Research Article

Analysis on Synchronization Between The Military Code With Law Number 1 2023 on Indonesia Criminal Code in Sentencing System

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ABSTRACT

The enactment of Law Number 1 of 2023 concerning the new Indonesian Criminal Code (KUHP), which replaces the colonial-era Criminal Code, requires the Indonesian Military Criminal Code to be synchronised and reformed. This reform must be examined through the lens of the sentencing theories that underpin the vision of the new KUHP. This study aims to determine the alignment of military criminal law with Law Number 1 of 2023, while analysing and elaborating on the necessary reforms to the military criminal sentencing system. This study employs a normative legal research approach with a global perspective, as conceptualised by Mulyadi, to enable a clear and comprehensive evaluation of the sentencing aspects requiring synchronisation and reform. The findings reveal that the military criminal sentencing system must shift its orientation from retributive to restorative justice. Reforms are also required in several areas, including sentencing objectives, guidelines and the scope and implementation of additional punishments. Reform of the military criminal code is expected to impact Indonesia's overall military justice system. In conclusion, synchronisation and reform of the sentencing system are necessary to ensure harmonisation between the special and general laws, thereby preventing overlaps in principles and systems.

Keywords: Sentencing System; Military Criminal Law; Criminal Code; Military Criminal Code

A. INTRODUCTION

On 2 January 2023, Law Number 1 of 2023 came into effect, replacing the colonial-era criminal law inherited from the Dutch government (the Wetboek van Strafrecht voor Nederlands-Indië), which was enforced through Law Number 1 of 1946 on Criminal Law Regulations. This reform of the criminal code has prompted the revision of the military criminal code, originally derived from the Wetboek van Militair Strafrecht and enforced under Law Number 39 of 1947, which is also a legacy of the Dutch colonial administration. In line with the national criminal law reform mission, which emphasises decolonising criminal law, the military criminal code must also be revised (Andre, Arief & Sularto, 2024).

Updating the military criminal code is just as important as reforming general criminal law. As a nation that has been independent for 80 years, it is a matter of national pride for all citizens, as well as for those entrusted with protecting, safeguarding and defending the country's sovereignty, to be governed by a criminal legal system developed by their own nation (Boister, 2025). Reforming the military criminal justice

system should involve comprehensive systemic renewal to ensure the modernisation of all its sub-systems (Nugroho, 2019).

Reform of criminal law is an ongoing legislative effort to align criminal law with legal principles and evolving societal values (Taufano & Yusuf, 2024). From a sociological perspective, renewing military criminal law and transitioning away from a colonial legacy signifies the modernisation of the legal system by aligning it with Indonesia's national values (Handayani & Hardiyanti, 2025). This ensures that the developing legal framework reflects the nation's cultural values and philosophical foundations. From the perspective of legal scholars of sociological jurisprudence such as Roscoe Pound (Nalbandian, 2011; Schiff, 2016), Eugen Ehrlich and Benjamin Cardozo, an effective legal system corresponds with the living law within society (Hariyanto, 2018).

The colonial government's inherited criminal law is undoubtedly a legal system imbued with the values of liberalism and capitalism, derived from the philosophy of individualism. Reforming criminal law is part of a policy aimed at establishing more effective and rational regulations to address crime (Alimuddin, 2022).

From the perspective of criminal law doctrine, Herbert L. Packer, in his book The Limits of the Criminal Sanction, asserts that the rationale of criminal law is based on three fundamental concepts: offense, guilt, and punishment (Packer, 1968). These three concepts represent the core issues of substantive criminal law: (1) the identification of actions that constitute criminal offences; (2) the criteria that must be met before an individual can be deemed guilty of a criminal offence; and (3) the legal consequences for those found guilty of such offences. In the context of Indonesian criminal law, Sudarto formulates these three fundamental issues as follows: (1) prohibited acts; (2) individuals who commit such acts; and (3) sanctions for violating these prohibitions.

Barda Nawawi Arief simplifies these three aspects, stating that the three fundamental subjects in criminal law are: (1) criminal acts; (2) fault or criminal liability; and (3) punishment and sentencing. Similarly, Nils Jareborg states that the overall structure of the penal system consists of: (1) criminalisation, involving the formulation of criminal offences; (2) sentencing, involving the imposition of criminal sanctions; and (3) the execution of punishment, involving the enforcement of criminal penalties (Arief, 2012a).

Reviewing various perspectives on criminal law doctrine and their relevance to the criminal sanction system highlights the importance of the existing model or system of criminal sanctions in statutory regulation. Therefore, the criminal sanction system in a regulation must not differ significantly from, or contradict, the laws and regulations that generally govern the criminal system. Similarly, the criminal system in the New Criminal Code differs from that in the Military Criminal Code. The New Criminal Code contains

many concepts that are not found in the Military Criminal Code. This is important because, although the Military Criminal Code has legal standing as 'lex specialis' to the New Criminal Code, the basis of the criminal system must not conflict with the principles stipulated in the New Criminal Code. This is crucial because the New Criminal Code serves as a guideline that must be followed in the criminal system and/or when applying sanctions (Widyawati et al., 2024).

