionally, there is the principle of criminal differentiation, which allows judges to choose a more proportionate form of punishment and not always imprisonment. Normatively, this spirit aligns with progressive legal theory that views law as a means of social liberation and recovery, not just a tool of retribution.[54]

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[52] Andrew Novak, "Capital Sentencing Discretion in Southern Africa: A Human Rights Perspective on the Doctrine of Extenuating Circumstances in Death Penalty Cases," *African Human Rights Law Journal* 14, no. 1 (2014): 24–42, https://doi.org/10.10520/EJC153668.

[53] Ali Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform," *Jambe Law Journal* 8, no. 1 (2025): 255–85, https://doi.org/10.22437/home.v8i1.502.

[54] Rebecca Wasif, "Reforming Expansive Crime Control & Sentencing Legislation in an Era of Mass Incarceration: A National and Cross-National Study," *University of Miami International and Comparative Law Review* 27, no. 1 (2020): 174–202, https://repository.law.miami.edu/umiclr/vol27/iss1/7/.

However, behind the reform narrative, a number of academics and civil society institutions argue that the New Criminal Code still carries traces of the old paradigm oriented towards state power. Butt[55], in his analysis of the construction of the 2023 Criminal Code, states that this update is more symbolic than substantive. He pointed out that many articles appear editorially modern, but still maintain a repressive penal structure centred on prison sentences.

From a historical perspective, this condition describes the reproduction of power through law. As Foucault suggests, modern criminal law is often an instrument of normalisation and social control wrapped in moral legitimacy.[56] Thus, while the New Criminal Code carries the narrative of legal decolonisation, in practice, "epistemic colonialism" in the form of imprisonment continues. Legal reforms, which are expected to bring substantive justice, have the potential to preserve the old power mechanisms under a new guise. This paradox demonstrates that the humanisation of the law cannot be realised merely through changes in the text of the law, but requires a paradigm shift in understanding the function of punishment itself—from a tool of subjugation to a means of liberation and restoration of humanity.[57]

Normatively, the New Criminal Code introduces a more varied framework of criminal sanctions than the previous Criminal Code. Article 65 of Law No. 1 of 2023 recognises seven main types of punishment: imprisonment, custody, criminal supervision, fines, community service, the publication of judicial decisions, and the death penalty.[58] On paper, this represents a step towards a sentencing system that is more flexible and proportionate. The inclusion of community service and criminal supervision is presented as an alternative to imprisonment, in line with the spirit of restorative justice and rehabilitative punishment. However, a closer reading shows that these provisions still position imprisonment as the primary and most dominant sanction, whilst alternative punishments remain secondary, supplementary, or exceptional in nature. As a result,

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55 Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?"

56 Pat O'Malley and Mariana Valverde, "Foucault, Criminal Law, and the Governmentalization of the State," in *Foundational Texts in Modern Criminal Law*, ed. Markus D. Dubber (Oxford University Press, 2014), https://doi.org/10.1093/acprof:oso/9780199673612.003.0017; Aga Natalis, "Power, Law, and the Semiotics of Marginalisation: Rethinking Prostitution, Health Risk, and Legal Discourse in Indonesia," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique*, ahead of print, July 2, 2025, https://doi.org/10.1007/s11196-025-10310-y.

57 Sandeep Gopalan and Mirko Bagaric, "Progressive Alternatives to Imprisonment in an Increasingly Punitive (and Self-Defeating) Society," *Seattle University Law Review* 40, no. 1 (2016): 57–114, https://digitalcommons.law.seattleu.edu/sulr/vol40/iss1/3/.

58 Bagus Hanindyo Mantri et al., "Social Work Punishment in the 2023 Indonesian Criminal Code: Lessons from Finland and Netherlands," *Indonesian Journal of Crime and Criminal Justice* 1, no. 2 (2025): 131–55, https://doi.org/10.62264/ijccj.v1i2.157.

the system that is expected to open space for humanisation continues to rest on largely the same repressive foundations.

This tendency is clearly evident in the formulation of criminal threats for various criminal acts in the New Criminal Code. Most articles, even for non-violent crimes such as insults, moral violations, or administrative crimes, still make prison the primary sanction. For example, Article 218 of the Criminal Code, which regulates insults against the President and Vice President, threatens imprisonment of up to three years, while a fine is only an additional option. A similar pattern is found in articles related to decency and public order, which show that the New Criminal Code is still oriented towards punitive state logic—a state that maintains the legitimacy of its power through the threat of imprisonment. Thus, the "criminal diversification" promised by lawmakers has not been followed by the transformation of the real penal policy paradigm.[59]

