

Measures: The New Face of Criminal Punishment in the New Indonesian Criminal Code



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ABSTRACT: The criminal punishment system in the WvS Criminal Code has shifted from only imposing punishments (single track system) to punishment and/or measures (double track system) in the National Criminal Code. This study aims to determine the conditions under which measures can be imposed and the form and application of measures in the new Criminal Code. The method used in this study is the doctrinal research method. The conditions for criminal law subjects to be subject to measures are as follows: if the criminal law subject is an individual, including people with mental and intellectual disabilities, children under 14 (fourteen) years of age, and corporations. The imposition of Measures must be based on the objectives and guidelines for punishment as in Articles 51 to 54 of the New Criminal Code.

KEYWORDS: Measures, Punishments, National Criminal Code

I. INTRODUCTION

Criminal law in Indonesia has undergone a long transformation along with the dynamics of the nation's history. Since the Dutch colonial era, our criminal justice system has continued to evolve, influenced by various factors such as social, political, and economic changes. The Criminal Code we know today results from accumulating these various influences.

In the early 20th century, the Dutch East Indies government felt the need to have consistent and systematic legal regulations regarding criminal acts. This was the background to the birth of the first Criminal Code in Indonesia in 1918, which underwent several revisions and changes over time. (Malau, 2023)

The renewal of the Criminal Code of a national nature began in 1963 through a First National Criminal Law Seminar at Diponegoro University, Semarang, in which the seminar stated the reasons for the importance of having a Criminal Code of a national nature in the sense that its spirit, soul and philosophy are all based on the foundation of Indonesian nationalism. (Setiadi, 2011)

Changes in legislation in Indonesia must create a more stable environment so that every citizen can enjoy an atmosphere and climate of order and legal certainty, with justice at its core. (Zainuddin, Mubarok, & Bachriani, 2022)

The Wetboek van Strafrecht, translated as the Criminal Code used to date, is considered unable to accommodate various problems and developments in new forms of criminal acts in line with the development and dynamics of society. This raises concerns, primarily related to the dogmatic nature and substance of the Criminal Code, which is thick with classical and Western schools which are considered to be incompatible with the Eastern culture adopted by Indonesian society, so we should reform Indonesian criminal law, which is based on fundamental values and socio-philosophical, socio-political and socio-cultural values that live in Indonesian society. (Fadhilah, Zulkarnain, Yulianto, & Satory, 2024)

Sentencing or imposing sanctions or punishments on defendants depends on the judge. Judges are not bound by the severity of the prosecutor's demands; judges can sentence defendants more severely or more lightly than the prosecutor's requisitor based on considerations of aggravating and mitigating factors for the defendant's actions. (Rivanie, Muchtar, Muin, Prasetya, & Rizky., 2022)

Legal norms are different from several other social norms that apply in society; norms of politeness, for example, do not have strict sanctions when violated, and the same happens to moral and religious norms. Unlike the three norms, legal norms have sanctions that are imperative in the form of physical coercion and are implemented by institutions appointed to implement them by the State. (Winda Apriani Zarona Harahap, Asep Syarifuddin, 2021)

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The purpose of punishment essentially contains two main aspects, namely:

1. Aspect of protecting society against criminal acts.

This first central aspect includes the objectives: a) Crime prevention, b) Protection (security) of society, c) Restoring social balance: Conflict resolution (conflict oplossing) and Bringing a sense of peace (vredemaking)

2. Aspect of protection/guidance of individual perpetrators of criminal acts (aspect of criminal individualization)

This second central aspect can include the following objectives: First, rehabilitation, reduction, and resocialization (socializing) of convicts so they no longer repeat or commit acts damaging/harmful to themselves or others/society. Second, so that they have good morals (morals) of Pancasila. Freeing guilt and protecting the perpetrator from the imposition of arbitrary sanctions or inhumane retaliation (criminal punishment is not intended to suffer and degrade human dignity)

From the description, it can be concluded that if criminal law must be oriented towards protecting society to achieve social welfare, then a theory that only sees one aspect of the general goal is actually too one-sided. Therefore, a new, more humane criminal punishment system is needed to fulfil the purpose of punishment, so a new sanction system is formed, which is known as measures.