A closer examination of the Military Criminal Code reveals the absence of any provisions or articles addressing the objectives of criminal punishment or the classification of principal and additional penalties. The legal consequences of this lack of synchronisation between regulations are overlapping regulations and the potential for conflicting principles and forms within the criminal justice system, which significantly deviates from the basic provisions of the New Criminal Code (Mevorach, 2021). Reform of military criminal law should focus not only on updating the substantive aspects of criminal offences, but also on restructuring the criminal accountability system and the criminal justice framework. Reforming the criminal justice system is important because it reflects a nation's cultural values and establishes the fundamental objectives of criminal punishment within its legal framework.

The importance of alignment or synchronisation between the new Criminal Code and the Military Criminal Code has been described above. Therefore, there is an urgent need for synchronisation and reform of the Military Criminal Code. In this study, the researcher aims to identify whether military criminal law is in line with Law Number 1 of 2023 and analyse the reform of the military criminal law sentencing system.

To strengthen this study, the researcher will present a theoretical framework. The first of these is the Theory of a Global Approach. A key issue in criminal law reform in Indonesia is the need to harmonise the Military Criminal Code with the new Criminal Code. This cannot be achieved through a partial or piecemeal approach; rather, it requires a comprehensive, global approach. Muladi (1997) defines a global approach as comprehensive criminal law reform through recodification. This approach is crucial because the current Military Criminal Code still relies heavily on the Dutch colonial system and classical principles that no longer fully align with the new Criminal Code paradigm, which promotes dualistic criminal responsibility and human rights protection.

Firstly, the application of a global approach to synchronising and reforming the Military Criminal Code is essential to avoid overlapping or disharmonious regulations between the new Criminal Code and the Military Criminal Code, which utilise different principles in terms of substance, structure and legal culture. Secondly, it guarantees legal certainty for both Indonesian National Armed Forces (TNI) soldiers and

civilians by demonstrating that military criminal law is an integral part of the national criminal law system, not an independent legal sector. Thirdly, it aligns military criminal regulations with the demands of a modern legal state that prioritises restorative justice, the principle of proportionality and the accountability of law enforcement agencies. Therefore, renewing the Military Criminal Code through a global approach will result in a codification of military criminal law that is aligned with, and systematically synchronised to, the new Criminal Code, while also being responsive to the development of values in the modern state era (Arifin et al., 2024).

The term 'crime' is often used synonymously with 'punishment'; however, there is a distinction in meaning. Punishment has a broader scope than crime as it encompasses sanctions beyond criminal law, including civil, administrative and other legal domains (Garfield et al., 2023). Punishment is a general term for all legal consequences arising from violations of legal norms, regardless of the specific field of law (Rozah & Yudistira, 2025). In contrast, crime is inextricably linked to criminal law as it is the primary means of enforcing it. Sudarto (1983; Firdaus & Maerani, 2020) defines crime as suffering intentionally inflicted upon an individual who has committed an act that meets certain legal requirements. Meanwhile, Roeslan Saleh conceptualises crime as a reaction to a delict, manifesting as a form of suffering deliberately imposed by the state on the perpetrator of the offence (Saleh, 1983). Meanwhile, Muladi and Barda Nawawi Arief argue that crime constitutes an absolute consequence that must exist as retribution for individuals who commit crimes (Efendi, 2017).

As cited in P.A.F. Lamintang, Simon asserts that punishment (straf) is a type of suffering prescribed by criminal law for violating a legal norm. It is imposed on individuals found guilty by a judicial ruling (Lamintang, 1984).

Van Hamel defines punishment as a specific form of suffering imposed by an authorised authority. In this context, the state is responsible for upholding general legal obligations and imposes a penalty on an offender solely because they have violated a legal provision that must be enforced by the state. Furthermore, Van Hamel argues that responsibility is a condition of psychological normality and maturity that entails three essential abilities:a. The ability to comprehend the values and consequences of one's own actions; b. The ability to recognise that one's actions are impermissible from a societal perspective; c. The ability to exercise volition in determining one's actions (Suartha, Martha & Hermanto, 2022).

This is why criminal punishment serves as an instrument to achieve specific objectives. Barda Nawawi Arief asserts that criminal punishment essentially serves to attain goals based on a balance between two fundamental aspects: the protection of society and the protection or rehabilitation of offenders (Arief,

1986). From this perspective, the issue of criminal punishment is closely related to policy decisions regarding the imposition of sanctions and the underlying rationale for penal objectives. The formulation of sanctions policy is also inseparable from the broader objectives sought by criminal policy as a whole.

