Conceptual Article

Guidelines for Implementing Imprisonment Sentences with Single Formulation (A Critique of Book I of the National Criminal Code)

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ABSTRACT

The most basic difference in the criminal system between the Criminal Code (WvS) and the National Criminal Code is the provision of sentencing guidelines. It is important to formulate guidelines for sentencing as a provision to achieve the objectives of punishment because they are related to the formulations of single and alternative penalties for criminal acts in the provisions of the National Criminal Code. This paper aims to conduct a theoretical study on the formulation of the criminal system from the guidelines for implementing prison sentences with a single formulation contained in Book I of the National Criminal Code, as a general rule that applies to Book II of the National Criminal Code and criminal law out of the National Criminal Code. The results of the study show that the formulation of criminal application guidelines with a single formulation contained in the provisions of Article 57 of the National Criminal Code theoretically does not follow the rules of the criminal system as they should. The provisions of Article 57 are placed in the 3rd paragraph to regulate "Guidelines for the Implementation of Imprisonment Sentences with a Single Formulation and Alternative Formulations." Lawmakers no longer include guidelines for implementing prison sentences with a single formulation, as previously existed in the Draft of the National Criminal Code. The consequence of not regulating the guidelines for implementing prison sentences with a single formulation is that judges cannot make flexible choices in applying sentences that are in accordance with the objectives of the sentence.

Keywords: Sentencing Guidelines; Imprisonment Sentence; Single Formulation.

A. INTRODUCTION

The presence of Law Number 1 of 2023 concerning the Criminal Code, which was ratified on December 6, 2022, is a history of decolonialization of the material criminal law system which follows Law Number 8 of 1981 concerning the Criminal Procedure Code replacing the HIR. The National Criminal Code's ratification of the Criminal Code (WvS) is eagerly awaited as the parent of the national criminal law system. The Criminal Code (WvS) as the Dutch legacy, which has been a positive law, is a legal product that has been swallowed by time and is far behind the needs of modern punishment. In the formulation of the provisions of the criminal system in the Criminal Code (WvS) as a legacy of the Dutch Criminal Code (WvS), the main regulatory provisions of the criminal system do not regulate the provisions of the sentencing

guidelines for criminal acts and mistakes that can be punished.

The unification of acts and mistakes as components of criminal acts in the Criminal Code (WvS) reflects that the Criminal Code adheres to a monistic school in determining actions as criminal acts. Likewise, regarding the pattern of formulating the *strafsoort* of prison sanctions in the Criminal Code (WvS) punishment system, it tends to use alternative formulations of criminal sanctions. However, the pattern of formulating the *strafsoort* does not determine the pattern and guidelines for punishments in Book 1 of the Criminal Code (WvS), so, in practice, its application becomes a problem, especially an imprisonment which is an alternative to monetary fines with its significance value which is no longer relevant. When examining the elasticity of the formulation of sentencing guidelines in the Criminal Code (WvS) as a reference for implementing alternative sentences, it is only determined in Article 14 a of the Criminal Code (WvS) to provide elasticity in the judge's freedom to make other decisions deemed appropriate other than imprisonment.

A recent development in the National Criminal Code's criminal system with a *daad-dader-strafrecht* orientation, in its provisions on the principles of criminal law, reflects its style which Muladi calls the term "Indonesian-way" (Muladi, 2020). The restructuring of criminal law in the National Criminal Code means a shift in the values, patterns, and formats of the criminal system that previously existed in the Criminal Code (WvS). From a normative-substantive point of view, according to Barda Nawawi Arief, the criminal system is the entire system of material criminal law rules for the imposition and implementation of crimes (Arief, 2016). For the imposition and implementation of this crime, sentencing guidelines are required to achieve the goal of punishment that is certain and fair in a balanced way as the mission of the concept in the principles of the National Criminal Code. The views of Muladi and Barda Nawawi Arief illustrate the hope that with the birth of the National Criminal Code there will no longer be disparities in the application of the law in the future, which is currently as complained about in the writings of Rofingi and Umi Rozah, Umi in her research that the application of the existing law shows that there are differences that occur. in the social strata of Indonesian society (Rofingi, Rozah, Asga, 2022).

The character of the punishment system which is oriented towards *strafrech daad-dader* as the nature of determining punishment in the National Criminal Code is seen as more humane because legal certainty is no longer the only goal in resolving criminal acts. To realize the objectives of punishment, the guidelines for punishment must be formulated firmly and clearly in the basic provisions contained in the general rules of the National Criminal Code. The general rules governing the objectives and guidelines for punishment in the National Criminal Code are

formulated by grouping the articles that fall into the category of objectives and guidelines for punishment. The objectives of punishment are placed in Articles 51-52 in the 1st paragraph, and the guidelines for punishment are in Articles 53-57 in the 2nd paragraph of Chapter III of Book I of the National Criminal Code. In the sentencing guidelines formulated in Article 57 by the drafter of the law, it appears that it specifically determines the guidelines for implementing imprisonment with a single formulation and alternative formulations.

The placement of Article 57 in Book I of the National Criminal Code in the criminal system has the meaning and position as a general rule regarding sentencing guidelines for the application of the formula for criminal acts contained in Book II of the National Criminal Code. The placement of guidelines for implementing prison sentences with a single and alternative formulation in the 3rd paragraph theoretically creates a discrepancy or gap that is highly fundamental that judges can apply in practice. By not formulating the judge's guidelines for the application of the formulation of a single prison sentence in Article 57, as intended in the content of paragraph 3 of Chapter III Book I of the National Criminal Code, this constitutes an irregularity in the rules of the sentencing system.

The Criminal Code (WvS), based on Barda Nawawi Arief's research, has 395 criminal acts or 67.29% of those formulated in Book II in the single prison sentence formulation system, and the alternative formulation system only has 118 criminal offense formulations or 20.10%. % of total criminal acts (Arief, 2010). However, due to the absence of sentencing guidelines in Book I of the Criminal Code (WvS), its application is imperative, and there are no other options for judges to apply types of punishment out of the provisions that have been formulated in written norms.

The above problem was anticipated long ago by the drafter of the National Criminal Code to formulate sentencing guidelines for the formulation of a single prison sentence so that judges can choose a more appropriate punishment to be applied out of the provisions of criminal sanctions in criminal offense norms. However, the absence of such guideline provisions in Article 57 will cause problems at the application stage, while paragraph 3 of the sentencing guidelines in its normative function contains optional ideas that should be broken down or reduced to the content of the norm article. The theoretical discrepancies of *das sollen* and *das sein* in the formulation of this norm are important to study from the aspect of the criminal system, especially ontological and epistemological relations, and their implications for positive criminal law in the future.