Furthermore, the effectiveness of the alternative sanctions introduced by the New Criminal Code remains uncertain at the level of implementation. Measures such as criminal supervision and community service are not yet supported by robust institutional frameworks or sufficient human resources, limiting their practical viability. In this context, judges continue to rely predominantly on custodial sentences, as these are perceived to be more certain, straightforward, and administratively manageable. This tendency reinforces the enduring dominance of imprisonment within the penal system, despite the formal availability of alternatives. Consequently, the New Criminal Code exhibits a familiar pattern of formalistic legal reform, whereby structural changes are introduced without being accompanied by substantive transformation in practice. This, in turn, strengthens the argument that imprisonment continues to function as the centre of gravity in Indonesia's criminal law—not necessarily because of its effectiveness in addressing crime, but because of its symbolic role as an expression of state authority over its citizens.

Comparisons with criminal justice systems in various countries show that some jurisdictions have sought to reduce their dependence on prison sentences through more humane and rehabilitation-based policies. The Netherlands, for example, is known as one of the countries with the lowest incarceration rates in the world. Criminal law reform in the Netherlands during the 1980s–1990s emphasised the principle of minimum intervention—where punishment, especially imprisonment, is used only as an ultima ratio. Criminal fines, criminal supervision, and mediation between the perpetrator and the victim are more often applied for minor offences. This approach

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[59] Faisal et al., "Progressive Consderation of Judges in Deciding Sentencing Under Indonesia New Criminal Code," *Jambe Law Journal* 6, no. 1 (2023): 85–102, https://doi.org/10.22437/jlj.6.1.85-102.

has proven effective in reducing recidivism rates and increasing public trust in the criminal justice system. In this context, the Netherlands successfully put into practice the philosophy that justice does not always have to be realised through suffering, but through social restoration.[60]

A more progressive model can be seen in Norway, where the prison system is based on the principles of restorative and rehabilitative justice. Correctional facilities in the country are designed to resemble ordinary social environments, with open access to education, employment, and family relationships. The goal is to prepare inmates to return to society without stigma and dependence on the prison system. As a result, the crime recidivism rate in Norway is among the lowest in the world, at around 20%, compared to the global average of over 50%. The principle that this system adheres to is that "man is not his crime"—a value that puts the dignity of the individual above the logic of retribution. In comparison, Indonesia's criminal justice system remains trapped in the paradigm of retributive justice, where imprisonment is considered the only form of legitimate justice.[61]

Meanwhile, the Philippines—a developing country with a relatively similar legal and social context to Indonesia—faces almost the same challenges: overcapacity, violence in prisons, and a lack of rehabilitative resources. However, several policy reforms in the past decade point to a direction of change. The Philippines introduced the Community Service Act (2019) programme, which replaces prison sentences for minor offences with community service in the community.[62] Although its implementation is not perfect, this policy shows a new awareness that imprisonment is not always an effective solution. This comparison shows that Indonesia is lagging behind in implementing the principle of decarceration or reducing dependence on prisons. The New Criminal Code has not adopted concrete steps towards a more progressive penal policy as other countries have done. This means that Indonesia's criminal law reform is still dwelling on the symbolic and normative level, not yet touching the philosophical roots of the penal system itself.

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[60] M. Arief Amrullah, "Paradigm Shift of Death Penalty Regulation in the New Criminal Code (KUHP) of Indonesia," *Lentera Hukum* 11, no. 1 (2024): 24–55, https://doi.org/10.19184/ejlh.v11i1.45809.

[61] Masyhadi Irfani and Ira Alia Maerani, "Criminal Code Policy in the Effort of Corruption Prevention in Institutions Regional Disaster Management Agency," *Jurnal Daulat Hukum* 2, no. 1 (n.d.): 324167, https://doi.org/10.30659/jdh.v2i1.4209.

[62] Le Thu Dao et al., "Diversion and Restorative Justice in the Context of Juvenile Justice Reforms in Indonesia, Thailand, the Philippines and Vietnam," *The International Journal of Restorative Justice* (Leiden, The Netherlands) 5, no. 2 (2022): 237–62, https://doi.org/10.5553/TIJRJ.000104.

Philosophically, criminal law ideally serves not solely to avenge crimes but to restore disturbed social and moral balances.[63] In this context, the renewal of the 2023 Criminal Code should be a momentum to strengthen the rehabilitative rather than retributive orientation. However, an analysis of the structure and spirit of the articles shows that the direction of change remains half-hearted. Prison sentences are still placed as a symbol of justice and order, not as a means of recovery. Criminalisation in Indonesia remains rooted in the morality of classical law that identifies justice with the suffering of the perpetrator. This view contradicts modern principles that emphasise social reintegration and respect for human dignity. Thus, the New Criminal Code has not fully reflected the paradigm shift from the law of retribution to the law of restoration.