As cited by Sholehuddin (2003), Jerome Hall provides a detailed description of punishment:

1. Punishment involves the deprivation of fundamental aspects of life.
2. Punishment is coercive and involves the use of force.
3. It is imposed in the name of the state and authorised by law.
4. Punishment requires legal provisions, violations of these provisions, and determinations of these violations, as expressed in judicial decisions.
5. Offenders who have committed crimes are punished, and this necessitates a set of values by which both crime and punishment hold ethical significance.
6. The type and degree of punishment are correlated with the criminal act and may be aggravated or mitigated based on the offender's personality, motives and driving factors.

According to J.M. van Bemmelen, criminal law differs from other branches of law in that it intentionally imposes suffering in the form of punishment. The purpose of this is to establish sanctions for violations of prohibitive regulations, thereby maintaining order, tranquility and harmony within society (Bemmelen, 1984).

Punishment is one of several sanctions aimed at enforcing legal norms. As Syaiful Bakhri states, violations of societal norms give rise to a sense of discontent, which is manifested through the imposition of such sanctions (Bakhri, 2009).

Based on various definitions of criminal punishment put forward by legal scholars, Eddy O. S. Hiariej draws the following conclusion: Firstly, punishment is a form of suffering intentionally imposed by the state upon an individual. Secondly, it is imposed in reaction to an individual's act that violates criminal law. Thirdly, criminal sanctions imposed by the state are regulated and determined in a detailed and specific manner (Hiariej, 2014).

However, the enactment of Law Number 1 of 2023 on the Criminal Code, which replaced the colonial-era Criminal Code inherited from the Dutch government, was not followed by an update to the Military Criminal Code. This is likely to create legal challenges in the regulation of military criminal law.

As the Military Criminal Code is still based on the previous Criminal Code, discrepancies in legal provisions may arise, particularly with regard to sentencing and law enforcement mechanisms within a military context. Military personnel subject to the outdated Military Criminal Code may face legal uncertainty because several norms have been revised in the new Criminal Code, yet

remain unharmonised with the Military Criminal Code. This is evident in the main form of disharmony within the criminal system and the principles recognised and employed in the new Criminal Code. In light of the existing issues, this study aims to address two key questions: 1) Is military criminal law aligned with Law Number 1 of 2023? and 2) How can the military criminal legal system be reformed?

To review the novelty of this research, a state-of-the-art study is required. Several such studies are relevant to this research. The first is Agustinus PH's study entitled 'Military Criminal Law Reform as Part of National Criminal Law Reform'. This study primarily examines how military criminal law can be reformed to align with the new Criminal Code. It discusses the need to delve deeper into three key issues in Military Criminal Code reform: military crimes, criminal liability and crimes and punishment (Agustinus, 2023). This study differs from the current study in that the former explored the harmonisation of the Military Criminal Code with the new Criminal Code in three areas: military crimes, criminal liability and crimes and punishment. This study focuses on the criminal justice system and examines inconsistencies within the Military Criminal Code resulting from changes in the approach to punishment. The study also presents key aspects of reform in the military criminal justice system.

Another relevant study is the journal "Learning from the Complexities of Fostering a Restorative Justice Culture in Practice within the Royal Netherlands Air Force" by Boskeljon-Horst, L., Snoek, A. and Van Baarle, E., which primarily examines the application of restorative justice in the Dutch Air Force. The aim is to replace the repressive or retributive system with a restorative one. However, the implementation of this concept is hindered by the legal culture practised by the military and is difficult to change. Special management is required to alter the military's retributive mindset (Boskeljon-Horst, Snoek & Baarle, 2023). This study differs from the previous one in that it focuses not only on the application of the restorative justice concept in the Air Force, but also on synchronising and reforming the Military Criminal Code to align it with the vision and/or objectives of punishment in the new Indonesian Criminal Code.

The third piece of relevant research is by Noveria Devy Irmawanti and Barda Nawawi Arief and is entitled 'The Urgency of Sentencing Goals and Guidelines in the Context of Reforming the Criminal Law Sentencing System'. This study concludes that the need to establish sentencing goals and guidelines is urgent due to issues relating to the outdated Criminal Code and the emergence of new legal challenges in society. These guidelines provide fundamental provisions that direct the imposition of criminal sanctions and guide judges in determining appropriate sentences (Irmawanti & Arief, 2021). While the previous research emphasised the urgency of updating the sentencing guidelines, this latest

research focuses more on synchronising the Military Criminal Code with the new Criminal Code. It also describes how the Military Criminal Code can be reformed to ensure that these regulations are efficient and synchronised with the new Criminal Code regulations.