In modern criminal system theories, it is very important to formulate sentencing guidelines to provide direction and guidance to judges before imposing criminal sanctions. The provisions of the National Criminal Code which start from the

principle of balance are intended to change the paradigm of existing principles in the criminal law of the Criminal Code (WvS) by explicitly formulating sentencing guidelines that start from the idea of balance. The idea of balancing the criminal system in the National Criminal Code is based on balance-oriented punishment. The *daad-dader strafrecht* character systematically colors the National Criminal Code as stated above. It aims to maintain balance in the criminal system, and one of these is reflected in the development of alternative short-term freedom crimes (Jaya, 2017).

The emergence of alternatives to short prison sentences was due to overcapacity/ overcrowded in correctional institutions, high costs for inmate needs, and inmate riots within institutions. This problem should be overcome by developing types of criminal *(strafsoort)* and criminal implementation *(strafmodus)* through criminal implementation guidelines. Interestingly, even though the National Criminal Code determines the sentencing guidelines for imprisonment with a single formulation, no article formulation has been found that regulates the guidelines for implementing the single prison sentence. None of the articles in Paragraph 3 of Chapter III Book I of the National Criminal Code regulates or includes guidelines for alternative prison sentence formulations with a single formulation.

The National Criminal Code only formulates alternative prison sentences which are regulated by Article 57 which reads "If a criminal offense is punishable by an alternative principal penalty, the imposition of a lighter principal penalty must be given priority when considered appropriate and can support the achievement of the objectives of the sentence". This alternative is not for serious crimes (Atmasasmita, 2021) or criminal acts of terrorism (Makarim, 2010). Thus, the issues of *strafsoort* and *strafmodus* in criminal law reform have become principal issues in discussing sentencing guidelines (Arief, 2012). To the sentencing guidelines, the provisions on alternative sentences are only intended to guide the choice of several types of criminal threats *(strafsoort)* in the formulation of the offense, not to flexiblly/ alternatively threaten a single offense (imprisonment) with the guidelines for implementing the sentence *(strafmodus).* This situation gives rise to a vacuum in the regulations because no article specifically regulates alternatives to imprisonment individually under Paragraph 3. This is a problem at the applicative level for implementing criminal penalties because the judge cannot provide an alternative prison sentence that is formulated in a single (rigid) manner. The discrepancy in the formulation of prison sentences with a single formulation that does not provide alternative guidelines for its application has become a limitation of the creative freedom of judges in realizing justice, and the problem of the absence of implementation guidelines is worthy of being explained, including future solutions.

Regarding the issue of sentencing guidelines, it has been written in national and international journals, such as Irmawanti and Arief (Irmawanti & Arief, 2021). However, this article only discusses the urgency of the objectives and guidelines for punishment in the provisions of the RKUHP (the Draft of the Criminal Code). Meanwhile, in the articles on the issue of imprisonment written by Kania (Kania, 2015) and Wibawa (Wibawa, 2017), the analytical content of these two articles is limited to discussing the reform of imprisonment in the provisions of the RKUHP and social work penalties as alternative punishments to replace imprisonment. As for the international journal written by Assegaf (Assegaf, 2018), this article has limited specific discussion regarding the potential risks of abuse of power and bias in the application of prison sentences. Because there is a conflict between the objectives of punishment and the criminal guidelines in the RKUHP, there will be multiple interpretations of the application of the crime. In the writings of Sukedi, Yasa, and Swardhana, the subject of the articles written on the policy of life imprisonment in the Criminal Code and the Draft Criminal Code is related to the human rights of convicts, the aspects of the interests and protection of society as well as modifications to life imprisonment to achieve the objectives of punishment (Sukedi, Yasa, & Swardhana, 2022),

Meanwhile, Angkasa's article highlights the application of prison sentence formulation and its application from a victimology perspective. The impact of prisoner overpopulation from a victimization perspective had resulted in individual victims of prisoners because correctional institutions had implemented deviant policies (Angkasa, 2020). The issue discussed by Pascoe is related to the government's choice in implementing a policy of formulating prison criminal law to facilitate the release of prisoners, especially regarding conditional release as well as reviewing the advantages and disadvantages of its implementation (Pascoe, 2017). On the other hand, the research team of Febrian analyzed the enforcement orientation of the policy of formulating prison sanctions; the application of which cannot be maximized in specific crimes. The implications do not cause deterrence (Febrian, Apriyani, & Novianti, 2021). Finally, Naibaho and his friends discussed the policy of using prison sentence formulations, especially the policy of prison sentence formulations within the scope of administrative law. The functionalization and role of prison sanctions exist at the intersection of acts regulated by criminal and administrative laws. Prison sanctions become an alternative when there is a punitive nuance to an administrative sanction (Naibaho et al, 2021).

The uniqueness of this article is compared to the articles mentioned above even though they both discuss sentencing guidelines and prison sentence issues. It is the state of the art, and the novelty of writing lies in criticism regarding the absence of guidelines for the implementation of the formulation of a single prison sentence. By not

explicitly formulating sentencing guidelines regarding the single formulation of imprisonment in the National Criminal Code, the implication is that judges as the final law enforcers in the criminal justice system do not have guidelines for alternative provisions for imprisonment sanctions with this single formulation. Thus, the subject of discussion in this paper is to explain argumentative arguments regarding the ontological and epistemological implications of not formulating guidelines for implementing prison sentences with a single formulation in the National Criminal Code. This aims to explain the importance of formulating the sentencing guidelines firmly so that judges can avoid imposing imprisonment for the criminal acts considered irrelevant and insignificant after the National Criminal Code is implemented in the next few years.

B. DISCUSSION

It is generally recognized that the Criminal Code (WvS) is included in the Indonesian national legal system based on Article II of the Transitional Rules of the 1945 Constitution which is strengthened by Law No. 1 of 1946 and Law No. 73 of 1958. The essence of Article II of the Transitional Rules of the 1945 Constitution, which is strengthened by this law, is a participatory legal provision in filling the legal vacuum in the field of public legal regulation which is fundamental to ensuring legal certainty regarding public order. Ludving Beckman views this legal participation as democratic participation relating to decisions regarding regulations that aim to establish standards of behavior that must be obeyed (Beckman, 2023).

The Dutch inherited Criminal Code, so the Criminal Code (WvS) was "forced" to automatically enter the legal structure and system of the national legal system. Meanwhile, philosophically and historically, the orientation of legal values in the Criminal Code (WvS) is based on the secularization of values and individualistic in nature. The most important thing in this case is to understand that fundamentally the provisions of the Criminal Code (WvS) are operationally enforced only based on the principle of legality as the fundamental principle of the Criminal Code (WvS). Thus, the principles of *ip lex certa, lex scripta,* and *lex stricta* which are the content of the principle of legality, are the benchmark for enforcing the three main issues of substantive criminal law to be value-free. Meanwhile, in the constitutional system, the national legal system is a Pancasila legal system whose value requirements, according to Barda Nawawi Arief, are laws that are oriented towards three pillars or balanced values. Oriented to divine values (religious), human values (humanistic), and societal values (nationalistic-democratic-social justice) (Arief, 2012).