From a political and legal perspective, the dominance of imprisonment reflects the state's attempt to maintain social control through legally legitimate mechanisms. According to critical legal studies theory, law is often a tool to maintain the existing power order, not to challenge it. In this case, prison functions as a disciplinary mechanism that produces compliance, not as an instrument of rehabilitation.[64] This is evident in the way Indonesian law responds to crime: instead of strengthening the restorative justice system or encouraging a community-based approach, the state is expanding the scope of criminalisation and the threat of imprisonment. Such policies show that "criminal law reform" is often used to strengthen the political and moral legitimacy of the state, not to restore social welfare or fight for substantive justice.

From a legal moral point of view, a system that focuses on the suffering of the perpetrator is closer to the spirit of revenge than humanity. Beccaria[65], in his classic work, emphasised that the purpose of punishment is not to make the perpetrator suffer, but to prevent crime and improve society. In the modern context, this principle aligns with the idea of progressive law that views human beings not as objects of punishment, but rather as subjects that can be restored.[66] However, the New Criminal Code has not been able to realise this morality. When prison sentences remain dominant while alternative sentences are only accessories, legal reform loses its moral power. True

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63 Joshua Kleinfeld, "Reconstructivism: The Place of Criminal Law in Ethical Life," *Harvard Law Review* 129, no. 6 (2016): 1485–565, https://harvardlawreview.org/print/vol-129/reconstructivism-the-place-of-criminal-law-in-ethical-life/.

64 R. M. Unger, *The Critical Legal Studies Movement* (Cambridge University Press, 1983); F. X. Adji Samekto, "Revealing Relationship Capitalism, Democracy and Globalization in Critical Legal Studies Approach," *Diponegoro Law Review* 2, no. 1 (2017): 15–26, https://doi.org/10.14710/dilrev.2.1.2017.15-26.

65 Beccaria, *Dei Delitti E Delle Pene*.

66 Erlyn Indarti, "Progressive Law Revealed: A Legal Philosophical Overview," *Diponegoro Law Review* 3, no. 1 (2018): 28, https://doi.org/10.14710/dilrev.3.1.2018.28-42; Satjipto Rahardjo, "Hukum Progresif: Hukum Yang Membebaskan," *Jurnal Hukum Progresif* 1, no. 1 (2011): 1–24, https://doi.org/10.14710/hp.1.1.1-24.

criminal law reform is not about adding articles or reorganising the criminal structure, but rather about changing the way of thinking about the law—from punishing the body to rehabilitating people.

One of the main criticisms of the New Criminal Code is that there is a wide gap between the reform narrative and the substance of the law change. The government claims that this codification brings fundamental renewal through a more humane, contextual, and socially just approach. However, at the normative level, the New Criminal Code still shows the same pattern as the colonial system, namely making prison sentences the main axis in law enforcement. Many of the new provisions actually do not reduce the burden of imprisonment, but instead expand the scope of criminalisation, such as moral offences, insults to state institutions, and violations of public morals. Thus, the "reforms" in the New Code tend to be cosmetic—refining the language of the law without changing its underlying ideology. This phenomenon is referred to by some academics as reform without transformation, where legal changes are not accompanied by a change in the paradigm of thinking.

This inconsistency is also reflected in the rhetorical shift from "retaliation" to "coaching", without being followed by adequate institutional restructuring. In fact, the concept of restorative justice introduced in the New Criminal Code is only applied to minor crimes, without touching the deeper structure of criminal law. As a result, criminal law reform runs in a narrow space—adapting modern symbols and terms, but retaining the old logic of power. In the framework of legal politics, this condition reflects that the state still sees prison as a means of moral and political legitimacy, not as an instrument for the formation of a just and civilised society.[67]

Furthermore, this failure of transformation demonstrates the weak integration between human rights values and national law enforcement practices. Although Indonesia has ratified various international instruments such as the ICCPR and the Convention against Torture, its implementation in penal policy is still formalistic. The principle of human dignity, which should be the soul of criminal law, has not been truly internalised in judicial practice and in correctional policy. True legal reform requires an epistemological change: viewing the perpetrator of crime as a human being who still has the right to be corrected, not just an object of suffering to be confined. Thus, the criticism of the New Criminal Code is not only about the incompatibility between text

[67] A. M. Endah Sri Astuti, *Bringing Justice for Transgender People: Reforming Rehabilitation Policies in Indonesia's Correctional System*, 11 (December 2025): 2801–48, https://doi.org/10.5281/zenodo.17835026.

and practice but about the failure to understand that substantive justice cannot be achieved without the courage to transform the way of thinking about the meaning of punishment itself.