The fourth relevant study is a journal article by Failin Alin entitled 'Sistem Pidana dan Pemidanaan di Dalam Pembaharuan Hukum Pidana Indonesia' (Criminal System and Punishment in Indonesian Criminal Law Reform). The study concludes that, within the Indonesian criminal justice system, the primary focus of criminal offences and criminal accountability is on individuals directly involved in the criminal process. However, in many cases, parties other than the direct perpetrators can also bear responsibility due to their involvement or the broader impact of the crime (Alin, 2017). The previous study explained that the criminal justice system in the new Criminal Code should prioritise justice over legal certainty. This study, however, focuses more on synchronising the Military Criminal Code with the new Criminal Code, as well as improving or reforming the objectives of criminal justice in the Military Criminal Code.

The fifth study is by Pavlo Gorinov and Khrystyna Mereniuk, and is entitled 'Military Law in Ukraine: Future Prospects for Development'. This research essentially examines the need for comprehensive reform of Ukrainian military law to adapt to the realities of war and international legal standards. This reform involves not only technical changes, but also the integration of democratic values, human rights and best practices from the EU and NATO (Gorinov & Mereniuk, 2022). The difference between this research and the current study is that the former focused on developing military law in Ukraine for warfare purposes, whereas the latter focuses on updating, reforming, and synchronising the concept of the military criminal system in Indonesia, which applies not only to warfare but also to state interests.

B. RESEARCH METHODS

This research employed normative legal research. This type of research aims to explore the fundamental philosophical principles, established regulations and institutional frameworks that govern specific issues (Jaya et al., 2023). It focuses on evaluating and interpreting legal norms and principles, emphasising the moral and ethical dimensions of law (Danial et al., 2024; Geeraets & Veraart, 2021; Jaya et al., 2023).

It includes legal principles and methods in the sense of values (norms), as well as concrete legal regulations and systems. The method used in normative legal research to identify solutions is legal discovery, which includes interpretation and argumentation (Muhdlor, 2012).

The main characteristic of normative legal research when it comes to legal materials is the data source, which is secondary data (Irawan et al., 2024). The legal materials used in this study

consist of primary, secondary and tertiary sources (Jaya et al., 2023).

This research takes a global approach to synchronising and reforming the Military Criminal Code. In doing so, researchers aim to reform it within a broad context, with the hope that this alignment will create harmonisation between the principles and criminal systems contained in the new Criminal Code.

C. RESULTS AND DISCUSSION

1. A review of the misalignment between the Military Criminal Code and the New Criminal code

The issue of misalignment between the Military Criminal Code (KUHP Militer) and the New Criminal Code (KUHP) was previously highlighted in the background and problem gap sections. One of the central issues lies in the sentencing system. The concept of a sentencing system can have different meanings. L.H.C. Hulsman defines it as statutory rules relating to criminal sanctions and punishments (Arief, 2012a; Fokkema, 1978). Barda Nawawi Arief states that, when understood broadly, sentencing is the process by which a judge imposes or administers criminal sanctions. In this sense, the sentencing system encompasses all statutory provisions that regulate the enforcement and operationalisation of criminal law, ultimately resulting in the imposition of criminal sanctions on individuals (Körtl & Chbib, 2024).

This implies that all statutory provisions concerning substantive criminal law, criminal procedural law and the law of criminal execution can be regarded as an integrated penal system. In short, the penal system can be defined as a system for imposing or enforcing criminal sanctions. The imposition or enforcement of criminal sanctions (the penal system) can be examined from two perspectives (Sopacua, 2024).

From a broad perspective, the penal system is viewed functionally, with a focus on operational processes and implementation. First, the penal system can be understood as a comprehensive legislative framework for the functionalisation of criminal law. Second, it can be understood as a comprehensive legislative framework that regulates the concrete enforcement and operationalisation of criminal law, ensuring that individuals are subjected to criminal sanctions.

Thus, the penal system is inherently linked to the system of criminal law enforcement, consisting of three interrelated subsystems: Substantive Criminal Law, Criminal Procedure Law and Criminal Execution Law (Latupeirissa & Titahelu, 2025). These three subsystems form an integrated penal system because the enforcement and application of criminal law cannot operate effectively by relying solely on one subsystem (Latifiani et al., 2022). This conceptualisation of the penal system is referred to as the 'functional

penal system' or the 'penal system in a broad sense' (Shabrina & Putrijanti, 2022).