The impact of confinement on the application of the norms of the Criminal Code (WvS) as public law to resolve the problem of criminal acts, raises legal problems for the

Indonesian people whose legal philosophical background has fundamental differences from the provisions of the Criminal Code (WvS). The drafters of the R-KUHP realized that the existence of the Criminal Code (WvS) was temporary in nature to speed up changes. Fundamental changes, especially the reconstruction of fundamental principles in the general rules of criminal law in Book I of the Criminal Code. The desired changes are a reflection of the mission of the National Criminal Code, as emphasized in the General Explanation of the National Criminal Code, namely the mission of decolonizing the Criminal Code in the form of recodification, democratization of criminal law, consolidation of criminal law, adaptation and respect for the development of criminal law science and values, standards and norms. recognized by nations and those living in society (living law). The substantive objective of the mission of the National Criminal Code is intended to create and uphold consistency, justice, truth, order, usefulness, and legal certainty based on taking into account the balance of national interests, community interests, and individual interests.

Historically, reform of Indonesian criminal law was carried out decades ago and took a very long time. The concept of the R-KUHP was first discussed in 1963 and continued to be refined until it became law. Changes in fundamental principles in the National Criminal Code abandon the style of the classical criminal law school and the positive criminal law school adopted by the Criminal Code (WvS). The National Criminal Code was created based on neo-classical criminal law thinking, this is stated firmly in the Explanation to Book I of the National Criminal Code with the orientation of the criminal system which is based on the daad-dader-strafrecht concept. The criminal system which starts from this concept is a unified system with a purpose (purposive system) and punishment which are only a means to achieve the goal (Arief, 2005). However, despite this, the influence of the continental European legal system in the formation of national criminal law still greatly influences the basis of criminal law. Meanwhile, most countries that are part of the common law system, such as India, as stated by A. Deb, have experienced social changes to make their criminal law more attentive and concerned with making laws that emphasize the substance of criminal law policy (Deb, 2021).

Apart from the formation of the Indonesian criminal law system which was largely influenced by the continental European system, the birth of the National Criminal Code as a visionary positive law is progress. The style and concept of criminal law used in the National Criminal Code has moved towards the paradigm of the neo-classical criminal law school, thus the criminal law system has been oriented towards *daad-dader-srafrecht* and emphasizes the principles of balance. Thus, the philosophical-sociological, philosophical-juridical value orientation as content agreed upon in its formulation in the National Criminal Code, is

a provision of a criminal law style that is symmetrical to the values of Pancasila, the 1945 Constitution which accommodates legal values based on local wisdom and legal developments. global.

There are several new things, especially in determining and especially guidelines for the application of a single prison sentence to determine certainty and create justice, some of which are the basic pillars of the principles in the National Criminal Code.

1. **Shifting the supra-principle paradigm towards the principle of balance in the National Criminal Code**

Recognition of human rights has resulted in more humane criminal sanctions, following the development of modern humane criminal law civilization. The ontology of the policy for formulating criminal sanctions in law cannot be separated from the policy for formulating criminal sanctions. Concerning actions that originally constituted freedom of will to act (free will) as a fundamental and natural right, it is necessary to limit them based on mutual agreement if they are viewed morally as an action that requires censure with criminal sanctions. Indonesia, with its legal style, is heavily influenced by religious values that are oriented towards standards of violation of morality, so Stuart Hall's reception theory regarding the meaning of behavioral attitudes which become the interaction of the audience's judgment will create messages for regulatory media (Mustofa & Na'im, 2024). Criminal law regulatory policies are to respond to the reality of the existence of strict moral and religious values in society as a benchmark in the order of life, legal regulatory policies with an adaptive and inclusive approach must be used (Al Houl, 2024). The latest challenge in the criminal law algorithm in the National Criminal Code is mainly related to the sentencing guidelines for the formulation of the single crime in question. There are two big problems in the future regarding the functioning of these sentencing guidelines. First, the issue of the existence of living law as local wisdom and second, the issue of the existence of the concept of artificial intelligence. The National Criminal Code has formulated fundamental principles of material legality, so that in practice it can predictively accommodate these two issues. Guidelines for implementing a single criminal formulation are the door of choice in dealing with crimes that have nuances of local wisdom, because according to Adhari, customary criminal law is one of the parts that receives attention from national criminal law policy (Adhari et al, 2021).

The concern about presence as an adresat of artificial intelligence expressed by research by Oljana Hoxhaj et al, questions the ethical guidelines to be established in criminal law. According to him, the law drafting authority (DPR) is related to the presence of the development of artificial intelligence. It is important to adopt an approach to responsibility that is guided by ethics to determine the steps for making regulations (Hoxhaj, Halila, & Harizi, 2023). Thus,

transformation or adaptation of works created with artificial intelligence requires efforts to overcome threats to their existence (Dharmawan et al, 2023).

Convergence In determining criminal law legislative regulations regarding this matter, it requires a unified perception of the form of restrictions regarding when a crime as a moral obligation becomes a legal obligation so that it can be punished. Immanuel Kant's view and the Neo-Kantian view according to ME Newhouse has discussed this matter long before, the point is that most legal and religious scholars argue that actions that are morally wrong, to be considered legally wrong require a coherent theoretical explanation of the boundaries of the relationship between moral obligations and legal obligations, and acts that are classified as disgraceful acts to be subject to criminal sanctions (Newhouse, 2023).

Current National Criminal Code reflects this civilization, where the legal principles and norms in the National Criminal Code are matched with the protection of human rights. Regarding the Criminal Code as a reflection of this, Hermann Mannheim had previously stated that the penal code was the most faithful mirror of the civilization of the nation (Hamzah, 2018). Provisions regulated in criminal law must reflect the personality and civilization of nations so that the concept of ultimum remedium and goal-oriented punishment (purposive) by prioritizing restoration and forgiveness is preferred. Apart from that, it also takes into account the development of modern criminal law, in terms of implementing criminal individualization and alternatives to imprisonment. Some of these developments have been adjusted in the National Criminal Code by placing Pancasila as a "margin of appreciation" for external values with adjustments to the legal character of Indonesian society.