D. Structural Failures and Social Impacts of the Indonesian Prison System: Challenges in Rehabilitation and Human Rights

Arafat et al.[68], in their study on mental health in Southeast Asian prisons, highlighted that overcapacity is not merely an administrative issue but a form of structural violence that systematically infringes upon the right to human health, safety, and dignity. In such conditions, prison sentences no longer serve as a means of rehabilitation but instead become spaces for the perpetuation of human suffering and degradation.

This poor physical condition correlates with the high rate of recidivism, or repeat offending, in Indonesia. This phenomenon underscores the failure of the prison system in fulfilling its rehabilitative function. Rather than improving behaviour, prisons have become new spaces for criminal socialisation. Factors such as violence among inmates, psychological stress, lack of family support, and the absence of social reintegration programmes exacerbate the situation. In many cases, released prisoners face social stigmas and difficulty finding employment, which pushes them back into criminal activity. Consequently, imprisonment in Indonesia not only fails to reduce crime but also perpetuates the cycle of crime, which is difficult to break.

In addition to physical and social problems, the mental health aspect of inmates remains a hidden crisis that rarely receives attention. Arafat et al.[69] found that the prevalence of depressive disorders, anxiety, and post-traumatic stress disorder in Southeast Asian prisons is significantly higher than in the general population, with stressful living conditions, violence, and legal uncertainty being the primary causes. In Indonesia, mental health services in correctional facilities are extremely limited — only a small percentage of prisons have permanent psychologists or psychiatrists. As a result, many inmates suffer from mental health issues without diagnosis or treatment. This situation reinforces the paradox of prisons as "rehabilitation centres" that actually worsen the welfare of individuals. With cramped living conditions, high recidivism rates, and neglected mental health, Indonesia's prison system demonstrates profound structural failure: imprisonment has ceased to be a tool of law enforcement and has become a form of state-sanctioned human suffering.

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[68] Arafat et al., "Prison Mental Health in South-East Asia: A Narrative Review."
[69] Ibid.

The deterioration of conditions within Indonesian prisons is closely linked to the persistent limitation of state budget allocations for correctional institutions. Within the overall budgetary framework of the Ministry of Law and Human Rights, funding for the Directorate General of Corrections has remained largely stagnant, despite a continual rise in the prison population. This imbalance has resulted in increasing pressure on already limited resources, leaving essential provisions such as food, healthcare, education, and rehabilitation programmes severely underfunded. Consequently, the capacity of correctional institutions to fulfil their rehabilitative function is significantly undermined. This situation reflects a deeper structural problem, suggesting that the state continues to perceive prisons primarily as a fiscal burden rather than as institutions capable of fostering social reintegration and the development of better citizens. Such an approach stands in tension with international human rights standards, particularly the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), which affirm the state's obligation to guarantee the basic rights of prisoners without discrimination, including access to adequate healthcare services and humane living conditions.

In addition to financial constraints, the shortage of professionals also contributes to the worsening situation. Indonesian correctional facilities are generally short of psychologists, counsellors, community service officers, and spiritual advisors, all of whom should play an important role in the rehabilitation of inmates. Most prison officers still serve primarily as security guards rather than as facilitators of rehabilitation. As a result, interactions with inmates tend to be mechanical and coercive, rather than educational. The disparity between the number of officers and inmates further creates heavy workloads, increasing the risk of disciplinary violations, corruption, and violence. In many cases, prison officers find themselves in a moral dilemma, having to enforce rules in structurally inhumane conditions. This highlights the need for correctional reform that includes not only changes in regulations but also an increase in human resources capable of applying a humanitarian approach to law enforcement.

More fundamentally, Indonesia's prison system is still built on a repressive paradigm that treats prisoners as objects of control, rather than subjects of rehabilitation.[70] This paradigm, rooted in colonial legal traditions, prioritises security and order over individual rights. This approach

[70] Iwa Maulana et al., "The Relevance of High-Risk Prisons to Indonesia's Preventing Violent Extremism Policy," *Perspectives on Terrorism* 16, no. 3 (2022): 22–36, https://pt.icct.nl/article/relevance-high-risk-prisons-indonesias-preventing-violent-extremism-policy; William Maxey et al., "Discrepancy Between Policy and Practice: A Case Study on Hegemony Within an Indonesian Juvenile Correctional Center (LPKA)," *Children and Youth Services Review* 177 (October 2025): 108469, https://doi.org/10.1016/j.childyouth.2025.108469.

manifests in uniform and disciplinary rehabilitation patterns, with minimal space for inmates' participation. Instead of fostering trust and responsibility, this system reinforces the power hierarchy between officers and inmates. Research by van Ginneken & Wooldredge[71] shows that this power dynamic often fosters latent violence and exacerbates the psychological conditions of inmates. This repressive paradigm also stifles policy innovation, as any change is often seen as a threat to the stability of the system. Therefore, the institutional constraints in Indonesia's correctional system are not just technical problems but reflect an epistemological failure to understand the true meaning of justice and humanity in the practice of imprisonment.