From the perspective of normative criminal law, the penal system in military criminal law can be understood as either the entirety of substantive criminal law norms governing sentencing or a comprehensive system of substantive criminal law norms regulating the imposition and execution of punishment (Suartha, Martha & Hermanto, 2022). Based on this understanding, the penal system in military criminal law encompasses all statutory provisions contained within the Military Criminal Code, the Indonesian Criminal Code and other special statutory provisions, thus forming an integrated penal system. Based on this broad definition, the military penal system includes the following statutory provisions:

1) General provisions contained in Book I of the Criminal Code, as these provisions apply to the implementation of military criminal law pursuant to Article 103 of the Criminal Code and Article 1 of the Military Criminal Code;
(2) General provisions regulated in Book I of the Military Criminal Code;
(3) Special provisions contained in Books II and III of the Criminal Code, as well as other statutory provisions regulating criminal offences outside the Military Criminal Code which apply to soldiers as referred to in Article 2 of the Military Criminal Code;
(4) Special provisions stipulated in Book II of the Military Criminal Code.

If the sentencing system in Military Criminal Law is interpreted broadly, the issue becomes highly complex as it is closely tied to the system set out in Book I of the Criminal Code. This complexity concerns not only the types of sanctions imposed, but also the objectives of sentencing and the sentencing guidelines formulated in the New Criminal Code under Law No. 1 of 2023.

Formulating a sentencing system is indeed a complex task, particularly in the context of special criminal law, such as the Military Criminal Code, which is a codified body of criminal law that is separate from the general Criminal Code. As a codification of military criminal law, the Military Criminal Code must be preserved as a statutory codification (wetboek/code) and must adhere to fundamental legal principles, ensuring harmony and synchronisation with the principal codification: the Criminal Code.

Accordingly, when the principal codification was reformed through Law No. 1 of 2023 on the Criminal Code, the revision of the Military Criminal Law particularly the Military Criminal Code must be based on the fundamental concepts and principles of the Criminal Code. According to its drafters, the Criminal Code is based on the following fundamental principles (Arief, 2012b):

1) The criminal law system is an integrated and purposive system where criminal sanctions serve solely to achieve intended goals.
2) The purpose of criminal sanctions is an integral part of the penal system as a whole, alongside

other subsystems such as criminal acts, criminal responsibility and sentencing.

3) The formulation of sentencing objectives and guidelines is intended to function as a control, direction and guidance mechanism while providing a philosophical foundation, rationality, motivation and justification for the imposition of criminal sanctions.
4) From a functional and operational perspective, the sentencing system encompasses three stages: formulation (legislative policy), application (judicial policy) and execution (administrative/executive policy). To ensure coherence and integration among these three stages as a unified penal system, sentencing objectives and guidelines must be established.

In addition to these fundamental principles, the Key Points of Penal System Reform in the New Criminal Code must be considered. The penal system is based on several fundamental principles (Arief, 2014), including:

1) A monodualistic balance between the interests of society (public interest) and individual rights;
2) A balance between social welfare and social defence;
(3) A balance between offender-oriented punishment (individualisation of punishment) and victim-oriented justice;
(4) The application of a dual-track system combining punishment (criminal sanctions) with treatment or rehabilitative measures;
(5) The optimisation of non-custodial measures as an alternative to imprisonment;
6) Elasticity and flexibility of punishment.
(7) Modification, alteration, annulment, revocation or re-determination of criminal sanctions;
8) The principle of subsidiarity when selecting appropriate forms of punishment.
9) Judicial pardon (rechterlijk pardon) as a discretionary power of the judge;
10) Prioritising justice over legal certainty.

Based on these fundamental principles, the Criminal Code incorporates several key provisions (Arief, 2014; Muttaqin, 2012):

(1) The affirmation of the principle of nullum crimen sine culpa (the principle of culpability), balanced with provisions on strict and vicarious liability (Bell, 2013; Chun & Kim, 2021);
2) Determination of the age of criminal responsibility. Although the Criminal Code does not explicitly regulate the minimum age of criminal responsibility, in England and Wales it is currently 10 years (Brown & Charles, 2021; Delmage, 2013), while in Australia it is also 10 years (Bushuev & Ivanchenko, 2023).
(3) A special chapter on sentencing juveniles (Book I, Chapter III, Part Four);
(4) Judicial discretion to suspend or terminate criminal proceedings against minors at any stage (the diversion principle);
5) Conditional death penalty;
The possibility of parole for life-sentenced prisoners.

(7) The inclusion of community service, restitution and fulfilment of customary or living law obligations as criminal sanctions;
(8) The establishment of certain minimum penalties accompanied by sentencing guidelines;
(9) The possibility of combining various sanctions (e.g. fines and measures);
(10) The use of additional sanctions as independent penalties;
(11) Judicial discretion to impose sanctions not expressly prescribed in the statutory formulation of an offence.
(12) The possibility of imposing cumulative penalties, even when sanctions are formulated as alternatives;
(13) Judicial pardon (rechterlijk pardon): allowing judges to refrain from imposing punishment despite proven guilt (Bahri, 2024).
(14) Judicial authority to impose liability and punishment even where grounds of justification exist if the perpetrator is deemed culpable for causing such justification (Dimock, 2013; Holgado Fernández, 2004).
15) The possibility of modifying or altering final judgements even after they have acquired legal force.