In cross-civilizations and global values which are currently *borderless* , not all values from outside can be adopted and justified , such as respect for tradition, making community members not have the freedom to give birth to their inspiration so that the innovation process becomes limited (Roisah, 2014). So it is very natural that Pancasila is placed as the boundaries of justification or what is known as the " *margin of appreciation*" (Muladi, 2013). The Pancasila values , which have been concretized in the National Criminal Code, regulate quite a lot of new criminal law principles compared to the Dutch inherited Criminal Code *(WvS).* Some of the new provisions include the existence of the principle of material legality in addition to the principle of formal legality, the development of basic crimes which are *non-custodial in nature* and the existence of criminal objectives and guidelines which are the pillars of the principles of balance formulated in the National Criminal Code.

a) Philosophically shifting the paradigm of the concept of the principle of legality

Very significant developments in the National Criminal Code by formulating the

principle of material legality in addition to the principle of formal legality. The provisions on the principle of formal legality in Article 1 paragraph (1) reads: no act can be subject to criminal sanctions and/or action, except on the strength of criminal regulations in laws and regulations that existed before the act was committed. In the National Criminal Code, the principle of formal legality has also been formulated, in balance, the principle of material legality. Article 2 paragraph (1) reads: the provisions as intended in Article 1 paragraph (l) do not reduce the validity of the laws existing in society which determine that a person deserves to be punished even though the act is not regulated in this law. Thus, it appears that there is a balance between formal legal sources regulated by the state, in addition to material legal sources, namely recognizing people's law or local wisdom *as* a source of criminal law. The formulation of this principle provides consideration and recognition for the Indonesian nation that there are still inherent values regarding local wisdom and customs that live in society and can be used as a source of criminal law.

b) Principal crime

As recognized in the Criminal Code (WvS), there are basic penalties and additional penalties (Marimin, Setyawan, & Sularto, 2022), but the differences in the main penalties in Article 65 paragraph (1) of the National Criminal Code are slightly different; there are imprisonment, cover-up penalties, supervision penalties, fines, and social work penalties. There are five main types of criminal penalties and there are new types of criminal sanctions which are formulated in the form of social work criminal sanctions, supervision criminal sanctions, and fines using a category system. Social work punishment for the category of criminal offenses carries a maximum prison sentence of five years and the judge imposes a maximum prison sentence of six months while implementing supervision punishment carries a maximum prison sentence of five years and the sentence imposed by the judge is a maximum six months imprisonment. The criminal fines use an eight-category system from the most severe to the lightest.

c) The purpose of punishment is as a substance in determining the application of punishment

Another new thing in the National Criminal Code by formulating the purpose of punishment as regulated in Article 51 of the National Criminal Code is that the purpose of punishment is to prevent criminal acts, socialize the convict, resolve conflicts, and relieve guilt. The existence of a criminal objective is normal because every criminal offense has a goal to be achieved. Even if the conditions for the act and the conditions for error are met, but the purpose of the sentence has been achieved, it may not be punished or forgiven, which is known as judge's forgiveness *(reclterlijlce pardon* or *judicial pardon)*. In some cases, all of the objectives of punishment may not be achieved, for example, the objective of preventing criminal acts is more dominant than

convicting the convicted person so the use of punishment objectives is very casuistic.

This is understandable because the issue of accommodating all values and desires to be absorbed at the level of norms is a problem. The problem of the absorption of negative values in society which are evil, sometimes cannot be understood by the law drafting authorities so that criminal instruments can be used that are in line with the objectives of punishment. One of the reasons for this is acknowledged by Edward L. Rubin, which is essentially due to the absence of legislators equipped with established theories and limited ideas and discourse from academics to contribute regarding good ways to draft a law (Rubin, 2017).

In several countries in the Asian region such as Vietnam, in the era of world globalization, policies in modernizing law and legal theory are preceded by modernizing philosophy. According to Thanh Quang Ngo in his research, the modernization of law and theory as well as the modernization of philosophy in Vietnam is significant for motivating regulators in determining legal formation policies focused as a means of resolving conflicts using mediation in dealing with modern society (Pham, Dung, & Ngo, 2022). This concept of thought from Thanh describes the provisions of the concept of criminal law formation in the post-modernization (neo-classical) era. The criminal law approach that is formulated must return to the essence of the main principle of criminal law as a means of ultimate remedium. Therefore, the criminal law instruments presented to answer problems at this time are more benefit-oriented by only applying targeted punishment (purposive sentencing). The National Criminal Code lays down the basics of punishment by prioritizing using the concept of the purpose of punishment itself so that punishment becomes the last alternative to be applied with strict guidelines. However, some of the weaknesses of this concept when it is formulated in the National Criminal Code as mentioned previously become necessary to be corrected so that at the application stage it could be applied holistically.

d) Sentencing guidelines as a pendulum for determining judge policy

One of the new provisions in the National Criminal Code What is very interesting is that there are sentencing guidelines regulated in Chapter III concerning Punishment, Criminal Acts, and Actions, especially in Paragraph 2, which is explained in Article 53 and Article 54 of the National Criminal Code. The sentencing guidelines in Article 53 of the National Criminal Code essentially regulate that if there is a conflict between legal certainty and justice then justice takes precedence. Furthermore, in Article 54 of the National Criminal Code, judges must also consider the form of the error, the motive, and purpose of committing the crime, the mental attitude, whether it was planned or not, the method of committing the crime, the attitude and actions of the perpetrator, life history, social conditions, the perpetrator's economy, the

influence of the crime on the perpetrator, forgiveness from the victim or his family, and the value of law and justice that lives in society. These provisions are guidelines for judges to consider before imposing and determining the length of the sentence *(strafmaat)* for the perpetrator.

Interestingly, from several of the new provisions above, especially the issue of sentencing guidelines regulated in Chapter III concerning Punishment, Criminal Acts, and Actions, it turns out that they not only regulate general sentencing guidelines as in Paragraph 2 but also regulate specific guidelines for imprisonment which are formulated individually. under Paragraph 3. Even though there is Paragraph 3 of the National Criminal Code, there are no rules or formulations in the articles that regulate guidelines for the formulation of a single prison sentence.

2. Single formulation of prison sentences

Sociologically, the existence of the National Criminal Code is a matter of pride for the community because it has a Criminal Code that is characterized by the Indonesian nation. There are quite a lot of new provisions in the National Criminal Code as stated previously, and one of them which is very interesting is regarding guidelines for implementing prison sentences with a single formulation. In Book I, Chapter III, the 3rd paragraph of the National Criminal Code determines two guidelines for the application of imprisonment, namely guidelines for the application of imprisonment with a single formulation and alternative formulations. According to Barda Nawawi Arief, the aim of formulating these guidelines is apart from overcoming the rigid and imperative nature, the main thing is to avoid short prison sentences (Arief, 2002). Guidelines for implementing prison sentences with these two formulation patterns had previously been formulated in the 2004 RKUHP draft, as well as in the 2012 RKUHP draft which had been discussed when it was with the Director General of Legislation, Law and Human Rights Department. The existence of these sentence guideline formulations in the draft R-KUHP 2015 has been formulated to provide direction or guidance to judges regarding both single and alternative prison sentence formulations. However, in the finalization of the R-KUHP, until it was promulgated as the National Criminal Code, the provisions formulated in the 2015 R-KUHP and its more complete criminal system were lost.

Potential deficiencies in regulations regarding guidelines for implementing a single prison sentence in Law no. 1 of 2023, its weaknesses will be tested by practicing law practitioners to determine whether it needs to be maintained or not. Because of the problem of unequal formulation of sentencing guidelines, it cannot be applied in judicial practice. It is true what William J Arceves stated, in essence, that the construction of laws is the main function of the judiciary if the formulation of the law is incomplete

and contains ambiguous language and multiple interpretations, then the law needs to be reviewed (Aceves, 2023).