In addition to institutional issues, Indonesia's prison system also has broad and long-term social consequences, particularly in terms of the stigmatization of former prisoners. Indonesian society still perceives prisoners as individuals who have lost their moral values and are unworthy of trust, even though they have served their sentences and tried to reform. This social stigma limits the opportunities for former prisoners to find employment, access education, and reintegrate into their communities. In many cases, they experience multiple layers of discrimination — whether from society, public institutions, or even their own families. This phenomenon perpetuates the cycle of incarceration, as individuals who fail to adapt to life after release are often pushed back into criminal behaviour due to economic hardship or the loss of social identity. Thus, Indonesian prisons not only isolate individuals physically but also socially and morally.

A more complex condition is faced by female prisoners, who experience double marginalisation — as criminals and as women. A report by Sridhar et al.[72] confirms that women in correctional facilities are often placed in conditions that do not meet their biological and psychological needs. Access to reproductive health services, psychological support, and protection from sexual violence remains severely limited. Moreover, many women are incarcerated for minor economic crimes or morality offences, which stem from gender inequality and structural poverty. While serving their sentences, their children often lose essential nurturing and emotional support, creating a cycle of intergenerational social vulnerability. This situation reveals that a gender-insensitive penal system not only punishes the perpetrator but also punishes their family — particularly children, who are hidden victims of the prison system.

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[71] van Ginneken and Wooldredge, "Offending and Victimization in Prisons: New Theoretical and Empirical Approaches."

[72] Sridhar et al., "Beyond Borders: The Global Impact of Violating Reproductive Human Rights."

The social impact of incarceration also extends to families and communities. The detention of a family member often leads to the economic collapse of the household, loss of social status, and psychological trauma for spouses and children. A study by Skjærvø et al.[73] found that children of incarcerated parents are at a higher risk of developing behavioural problems and criminal tendencies in the future. In Indonesia's collectivist culture, imprisonment also brings a sense of profound social shame to families, which can lead to social exclusion. As a result, the prison system not only punishes individuals but also disrupts the social networks that are the foundation of people's lives. Thus, prisons create a ripple effect that undermines social cohesion and exacerbates social injustice. In this framework, the prison issue is no longer merely a legal issue, but a humanitarian and social justice issue that calls for a comprehensive paradigm shift.

The passage of Law Number 22 of 2022 on Corrections is considered a significant milestone in the reform of Indonesia's prison system. This law explicitly shifts the focus from punishment to rehabilitation, making the concept of "coaching" central to the implementation of penalties. The main objective is to transform prisons into centres for social reintegration, rather than just places of punishment. Article 3 of the Law stresses that correctional services must be carried out with respect for human dignity, human rights protection, justice, and legal certainty. On paper, these changes align with the principles of the Mandela Rules and the progressive spirit of law, which highlights the humanitarian aspect of punishment. However, the issue lies in implementation: the extent to which normative principles are realised in practice within a context constrained by structural limitations.

In practice, the promised rehabilitative system continues to face significant obstacles. Rehabilitation programmes are frequently implemented in a uniform and administrative manner, with limited attention to the diverse psychological, social, and economic needs of individual inmates. As a result, the intended purpose of rehabilitation is often reduced to procedural compliance rather than meaningful personal development. In principle, effective rehabilitation should incorporate restorative elements that actively engage families, communities, and, where appropriate, victims, thereby fostering accountability and social reintegration. However, weak systems of evaluation and monitoring further undermine these efforts, as many programmes become little more than formalities designed to satisfy administrative requirements, particularly those related to parole. This lack of substantive engagement has serious consequences: individuals

[73] Skjærvø et al., "Characteristics and Risk of Reimprisonment Among Children and Young Adults in Norwegian Prisons. A 20-Year Cohort Study."

released from custody are often inadequately prepared, both socially and emotionally, to return to society. In turn, this increases their vulnerability to reoffending, contributing to persistently high rates of recidivism and reinforcing the cyclical nature of imprisonment.