Not all of the fundamental ideas and conceptual formulations in the New Criminal Code can or should be adopted for the reform of the Military Criminal Code. While full integration with the entire Criminal Code system is unnecessary, several key principles and core ideas must serve as the guiding framework for reforming the Military Criminal Code. As a branch of special criminal law, deviations from general criminal law may still occur. However, such deviations must be carefully justified, particularly in relation to the structure and types of sanctions outlined in the New Criminal Code.

The enactment of Law No. 1 of 2023 on the Criminal Code, which replaced the colonial-era Criminal Code inherited from the Dutch administration, has not yet been followed by a reform of the Military Criminal Code. This situation poses potential legal challenges in regulating military criminal law.

2. Key aspects of the reform of the military criminal law sentencing system

The reform of the military criminal law sentencing system must remain aligned with the sanction system set out in Book I of the Criminal Code. The provisions set forth in Article 1 of the current Military Criminal Code must be preserved as the legal foundation for applying the existing sanction system in the Criminal Code to the reformed Military Criminal Code. Consequently, Article 1 of the Military Criminal Code is maintained in order to reinforce Article 187 of the Criminal Code. Article 1 of the Military Criminal Code states: 'For the application of this Code, the provisions of General Criminal Law, including Chapter IX of Book One of the Criminal Code, shall apply, unless deviations are prescribed by law.'

The researcher will propose ideas for reforming the substance of the Military Criminal Code based on the theories of the purposes of absolute and combined punishments. The fundamental principles of the sanction system as part of the penal system in the reform of Military Criminal Law are as follows:

a) Formulating the objectives of military sentencing

The reform of the Military Criminal Code must establish sentencing objectives in accordance with Article 51 of the Criminal Code, taking into account the possibility of additional penalties in the form of dismissal for military personnel. This implies that there are two categories of convicted military personnel: those sentenced to imprisonment without the additional penalty of dismissal, and those sentenced to imprisonment with the additional penalty of dismissal from military service.

The objective of military sentencing should primarily focus on military convicts who are not dismissed from military service and who will resume active duty after serving their prison sentence. Convicts who are dismissed from military service will serve their prison sentence in a general correctional facility, where their rehabilitation will be conducted under the jurisdiction of the correctional institution in accordance with the sentencing objectives outlined in Article 51 of the Criminal Code.

The two objectives of military punishment are based on a combined theory (vereenigings theorie), which not only provides a deterrent effect or revenge on the convict (absolute theory), but also provides goals for the future that can be achieved through rehabilitation (relative theory).

b) Distinguishing principal punishment and additional punishment

Regarding the sanction system in the Criminal Code, which introduces several new types of sanctions not previously recognised in the sanction systems of the Criminal Code (Wetboek van Strafrecht/WvS) and the Military Criminal Code, the reform of Military Criminal Law must thoroughly examine the incorporation of these new types of sanctions into the Military Criminal Code.

In the category of principal punishments under the Criminal Code, new sanctions have been introduced: Supervisory Punishment and Social Work Punishment (Irawati, Prananingtyas & Wulan, 2023). The fundamental question that arises is whether Military Criminal Law will adopt these two new types of sanctions. If so, certain aspects of the system would inevitably require updates and revisions.

In revising the Military Criminal Code, the structure of criminal sanctions must continue to uphold the classification of principal and additional penalties. The order of these penalties should align with a hierarchy based on the severity of the punishment types.

c) Retaining the death penalty as a principal punishment

Regarding the death penalty, while the Criminal Code classifies it as a principal punishment of a special nature, the reform of Military Criminal Law recommends that it remain a principal punishment.

As a specialised branch of criminal law, military criminal law generally addresses offences of a serious nature. These include crimes relating to military duties in national defence and acts of military treason. Given the severity of such offences, the death penalty remains a justified form of criminal sanction. According to various previous studies, the theory of absolute criminal purposes is needed to deter the perpetrator from committing the crime in cases of serious crimes or violations (Dagan & Baron, 2025). This is the state's firm stance on military citizens who endanger their own country, and of course the death penalty is not imposed arbitrarily, but rather through special qualifications that can be derived from the sentencing guidelines referenced in the new Criminal Code.