It is understood that direction or guidance in imposing criminal sanctions is very important for judges , so that judges can determine the freedom to assess and choose what punishment is more appropriate to impose. According to Masyhar, a multi-faceted approach from judges in understanding a punishment that is complementary to this pattern of thinking that combines criminal and non-criminal acts is important in effectively dealing with complex issues related to understanding crime. Non-criminal policies, including educational programs, economic opportunities, moral guidance, and other social initiatives, play an important role (Masyhar, Murthado, & Ahmad, 2023). In fact, according to Barda Nawawi Arief, there are not only provisions regarding the "crime", both in the form of type, duration and execution of the crime *(strafsoort, strafmaat, strafmodus),* but also provisions regarding "sentencing rules" *(straftoemetingsregel"* or *"sentencing rules/provisions "),* and " sentencing guidelines" (*"straftoemingsleidraad"* or *"sentencing guidelines"/ "guidance of sentencing "*) . He further stated that the sentencing regulations contain norms regarding criminal and punishment, while the sentencing guidelines contain instructions about what things should be taken into account when imposing a sentence (Arief, 2012).

There are guidelines for implementing sentences, especially for prison sentences, with a single formulation, the aim of which is to provide flexibility The judge may under certain conditions not impose a prison sentence. In other words, the guidelines for implementing imprisonment with a single, rigid /absolute formulation must be used as an alternative to other penalties. Supervision penalties, fines, or social work penalties are other alternative forms of imprisonment that are formulated to be used by judges. Alternatives to imprisonment are known as "prison alternatives" or "non-custodial penalties" which are a form of criminal sanctions carried out outside the institution. The term criminal alternative here is meant in the formulation of the offense, not as an alternative or authority to stop an investigation or prosecution in procedural law (Suarda, Taufiqurrohman, & Pambudi, 2021).

The importance of alternative prison sentences with guidelines for implementing prison sentences with a single formulation is logical because the judge is the one who understands better what criminal sanctions are appropriate to impose on the defendant. The judge knows more about the defendant's actions and mistakes based on the evidence presented at the trial so that in certain conditions based on the facts found by the judge at trial, the judge has the option to impose a crime other than the threat of imprisonment in a single formulation. In Russia, as expressed in O. Pankova's writing, the goal of realizing a just judge decides that justice is

defined as state activities in which judicial power is exercised. The issue of signs of justice, according to him, is the role of mediation, conciliation, and arbitration as alternative forms of resolving legal conflicts, because justice is a category that makes it possible to reveal the content and essence of law as a concept for resolving problems (Pankova, & Migachev, 2020).

Therefore, the sentencing guidelines within the framework of the formulation of prison sentences with a single formulation in the criminal law are important to determine firmly, the aim is none other than to be able to flex/alternate the prison sentence individually in the formulation of the offense so that the sentence imposed is fairer and more rational. The threat of incomplete guidelines for implementing prison sentences with a single formulation regulated by Article 57 of the National Criminal Code, the practical solution for implementing the role of the government is important in determining Government Regulations to be used as guidelines for judges and is the best option if the legislature does not exercise its right to amend the formulation the sentencing guidelines. In political constitutional practice, the legislature always ignores and is late in responding to the absence of a law that is purely a public concern. This goodwill has been proven to replace the criminal law from the provisions of the Criminal Code (WvS) with the National Criminal Code which took approximately 60 years. This reality does not come as a surprise, David Kamin stated long ago that in essence, policy changes often occur due to periods of legislative stasis, slow or lack of response to the circumstances that occur even though policies must be updated and adjusted by policymakers (government) to developing conditions (Kamin, 2017).

3. Dispute over the idea of formulating guidelines for implementing sentences versus formulating a single prison sentence

The previous generation of drafters of the R-KUHP attempted to formulate specific guidelines for the implementation of the formulation of a single prison sentence, the concepts of the previous R-KUHP were clearly and firmly defined. After the promulgation of Law No. 1 of 2023 concerning the Criminal Code, the formulation of these guidelines was no longer found, either individually or separately, even though the paragraph title of Article 57 was decisive. Chapter III of the Criminal Code which regulates " Aims and Guidelines for Sentencing" in its 3rd paragraph determines the issue of "Guidelines for the Implementation of Imprisonment Sentences with a Single Formulation and Alternative Formulations".

Article 57 of the National Criminal Code stipulates: "If a criminal offense is punishable by an alternative principal penalty, the imposition of a lighter principal penalty must be given priority if this is considered appropriate and can support the achievement of the objectives of the sentence." Meanwhile, the explanation of Article 57 of the

Criminal Code does not explain how to operationalize what is derived (breakdown) from Article 57 of the Criminal Code. This explanation of Article 57 only explains the sentencing guidelines for alternative formulations of Article 57 of the Criminal Code. Explanatory Formulation Article 57 states "Even though the judge has a choice in dealing with alternative criminal formulations, in making this choice the judge is always oriented towards the objectives of the sentence, by prioritizing or prioritizing lighter types of punishment if this has met the objectives of the sentence."

Reviewing the R-KUHP before the promulgation of the National Criminal Code, it consistently still provides strict guidelines for punishment, related to the formulation of a single prison sentence in addition to alternative criminal formulations which are not found in Article 57 of the National Criminal Code. The R-KUHP has been amended several times, and the issue of sentencing guidelines regarding a single prison sentence is still maintained either separately or separately and is written expressly. This can be cited in several R-KUHP which have been amended. In the 2004 R-KUHP Concept, it is stated after the paragraph "changes and adjustments to criminal penalties", namely in article 56 paragraph (1-4) paragraph 4 with the title "Guidelines for the Implementation of Prison Sentences with a Single Formulation" placed separately from "Guidelines for the Implementation of Criminal Codes". with Alternative Formulation" which is placed in paragraph 5 of part 1 concerning punishment.

Article 56 paragraph (1) states "If a person commits a crime which is only punishable by imprisonment, but the judge believes that it is not necessary to impose a prison sentence after considering the provisions as intended in Article 51 and Article 52, then that person can be sentenced to a fine." The formulation of the application of imprisonment with a single formulation in the draft R-KUHP 2004, in fact also integrally formulates alternatives that give judges the freedom to impose sentences cumulatively to achieve the objectives of punishment. This is formulated firmly in Article 56 paragraph (4) which reads: "If the aim of punishment cannot be achieved only by imposing a prison sentence, then for criminal acts against property which are only punishable by imprisonment and have the nature of destroying the social order in society, can be sentenced to a maximum fine of Category V together with imprisonment."

For regulations regarding guidelines for implementing criminal penalties with alternative formulations in the draft R-KUHP 2004, determining whether fines can be alternatively implemented with additional penalties or actions. Apart from that, the guidelines for alternative criminal formulations also determine heavier criminal alternatives and criminal penalties. The guidelines for implementing punishment with the alternative formulation in paragraph 5 are formulated in more than one article, namely from

Articles 57-61 R-KUHP 2004. Things that are relevant to the issue being discussed can be seen from several provisions of the articles that regulate it.