Furthermore, the effectiveness of the rehabilitation system depends on the quality and orientation of correctional officers. The outdated paradigm that views prisoners as objects of discipline is still dominant, making it difficult to internalise a humanistic approach. Many correctional officers have not been trained in rehabilitative and restorative approaches, resulting in vertical and coercive interactions with inmates. Additionally, limited facilities, an unequal officer-inmate ratio, and low welfare further degrade the quality of rehabilitation. This situation shows that although the legal framework has shifted towards a more humane approach, the cultural and institutional transformation has yet to take place. Thus, the reform of corrections following Law No. 22 of 2022 remains largely rhetorical — successful in theory, but failing in practice. True reform will only be realised if the state changes its perspective on prisoners: not as a burden but as human beings deserving of rehabilitation.

To understand why the prison system remains dominant despite its ineffectiveness and violation of human rights, it is essential to examine what Foucault[74] calls disciplinary power — a power that operates not through physical violence but through mechanisms of criminal supervision, normalisation, and behaviour control. According to Foucault[75], prisons are not merely places of punishment but laboratories of modern power designed to control the body and mind. Through routine supervision, criminal regulation, and strict rules, individuals are conditioned to conform to norms set by the state. Thus, imprisonment serves to create "docile bodies", not free individuals. In this context, prisons are not only concerned with justice but also with the reproduction of power: the state uses criminal law to impose social discipline and bolster its moral legitimacy.

The logic of this power is still evident in law enforcement practices in Indonesia. The prison system remains a major tool in criminal politics, as it projects an image of state assertiveness in upholding order, even though its effectiveness is questionable. The mass incarceration of petty offenders, including drug users, administrative violators, and those committing misdemeanours, suggests that the focus of criminal law is more on social control than on achieving substantive justice. This reflects Foucault's logic of disciplinary power: law enforcement serves as a

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[74] Foucault, *Discipline and Punish: The Birth of the Prison*.
[75] Ibid.

mechanism for creating social order through fear and submission.[76] In practice, the state prefers to exert its power by "putting people in jail" rather than addressing the underlying social causes of crime, such as poverty, inequality, or lack of education. Therefore, the prison system becomes a symbol of repressive criminal politics — legally justified but morally unjust.

In contemporary Indonesian legal politics, the logic of power in imprisonment is also tied to the state's efforts to maintain authority and legitimacy in the eyes of the public. When a high-profile crime occurs, the quickest political response is to increase the threat of imprisonment or tighten law enforcement. This phenomenon is referred to as "penal populism", in which criminal policies are designed to satisfy society's emotional demands rather than to rationally address the problem of crime. As a result, the criminal justice system has shifted from a rehabilitative to a punitive orientation. This is where the greatest paradox of Indonesia's prison system lies: laws that are supposed to protect human dignity have become instruments of social control that reinforce inequality and state power. In other words, the logic of power that Foucault describes is still evident behind the modern Indonesian legal system — hidden behind the rhetoric of justice, yet operating through a continuously oppressive mechanism of punishment.

E. Building a Restorative Penal System in Indonesia: A Call for Legal Reform

The restorative justice paradigm emerged as a response to the failure of the retributive penal system, which focuses on the suffering of the perpetrator. This concept is based on the principle that crime is not merely a violation of state law but also a violation of social relations between the perpetrator, the victim, and the community. Consequently, the resolution of crimes should focus not only on punishment but also on restoring the damaged relationships and losses. According to Zehr[77], restorative justice aims to "restore balance" by providing a space for dialogue between perpetrators and victims, as well as involving the community in the process of social healing. This approach places moral responsibility above formal punishment and encourages social reintegration rather than isolation. Within the human rights framework, restorative justice affirms that every person, including the perpetrator of crimes, has the right to be corrected, not merely punished.

The application of this paradigm can be found in various modern jurisdictions. Canada, for example, has institutionalised community conferencing and victim-offender mediation

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[76] Natalis, "Power, Law, and the Semiotics of Marginalisation: Rethinking Prostitution, Health Risk, and Legal Discourse in Indonesia."

[77] Howard Zehr, *Changing Lenses: Restorative Justice for Our Times* (MennoMedia, Inc., 2015).

programmes for misdemeanour and juvenile cases.[78] This process allows victims and perpetrators to meet, listen to each other, and reach an agreement on forms of social responsibility, such as community service or direct compensation. Such programmes have been proven to reduce recidivism rates and increase victim satisfaction, providing a more personal and meaningful sense of justice. Meanwhile, New Zealand has become a pioneer in implementing restorative justice within its juvenile justice system through the Family Group Conference (FGC).[79] This approach prioritises family and community participation in resolving cases, ensuring that the legal process does not merely punish but also strengthens social ties damaged by criminal acts.