The differences between the sanction systems in the Wetboek van Strafrecht (WvS) Criminal Code, the New Criminal Code and the proposed reforms in the Military Criminal Code can be seen in the following table:

Table 1. Sanction System in the *WvS* Criminal Code (Law No. 1 of 1946), the New Criminal Code of Indonesia (Law No. 1 of 2023), and Recommendations for the Military Criminal Code Reform

Sanction Structure in the WvS Criminal Code	Sanction Structure in the New Criminal Code	Sanction Structure in the Draft Military Criminal Code (Author's Recommendation)
Principal Punishments: a. Capital Punishment b. Imprisonment c. Custodial Sentence d. Confinement e. Fines	**Principal Punishments (Article 65):** a. Imprisonment b. Custodial Sentence c. Supervision Sentence d. Fines e. Community Service	**Primary Punishments:** a. Capital Punishment; b. Imprisonment c. Custodial Sentence d. Supervision Sentence
Additional Punishments: a. Revocation of certain rights b. Forfeiture of specific goods and/or claims c. Public Announcement of Judicial Rulings	**Special Nature of Punishment (Article 66):** Capital punishment is a principal punishment with a special nature and is always imposed alternatively.	**Additional Punishments:** a. Dishonorable Discharge from Military Service b.Demotion in Grade c.Revocation of Certain Rights

Source: WvS Criminal Code (Law No. 1 of 1946) and New Criminal Code of Indonesia (Law No. 1 of 2023)

d) Introducing a new type of criminal punishment: Supervision Sentence

The supervision sentence is a new type of criminal sanction introduced under the New Criminal Code. It serves as an alternative to the conditional sentence, which was previously regulated under articles 14a to 14f of the Criminal Code (Muladi, 2002). The supervision sentence is outlined in Articles 75, 76 and 77 of the New

Criminal Code, which set out specific provisions and requirements.

Article 75 of the New Criminal Code states: 'A defendant who commits a criminal offence punishable by a maximum imprisonment of five years may be sentenced to a supervision sentence, subject to the provisions set out in Articles 51 to 54 and Article 70.'

(1) A supervisory sentence may be imposed on the defendant, taking into account their personal circumstances and the nature of their offence.

(2) The supervision sentence, as referred to in paragraph (1), may be imposed for a maximum period of three years.

(3) In imposing a supervision sentence, certain conditions may be stipulated, including:
   a. The convicted person shall not commit any criminal offence.
   b. within a period shorter than the supervisory sentence, the convicted person must compensate the full amount of damages resulting from the offence; and/or
   c. The convicted person must perform or refrain from performing certain acts, without prejudice to their freedom of religion and political rights.

(4) The supervision is carried out by the Correctional Hall under the Ministry responsible for Governmental Affairs in the Field of Law and Human Rights.

(5) If, during the supervision period, the convicted individual violates the law, the Correctional Hall, under the Ministry responsible for governmental affairs in the field of law and human rights, may propose an extension of the supervision period to the supervisory judge. However, this extension shall not exceed twice the remaining supervision period yet to be served.

(6) Conversely, if the convicted individual demonstrates good behaviour during the supervision period, the Correctional Hall may propose a reduction of the supervision period to the supervisory judge.

(7) The supervisory judge has the authority to modify the established supervision period after considering the views of the relevant parties.

Following the introduction of the supervisory penalty as an alternative to imprisonment and conditional sentencing in the New Criminal Code, questions have been raised as to whether the Military Criminal Code will retain conditional sentencing or adopt the supervisory penalty as an alternative to conditional sentencing and imprisonment (Hufron & Fikri, 2024). As a specialised branch of criminal law, the revision of the Military Criminal Code must adhere to fundamental principles, namely that criminal law outside the Criminal Code should be guided by Book I of the General Provisions of the New Criminal Code (Margono, 2024). In this context, adherence should not be interpreted as requiring absolute conformity, but rather as a principle whereby conditional sentencing is replaced by the supervisory penalty (Pramono et al., 2025).

However, adjustments must also be made to align with the military penal system, particularly with regard to the conditions and implementation of supervision (Kadir et al., 2025).

If Supervised Criminal Sentencing is adopted as one of the penal sanctions in the reform of the Military Criminal Code, is it appropriate for it to be determined based on the statutory penalty, considering its nature as a penal sanction served outside correctional institutions and the fact that its supervision is not carried out by correctional institutions, including military correctional institutions? Would it not be more appropriate for it to be determined based on the judge's verdict?

In the military criminal law system, the imposition of a conditional sentence is subject to restrictions for military judges, specifically that such a sentence must not contradict military interests. This limitation serves as a fundamental principle in the imposition of a conditional sentence (Junaidi & Susanto, 2025). Therefore, a military judge must carefully consider military interests when determining whether a military defendant is eligible for a conditional sentence. If the revision of the Military Criminal Code replaces the conditional sentence with a supervision sentence in future, military interests should remain a requirement for the judge to consider when imposing a supervision sentence (Wardana, Rahayu & Sukirno, 2024).