The provisions of Article 57 R-KUHP 2004 which are formulated in two paragraphs determine:

1. If a criminal offense is only punishable by a fine, additional penalties or actions can be imposed;
2. Persons who have been repeatedly sentenced to fines for criminal acts that are only punishable by fines can be sentenced to imprisonment for a maximum of 1 (one) year or a supervision sentence together with a fine.

The provisions of the 2004 R-KUHP are more complete in regulating alternative sentencing guidelines, in fact, they also determine the formulation of alternative principal penalties. These provisions can be seen in Article 58, formulated in three paragraphs, namely:

1. If a criminal offense is punishable by an alternative principal penalty, then the imposition of a lighter principal penalty must be given priority if this is deemed appropriate and can support the achievement of the objectives of the punishment;
2. If imprisonment and fines can be threatened alternatively, then to achieve the goal of punishment, the two types of basic punishment can be imposed cumulatively, provided that they do not exceed half the maximum limit of the two types of basic punishment that are threatened ;
3. If, in applying the provisions of paragraph (2), it is considered to impose a supervision penalty based on the provisions as intended in Article 74 and Article 75 paragraphs (1) and paragraph (2), then a fine of at most half of the maximum fine threatened can still be imposed. together with criminal supervision.

The model of guidelines for implementing prison sentences with a single formulation and alternative formulations which in the 2004 R-KUHP draft were formulated separately in different paragraphs and articles, apart from being more flexible in its regulation, shows the intention of the drafters of the R-KUHP at that time to guide judges in making decisions. leads to the essence of the purpose of punishment. However, when the draft concept of the 2012 R-KUHP was submitted to the Director General of Legislative Regulations, Department of Law and Human Rights, the formulation of guidelines for implementing prison sentences with a single formulation and alternative formulations was combined in one paragraph. The formulation of these provisions is still placed in Chapter III, part 1 of the regulations on punishment. Guidelines for the application of imprisonment with a single formulation and alternative formulations are positioned in paragraph 4 by uniting the two guidelines for the application of sentences and are listed in Article 58-Article 60 of the 2012 RKUHP. However, regarding the guidelines for the application of

imprisonment with a single formulation, it remains to be determined, The provisions still provide elastic guidance for judges to determine other crimes if according to the judge's empathy, other crimes are more appropriate for realizing the objectives of the sentence.

Article 58 which consists of 4 (four) specific paragraphs determines the guidelines for the application of imprisonment with a single formulation, which reads:

1. If a person commits a crime that is only punishable by imprisonment, but the judge thinks that it is not necessary to impose a prison sentence after considering the provisions as intended in Article 54 and Article 55, then that person can be sentenced to a fine;
2. The provisions as intended in paragraph (1) do not apply to people who have been sentenced to prison for criminal acts committed after the age of 18 years;
3. The fine that can be imposed based on the provisions as intended in paragraph (1) is the maximum fine according to Category V and the minimum fine according to Category III;
4. If the purpose of punishment cannot be achieved only by imposing a prison sentence, then for crimes against property which are only punishable by imprisonment and have the nature of damaging the social order in society, a fine of up to Category V can be sentenced together with imprisonment.

On the other hand, what is interesting is the provision of Article 59 R-KUHP 2012 as a provision that regulates guidelines for the application of fines with a single formulation, while paragraph 4 regulates the formulation of single and alternative prison sentences. However, the fine provisions are embedded in the two implementation guidelines for the formulation of imprisonment. Article 59 reads:

1. If a criminal offense is only punishable by a fine, additional penalties or actions can be imposed;
2. Persons who have been repeatedly sentenced to fines for criminal acts that are only punishable by fines can be sentenced to imprisonment for a maximum of 1 (one) year or a supervision sentence together with a fine.

The complementary article of the guidelines for implementing imprisonment with an alternative formulation in paragraph 4 of the 2012 R-KUHP is included in Article 60 of the R-KUHP which consists of 3 (three) paragraphs and reads:

1. If a criminal act is threatened with an alternative principal penalty, the imposition of a lighter principal penalty must be given priority, if this is deemed appropriate and can support the achievement of the objectives of the punishment;
2. If imprisonment and a fine are threatened alternatively, then to achieve the goal of punishment, the two types of basic punishment can be imposed cumulatively, provided that they do not exceed half the

maximum limit of the two types of basic punishment that are threatened;

3. If, in implementing the provisions as intended in paragraph (2), it is considered to impose a supervision penalty based on the provisions as intended in Article 77 and Article 78 paragraphs (1) and paragraph (2), then a fine of at most half of the maximum fine threatened can still be imposed. together with criminal supervision.

Finally, in the 2015 Draft R-KUHP specifically which regulates guidelines for the application of imprisonment with a single formulation and alternative formulations, there are only changes to the provisions of the article but the material remains as in the 2012 R-KUHP Concept. In the 2012 R-KUHP, these provisions are formulated in Article 58, while in the 2015 R-KUHP Concept, it is placed in the provisions of Article 59 of the 2012 R-KUHP. Article 59 states in expressis verbis the provisions for a single formulation and alternative formulations of implementation guidelines, which are stated in paragraphs (1) to paragraph (4).

Article 59 from paragraph (1) to paragraph (4) of the 2015 RKUHP fully determines what reads:

1) If someone commits a criminal act which is only punishable by imprisonment, the judge thinks that there is no need to impose a prison sentence after considering the provisions as referred to in Article 55 and Article 56 (meaning the objectives of punishment in Articles 51 and 52, and the guidelines for punishment in Articles 53 and 54 in National Criminal Code . Pen) then the person can be sentenced to a fine;
2) The provisions as intended in paragraph (1) do not apply to people who have been sentenced to prison for criminal acts committed after the age of 18 (eighteen) years;
3) The fine that can be imposed based on the provisions referred to in paragraph (1) is the maximum fine according to Category V and the minimum fine according to Category III;
4) If the purpose of punishment cannot be achieved only by imposing a prison sentence, then for crimes against property which are only punishable by imprisonment and have the nature of damaging the social order in society, a fine of up to Category V can be imposed together with imprisonment.

Based on the regulations in several RKUHP Concepts before the enactment of National Criminal Code Law no. 1 of 2023, it can be seen that the drafters of the Criminal Code allowed judges to choose a crime other than imprisonment, even though in the formulation of the offense the only penalty is imprisonment. This is different after the National Criminal Code was passed into law on the formulation of guidelines for imprisonment with a single formulation as regulated in Chapter III Paragraph 3, the regulation was only limited to the chapter which stated the guidelines for the application of imprisonment with a single formulation without

any provisions on the formulation of the article. Article 57 of the National Criminal Code which regulates guidelines for the application of imprisonment with a single formulation and alternative formulations, there has been a fundamental change regarding the guidelines for the application of imprisonment with a single formulation.