A similar model is also applied in Norway, where the penal system focuses on rehabilitation, personal responsibility, and social welfare.[80] The country has successfully integrated restorative justice into its criminal justice system through the restorative prisons approach, where prisons function as spaces for social education rather than punishment. Inmates are given access to education, employment, and social interaction as part of their self-recovery process. The underlying principle is simple but profound: "respect the dignity of the perpetrator so that they learn to respect the dignity of others." This approach reflects a shift from punitive power to liberating power. When compared to Indonesia, these practices show that true criminal law reform can only be achieved if the state changes its philosophical orientation from punishment to social healing and humanitarian restoration.

The New Criminal Code (Law No. 1 of 2023) is often hailed as a symbol of progress in Indonesia's criminal law reform because it introduces alternative criminal concepts and opens up space for the application of restorative justice. Among its significant provisions are the expansion of criminal forms such as community service, proportional fines, and criminal supervision as alternatives to imprisonment. Normatively, this step is an attempt to reduce the legal system's

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[78] Barbara Tomporowski, "Restorative Justice and Community Justice in Canada," *Restorative Justice* 2, no. 2 (2014): 218–24, https://doi.org/10.5235/20504721.2.2.218; Lynn Stewart et al., "The Impact of Participation in Victim-Offender Mediation Sessions on Recidivism of Serious Offenders," *International Journal of Offender Therapy and Comparative Criminology* 62, no. 12 (2018): 3910–27, https://doi.org/10.1177/0306624X17752274.

[79] Judge F. W. M. McElrea, "The New Zealand Model of Family Group Conferencing," *European Journal on Criminal Policy and Research* 6, no. 4 (1998): 527–43, https://doi.org/10.1023/A:1008696514447; William R. Wood and Juan Tauri, "Revisiting New Zealand's 'Gift to the World': Demythologising Youth Justice Family Group Conferencing in Aotearoa New Zealand," *Contemporary Justice Review* 28, no. 2 (2025): 220–44, https://doi.org/10.1080/10282580.2025.2519736.

[80] John Todd-Kvam, "Penal Welfarism and Rehabilitation in Norway: Ambitions, Strengths and Challenges," in *The Palgrave Handbook of Global Rehabilitation in Criminal Justice*, ed. Maurice Vanstone and Philip Priestley (Springer International Publishing, 2022), https://doi.org/10.1007/978-3-031-14375-5_27; Christin Tønseth and Ragnhild Bergsland, "Prison Education in Norway – The Importance for Work and Life After Release," *Cogent Education* 6, no. 1 (2019): 1628408, https://doi.org/10.1080/2331186X.2019.1628408.

dependence on incarceration and offer more humane penal optionsIn many cases, alternative punishment is positioned only as a complement to prison sentences, not as a primary option that is equivalent in value to other criminal sanctions. Therefore, while the reform appears progressive on paper, conceptually, the system remains centred on imprisonment.

The fundamental weakness in the implementation of alternative criminal justice in Indonesia lies in the lack of an adequate legal and institutional infrastructure to support it, as law enforcement bodies—including the police, prosecutors, and judiciary—remain largely oriented towards formalistic and punitive approaches. As a consequence, restorative justice is often applied only in a limited and symbolic manner, typically confined to minor offences or cases considered easily "resolvable," thereby undermining its broader transformative potential. At the same time, there is an absence of robust mechanisms to facilitate meaningful victim–offender mediation or to ensure genuine community participation, with many so-called restorative processes reduced to administrative settlements led by authorities. In reality, the essence of restorative justice lies in the active and voluntary involvement of all parties affected by crime, aimed at fostering accountability, repairing harm, and rebuilding social relationships; without this substantive engagement, restorative justice risks remaining merely procedural rather than functioning as a genuine alternative to punitive practices.

From an institutional perspective, the implementation of alternative sanctions is hindered by weak inter-agency coordination and limited institutional capacity. The absence of clear technical guidelines leaves implementation dependent on the subjective interpretation of law enforcement officials. Moreover, the mechanisms for monitoring and evaluating the success of alternative programmes are almost non-existent. This raises concerns that alternative criminal justice will merely become a "legal embellishment" without any real change to the repressive penal culture. Thus, the reforms introduced by the New Criminal Code are still in a transitional stage — adopting restorative terms without altering the power structure that underpins the penal system. For alternative criminal justice to be truly effective, Indonesia must build a legal ecosystem that prioritises social recovery, strengthens mediation institutions, and places humanity at the core of criminal law politics.[81]

The transformation of Indonesia's penal system requires a fundamental redefinition of the role of prisons. Within the framework of progressive law, prisons can no longer be understood as

[81] Barda Nawawi Arief, *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan* (Penerbit Pustaka Magister, 2012).

mere spaces for punishment but as means of social rehabilitation oriented towards human recovery. Their function must shift from enforcing fear to fostering moral responsibility and awareness. This redefinition includes a shift in how prisoners are perceived: no longer as objects of criminal supervision but as subjects with the potential for improvement. The state must ensure that any criminal process leads to social reintegration, not just institutionalised suffering. As articulated by Duffy & Kelly[82] in their concept of penal communication theory, punishment should be communicative in nature—conveying a moral message to the offender without negating their humanity. This principle is particularly relevant in the Indonesian context, where the moral purpose of criminal law has been diminished by the continued dominance of imprisonment.