The supervisory punishment concept is based on sentencing requirements rather than criminal threat conditions. As a penal sanction that can only be imposed for minor offences, the requirements for imposing supervisory punishment should follow the pattern outlined for conditional sentencing in Article 14a of the Criminal Code: 'If the judge imposes a prison sentence of no more than one year, the judge may also order in the ruling that the sentence does not need to be served...'

The concept of supervised criminal penalty in the revision of the military criminal code should not follow the pattern established in article 75 of the criminal code, which sets the condition for imposing supervised criminal penalty based on a maximum imprisonment threat of five years. Requiring a judge’s decision with a maximum period of one year as a condition for imposing the sanction makes the rationale behind the formulation of Supervised Criminal Penalty in Military Criminal Law more measurable when applied exclusively to minor offences. This approach is more precise than using the maximum threat of imprisonment of five years, as stipulated in Article 5 of the Criminal Code. Applying a five-year imprisonment threshold would give judges excessively broad discretionary authority as it would extend to serious criminal offences.

e) Eliminating of the double track system in military criminal law

The future regulation of the military criminal sanction system will not need to adhere to the double-track system. The current system of

sanctions under the Military Criminal Code still adopts this dual-track approach, incorporating both penal sanctions and disciplinary measures. One type of disciplinary sanction under military criminal law is the provision for an offender to be returned to their commanding officer in cases where convicted military personnel are classified as minors, as stipulated in Article 33 of the Military Criminal Code.

When Article 45 of the Criminal Code is applied to underage military personnel, the court's order to place the offender under the custody of their parents, guardian or carer if they are still serving is substituted with an order to transfer the individual to their direct commander or officer in charge.

Although Article 45 of the Criminal Code has been repealed by the Juvenile Justice Law, Article 33 of the Military Criminal Code has never been explicitly invalidated. Article 33 of the Military Criminal Code demonstrates that Military Criminal Law adheres to the dual-track system of penal sanctions and disciplinary measures. However, Article 33 of the Military Criminal Code is no longer necessary, given that the recruitment system for prospective military personnel now requires a minimum age of 18. Consequently, there will be no military personnel under the age of 18, rendering the provision obsolete.

f) Adopting a General Minimum Imprisonment System

The adoption of a general minimum imprisonment system is necessary in order to deviate from the minimum sentencing system stipulated in the Criminal Code. As a form of military criminal law, the penalties imposed will be more severe, potentially exceeding the general aggravation provisions outlined in Book I of the Criminal Code, which prescribe an additional one-third of the sentence. While the Criminal Code sets the minimum term of imprisonment at one day, the Draft Military Criminal Code should set the minimum term of imprisonment at one month.

g) The additional penalty of rank demotion must be limited to a demotion of only one level within the same grade category.

The regulation regarding the additional penalty of rank demotion requires revision as it is currently governed by the Military Criminal Code, which allows demotion down to the enlisted rank (Tamtama). As the existing grade demotion system is no longer relevant, the Draft Military Criminal Code should establish clear limitations on the level of demotion in accordance with the grade category. Rank demotion should be restricted to one level within the same grade group, with the specific duration determined by the judicial ruling.

D. CONCLUSION

Having attained independence 80 years ago, Indonesia must now reform its criminal law to replace the colonial-era legal framework inherited from the Dutch. Following the enactment of Law No. 1 of 2023, which updated the Criminal Code, it is imperative that the Military Criminal Code

does the same. The revision of the Military Criminal Law must be grounded in the nation's cultural values to ensure its relevance and legitimacy. From a pragmatic standpoint, modernising the Criminal Code requires corresponding reforms to the Military Criminal Law in order to maintain legal consistency and coherence within the national legal system.

The Military Criminal Code's sentencing system must be amended to align with that of the new Criminal Code. This can be achieved by shifting the focus of sentencing from repressive measures based on an absolute theory of sentencing to a combined theory that prioritises the rehabilitation of the offender within a restorative justice framework.

In updating or reforming military criminal law related to the sentencing system, the following could be included:a) The purpose of sentencing and sentencing guidelines, as stipulated in Articles 51 and 53 of the new Criminal Code, must be formulated in the new Criminal Code; b) The issue of additional criminal sanctions in the form of dismissal from military service for convicts sentenced to imprisonment; c) The issue of additional criminal sanctions in the form of demotion, as examined in research. Amendments to the new Criminal Code could impact the existing military criminal justice system, including sentencing procedures and sentence execution. The new Criminal Code incorporates supervision as a primary punishment, meaning supervision will have the same legal weight as imprisonment. This needs to be analysed within the context of military criminal law to assess its effectiveness as an alternative to or addition to conventional punishment.

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REGULATIONS

WvS Criminal Code (Law No. 1 of 1946)

Law No. 39 of 1947 concerning Adaptation of Military Criminal Law (Staatsblad 1934, No. 167) to Current Conditions

Law Number 1 of 2023 is the Law concerning the Criminal Code