Article 57 in the guidelines for the application of prison sentences does not provide the option of the judge's freedom to apply the sentence. Meanwhile, in the formulation of the articles contained in all the RKUHP Concepts, *expressis verbis* provides the option of the judge's freedom, so that the judge can determine the choice of application of other crimes listed in the provisions on types of punishment. to achieve criminal objectives. The difference in the fundamental concept of the two articles between the R-KUHP and the National Criminal Code which should be in the sentencing guidelines, is the author's assumption that it cannot be separated from the issue of perspective and role of the regeneration of the R-KUHP designer. On the other hand, the absence may be compensated for by regenerating "the deposit of moral messages and substance of ideas" regarding the importance of sentencing guidelines in the Criminal Code. The core philosophical issues, the history of ideological choices, and the politics of criminal law in the R-KUHP are milestones in the idea of changing the ideology of the National Criminal Code. The provisions of Article 57 of the National Criminal Code whose formulation removes guidelines for the application of imprisonment with a single formulation, in practice there will be "rape" in the application of the sentencing system (sentencing system) as is often the case in the formulation of criminal law or administrative law which carries criminal sanctions in past laws. It reminded me of a part of Jesse M Cross writing entitled "Legislative History In The Modern Congress". He states in essence that there is a need for an up-to-date understanding of the legislature and based on its historical process of making laws clearly, by investigating who drafted the laws from generations of legislation in the DPR, judges, and academics must understand the actual leadership of legislative actors when carrying out debates in formulating the law (Cross, 2020).

4. Neglect of normative construction from the ideas of the designer of the draft on sentencing guidelines

The formulation of article 57 of the National Criminal Code seems to have "forgotten" when it was agreed to create guidelines for the application of a single prison sentence, while the aim of paragraph 3 itself is to determine guidelines for the application of the single prison sentence and alternative formulations. Regardless of whether the changes to the guidelines constitute an agreement or have been forgotten, the main problem is that the formulation of the prison sentence guidelines with a single formulation regulated by Article 57 of the National

Criminal Code does not follow the rules of the sentencing system as they should. When the concept of the Criminal Code was in the form of the R-KUHP as mentioned above, the provisions on guidelines for prison sentences with a single formulation in Article 57 after becoming the National Criminal Code had an imbalance in the punishment system. This inequality will make it difficult for judges to apply other penalties that are deemed more empathetic and appropriate, to realize the goal of a just sentence.

Starting from the principle of formal legality is the main principle of criminal law using three principles, namely *lex scripta, lex certa, and lex stricta,* which are a pair of principles of material legality in the National Criminal Code. So these three principles need to be formulated explicitly in Book I, as principles for functioning in the norms in Book II of the National Criminal Code. Because the sentencing guidelines are part of the general rules, thus the benchmark for implementing imprisonment with a single formulation is a general provision. It must be regulated firmly and clearly. The strictness of the formulation of these guidelines becomes a guide for judges to solve legal problems (law-breaking) if the formulation of criminal provisions is not deemed appropriate to be applied in punishment. Strengthening the movement of judges to act to decide with a policy of "non-enforcement of law" to promote substantive justice, as well as being a solution to the provisions of criminal offense norms in the National Criminal Code which so many of the formulations carry criminal threats with a single prison sentence.

Long before, Barda Nawawi Arief warned that the policy of formulating "criminal provisions" which is problematic juridically (containing weaknesses in the juridical formulation) could be one of the factors inhibiting efforts to enforce criminal law at the application stage (judicial policy) and execution stage (executive/ administrative policy) (Arief, 2012). How do law enforcers such as judges carry out their duties well without ideal rules? Thus, criminal law enforcement is an initial and strategic step in passing criminal law into statutory regulations (Yanto, Rahmadi, & Sari, 2022).

Apart from the establishment of the principle of legality as a fundamental principle of criminal law with the adoption of the idea of criminal individualization in the National Criminal Code, the implications for the principles adopted by criminal sanctions are that their application is adjusted to the condition of the perpetrator. This principle provides a benchmark regarding the application of criminal sanctions which must be adjusted to the characteristics and circumstances of the perpetrator, so the principle of individualization in the National Criminal Code needs to be relaxed/flexible by which judges can be guided in choosing criminal sanctions. Thus, according to Barda Nawawi Arief, the sanctions provisions formulated must have the possibility of criminal modification (changes/adjustments) in their implementation. Then, it contains the

principles of flexibility and criminal modification (Arief, 2010).

The principle of flexibility allows prison sentences that are formulated rigidly/absolutely to be alternatives to other punishments by looking at the character and condition of the perpetrator. As explained in Article 53 of the National Criminal Code, if there is a conflict between certainty and justice, justice is the priority because law is essentially justice. It can be imagined that the formulation of a prison sentence is rigid/single without any guidelines, so the judge is "forced" to impose a prison sentence because there is no other alternative. On the other hand, the more alternatives there are to imprisonment, both types of punishment and guidelines for implementing prison sentences, the better because there are many choices for judges to try and decide on a case (Rifai, 2017). In fact, according to Widyawati, practically speaking, implementers of criminal sanctions do not have strong bargaining power, so in developing national criminal law they must provide a clear platform to achieve criminal objectives (Widyawati et al,2022).

Based on this discourse, sentencing guidelines for the application of imprisonment with the formulation of a single prison sentence are vital and urgent for determining criminal sanctions. The loss of guidelines for implementing prison sentences with a single formulation in The formulation of Article 57 of the National Criminal Code, the implications of the application of the formulation of prison sanctions alone, raises new problems in the practice of judges' decisions in the future. As is known, the importance of criminal law policy *i*s to be able to implement just criminal sanctions, criminal guidelines are a series of important processes and policies, the concretization of which is expected to be deliberately planned through the planning process. According to Barda Nawawi Arief, the unity of planning in the criminal law provisions is : (Arief, 2010).

1. “Formulation” by lawmakers;
2. “Application” by authorized bodies/officials; And
3. "Execution" by criminal executing authorities/agencies

The formulation stage as a policy-making process has a central role for the legislature in voicing policy models, by drawing on ideal ideas from academics and practitioners. As an illustration of the formulation steps that require careful attention to the three pillars of the criminal system. Topo Santoso and Hariman Satria in their research on criminal policy in Law Number 12 of 2022 relating to sexual violence, stated that the first step taken by law makers was to develop a policy formulation which included determining the threat of criminal sanctions as part of the steps " 'punishment' (Santoso, & Satria, 2023). The importance of this legislative policy is from the comparative research analysis conducted by Sulistyanta and friends regarding the formulation of anti-pornography laws, regarding the findings of similarities and disparities in the patterns

underlying law making, there is a legislative failure in determining the categories of mala per se that giving rise to the formulation of criminal sanctions that are so rigid that in their application they cannot fulfill the basic principle of proportionality (Sulistyanta et al, 2023).