To realise a more rehabilitative penal system, public policy must focus on strengthening the community-based system. The community-based rehabilitation model implemented in Norway and the Netherlands can serve as a reference: inmates undergo rehabilitation outside the prison walls, with social criminal supervision, skills training, and intensive psychological support. This approach has been proven to significantly reduce recidivism rates while also reducing state costs. In Indonesia, similar mechanisms can be adapted through collaboration between correctional institutions, local governments, and civil society organisations. Community service programmes, vocational education, and community mediation can serve as effective rehabilitation tools when managed with participatory principles. By involving the community, the penal system no longer isolates, but works to restore social relationships damaged by crime.

Furthermore, this reform requires institutional reconstruction and legal politics that prioritise humanity.[83] The government should develop a long-term strategy to reallocate budget priorities from prison construction towards strengthening social services and expanding community-based crime prevention programmes. Additionally, law enforcement officials need to be trained to internalise the principles of restorative justice rather than simply applying administrative procedures. Transparency and accountability in the implementation of rehabilitative programmes must also be strengthened through public evaluation mechanisms and academic participation. Therefore, the transformation of the penal system does not stop at changing the legal text but requires a cultural shift in legal practices. Such a policy direction would mark an important

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[82] R. M. Duffy and B. D. Kelly, "Can the World Health Organisation's 'QualityRights' Initiative Help Reduce Coercive Practices in Psychiatry in Ireland?," *Irish Journal of Psychological Medicine* 40, no. 2 (2023): 114–17, Cambridge Core, https://doi.org/10.1017/ipm.2020.81.

[83] Hudson, "Tough Justice: Sentencing and Penal Policies in the 1990s."

transition from a punishing state to a restorative state, where justice is not measured by how long someone is confined but by how far they manage to return to being a whole human being.

F. Conclusion

The system of imprisonment has become a paradox in modern criminal law: on the one hand, it is claimed to be an instrument of justice and social order; on the other hand, it actually gives rise to human suffering and the reproduction of power. This research demonstrates that although the New Criminal Code (Law No. 1 of 2023) embodies the spirit of humanisation and legal reform, the prison paradigm remains the central focus of the Indonesian penal system. The continued dominance of prison sentences indicates that the legal changes implemented are more symbolic than substantial. In this context, Indonesia remains trapped in the colonial legacy of criminal law, which emphasises retribution and the enforcement of state authority, rather than social restoration and respect for human dignity.

Empirical findings on the overcapacity of correctional institutions, high recidivism rates, and the poor mental health of inmates reveal that Indonesia's prison system has failed in its rehabilitative function. Prisons no longer serve as a means of rehabilitation but as an arena of social exclusion that legitimises suffering under legal authority. Institutional factors such as budget limitations, a lack of professional personnel, and the repressive paradigm of the correctional apparatus exacerbate the humanitarian crisis behind prison walls. Furthermore, social impacts such as the stigmatization of ex-convicts, the marginalisation of women, and family disintegration demonstrate that imprisonment has caused systemic social harm, which is the antithesis of the social justice ideals of Pancasila.

From the perspective of Michel Foucault's theory of power, imprisonment functions as a disciplinary mechanism that maintains the subjugation of citizens to the state, rather than serving as a means of moral education. This logic of power is evident in Indonesia's contemporary criminal politics, where the tightening of sentences and mass imprisonment are often used as instruments of penal populism to demonstrate state authority. In such a situation, criminal law reform loses its moral direction: instead of humanising the law, the state normalises suffering as a tool of legitimising power. Therefore, criticism of the New Criminal Code is not only about the legal text, but also about the epistemology of power that places punishment above restoration.

The recommendations of this study highlight the importance of transforming the criminal law paradigm from retributive to restorative and rehabilitative. The state needs to redefine the function of prisons so that they are no longer symbols of power, but spaces for social recovery.

Public policy should focus on strengthening community-based alternative sanctions, promoting community participation in the criminal justice process, and enhancing the institutional capacity of correctional institutions to implement rehabilitation-oriented correctional programmes. True reform is not merely about updating legal provisions, but about instilling the belief that justice is not measured by the length of time a person is imprisoned, but by how far the law can restore lost humanity. In this framework, progressive justice is justice that restores, not punishes.

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