In the United States as written by Bill Jr. Pascrell, legislators absorb and listen to issues and views from experts and thinkers to guide the legislature in making decisions. The results of these experts' thoughts are a material source to be able to draft laws, or change laws that are wiser and more comprehensive (Pascrell Jr, & Greenbaum, 2023). A shift in the thinking of the existing commission in the legislative body in creating a policy for formulating the R-KUHP's sentencing guidelines in 2015, with a different policy emerging in determining the sentencing guidelines in Law no. 1 of 2023 cannot be separated from the influence of expert views as well.

The policy of formulating the National Criminal Code, which does not formulate/formulate guidelines to provide flexibility in the threat of offenses with a single prison sentence, is seen as a change in the sentencing guideline policy which may be more strategic than the previous concept. As is known, the role of sentencing guidelines is very important in criminal provisions in addition to the objectives of punishment. According to Barda Nawawi Arief, these two things function as controllers or controllers as well as providing a philosophical basis, rationality, and clear and directed motivation for punishment (Arief, 2010). Important sentencing guidelines in the National Criminal Code because it is a justification for imposing a more rational crime. According to Barda Nawawi Arief, there are three forms of sentencing guidelines: (Arief, 2010).

1. There are general guidelines to provide direction to judges regarding what matters should be considered when imposing a sentence;
2. There are specific guidelines to provide direction to judges in selecting or imposing sanctions for certain types of crimes;
3. There are guidelines for judges in implementing the criminal threat formulation system used in formulating offenses.

General guidelines are regulated in Paragraph 2, especially Article 53 and Article 54 of the National Criminal Code which provide direction for all types of crimes. Paragraph 3 regarding guidelines for formulating alternatives, especially in Article 57, explains that if a criminal offense is threatened with an alternative principal penalty, then the lighter principal penalty must be preferred if, in the judge's consideration, it is appropriate and supports the achievement of the objectives of the sentence. Meanwhile, guidelines for the application of a single prison sentence are not regulated, even though it seems as if they are regulated in Paragraph 3 which mentions Guidelines for the Application of a Single Prison Sentence. Therefore, because the guidelines for

implementing a single prison sentence are very important and very urgent, according to the author, they need to be reviewed considering that there is still time before the National Criminal Code comes into force in 2026.

As a comparison, changes to the Criminal Code in Ukraine that have been passed regarding probationary sentences and sentencing guidelines as alternative sentences are more of a priority for judges to apply in determining sentences. From the results of research by Serhii Shevchenko et al, in complementing the applicable Criminal Code of Ukraine which is article 59-1 "Probation supervision ". Probation supervision lies in certain restrictions imposed on the accused by law to be determined by a court decision, how a person's efforts are not isolated from society by providing social, and educational supervision (Shevchenko et al, 2024). The freedom of discretion of judges in court to determine alternative criminal models has previously been stated by Paul H. Robinson, Matthew G. Kussmaul and Muhammad Sarahne that court discretion is very much needed when looking at the facts of a legal issue, however, the biggest obstacle is that judicial discretion cannot be used to resolve criminal matters, because judges do not have a clear legal basis and are limited and cannot be flexibly formulated (Robinson, Kussmaul, & Sarahne, 2021). Thus, the practice of lawmaking needs to be considered The government and the House of Representatives need to formulate or reformulate this issue as an alternative sentence for judges based on strict sentencing guidelines, so that judges can determine discretion for a decision that is just and aims as intended by Robinson et al.

If we reflect on several of these articles, as is known, the character of the National Criminal Code is the development of criminal alternatives to imprisonment which are relatively light, both in the type of crime and in the implementation of the crime. Developing alternatives to imprisonment is not only a national problem but has become a global problem because of the negative impact of implementing imprisonment. The basic idea of an alternative to imprisonment is: to be careful in applying prison sentences, especially short prison sentences. The issue of caution in applying criminal penalties, especially imprisonment, was put forward by Herbert L. Packer that criminal sanctions can be the main guarantor but can also be the main threat to human freedom (the criminal sanction is at once prime guarantor and prime threatener of human freedom). If criminal sanctions are used carefully and humanely, they can be the main guarantor, but if they are used indiscriminately and coercively, they become the main threat to humans (used providently and humanely it is a guarantor; used indiscriminately and coercively, it is a threat) (Packer, 1968).

One way to use criminal sanctions carefully and humanely is by formulating alternatives to prison sentences through guidelines for implementing rigid prison sentences to make

them more flexible. Moreover, criminal sanctions are considered more humane to avoid the imposition of imprisonment. These human values should be reflected in the formulation of criminal sanctions in the law to be applied by judges. A criminal sanction formulated by law for certain crimes, which cannot be changed by a judge, is known as a determinate sentence or fixed sentence. (Blackwell, 2008) . Judges are only implementers of a law, they cannot do anything without being regulated and without sentencing guidelines. Criminal threats in offenses that have the character of *a definite sentence* that is Rigid or absolute criminal sanctions tend to violate human values. On the other hand, criminal sanctions that are more flexible, namely giving the judge the freedom to choose or avoid punishment, will create justice and the values of truth. According to Lies Sulistiani and Efa Laela Fakhriah, formal criminal law instruments are important to support the flexible application of material criminal law norms by enforcers, as an embodiment of the principle of ultimum remedium for the use of criminal sanctions in resolving certain and minor criminal cases (Sulistiani, & Fakhriah, 2023).

It is even more interesting when talking about this truth, Kevin Walton provides a balance that truth comes from intention and obedience. Consider what conditions must be met for compliance with legal norms to be intentional. This is one of the needs for knowledge about norms. No one can obey a legal norm of which they are not aware. If we borrow Jonathan Crowe's concept, law as a social practice is a challenge, because the only factor needed in determining the content of law is its socially recognized source (Crowe, & Agnew, 2020). In acting, sometimes everyone wants to act consistently with legal norms. But not everyone knows that their actions comply with all legal norms (Walton, 2023). Therefore, the criminal system is a system of authority or power to impose penalties. Criminal imposition means the authority to impose or impose criminal sanctions according to law by an authorized official (judge) (Arief, 2011). The existence of sentencing guidelines will provide alternative authority to the judge as to whether in his opinion it is appropriate or appropriate to give a prison sentence to the perpetrator.

C. CONCLUSION

The flexibility of the guidelines for implementing a single formulated prison sentence must be determined firmly in the sentencing guidelines stipulated in Article 57 of the National Criminal Code, as previously formulated in several complete R-KUHPs. In this way, the judge can impose other penalties even though in the formulation of the offense it is only imprisonment. The essence of sentencing guidelines is to provide alternative sentences for judges so that they can consider appropriate punishment for the perpetrator. One of the shortcomings of the National Criminal Code is that there is no article

regarding single application guidelines of imprisonment even though Chapter III Paragraph 3 seems to state the guidelines. Therefore, the term guidelines for the application of imprisonment with a single formulation in Chapter III Paragraph 3 of the National Criminal Code has no meaning because no article explains the guidelines for application for the offenses formulated only as imprisonment.

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