Sardjana Orba Manullang (Manullang, Tompul, Kusumadewi, Krisnalita, & Mutiarany, 2023) has conducted several studies. One focused on the binding power of the National Criminal Code to Special Laws, reviewed from a Philosophical Perspective. Muhammad Idris Nasution's (Nasution, Ali, & Lubis, 2024) other study discussed the renewal of the criminal punishment system but only focused on punishments. The method used in this study is doctrinal research.

The criminalization system in the WvS Criminal Code has shifted from only imposing punishments (single-track system) to punishments and/or measures (double-track system). This study aims to determine the conditions under which measures can be imposed and the forms and implementation of measures in the new Criminal Code.

II. DISCUSSION

Criminal acts are subject to punishment and/or measures by statutory regulations. The act must be unlawful or contrary to the laws that apply in society. Measures are new in the National Criminal Code compared to the WvS Criminal Code. In the WvS Criminal Code, there are indeed forms of measures, but they are not explicitly referred to as Measures.

Measures have been standardized in the National Criminal Code as one form of sanction accompanying punishment. To find out more, we will discuss the form and application of Measures as follows:

A. Conditions that can be subject to Measures

Article 38 of the National Criminal Code states that if a person at the time of committing a crime has a mental and/or intellectual disability, then the punishment for that person can be reduced by criminal sanctions and/or be subject to Measures. The option of imposing criminal sanctions remains an option, but because of the condition of the perpetrator who is "disabled", this factor makes the criminal sanctions can be reduced. In addition to being reduced, Measures can also be imposed, which, in this case, function as a form of improvement or recovery for the perpetrator who is "disabled".

"Mental disability" is a disturbance in the function of thinking, emotions, and behaviour, including a. psychosocial, including schizophrenia, bipolar, depression, anxiety, and personality disorders; and b. developmental disabilities that affect the ability to interact socially, including autism and hyperactivity. What is meant by "intellectual disability" is a disturbance in the function of thinking due to a below-average level of intelligence, including slow learning, intellectual disabilities, and Down syndrome. Criminals who have mental and/or intellectual disabilities are considered less able to realize the unlawful nature of the actions they have committed or to act based on the awareness that they can be punished.

Mental disabilities include various conditions such as developmental disorders, mental disorders, anxiety disorders, mood disorders, and neurological disorders that affect the cognitive, emotional, social, or behavioural functions of an individual. In some cases of criminal acts, it is not uncommon to find that the perpetrators of the criminal acts are people with mental disabilities. As a result, there is a particular urgency regarding the regulations that form the legal basis for deciding criminal responsibility for them. (Hidayat & Ibrahim, 2023) All citizens are treated without any differentiating factors in obtaining their rights, as well as people with intellectual disabilities when they are in a condition as perpetrators, victims or witnesses. People with intellectual disabilities with conditions that have disorders in thinking function or growth and development require special handling from law enforcement officers in order to create fair and inclusive law enforcement. (Listiwati, Fauzi, Mande Nata, & Jamaludin, 2023)

Article 39 of the National Criminal Code states that anyone who, at the time of committing a Criminal Act, has a mental disability that is in a state of acute relapse and is accompanied by psychotic symptoms and/or moderate or severe intellectual disability cannot be sentenced, but can be subject to Measures. The article states that people who experience acute and/or moderate/severe "disabilities" can eliminate the perpetrator's guilt because they are considered unable to take responsibility.

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This requires an expert in the field of Mental Health to assess whether they are indeed unable to take responsibility or not because of the "disability".

The perpetrator may not be subject to punishment and measures by looking at the severity of the act, the personal circumstances of the perpetrator, the circumstances at the time it was committed and what happened later by considering the aspects of justice and humanity. In criminal law, it is known as *rechterlijk pardon* or the Judge's forgiveness. The Judge may not impose sanctions even though there is an unlawful act and the perpetrator can be responsible, per Article 54 paragraph (2) of the National Criminal Code.

In addition to people with disabilities, children can also be subject to measures. Children who can be subject to measures are children under 14 (fourteen) years old. This is based on the consideration that the child is still growing and developing and looking at the child's psychology. This is by Article 113 paragraph (3) of the National Criminal Code and Article 69 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The most important basis for the Judge's consideration in imposing punishment on children is the legal consideration, namely drawing facts in the trial that arise, which are conclusions from the statements of witnesses, the statements of the child defendant, and the evidence submitted. (Sompie, Rusdiyanto, & Badu, 2024) In addition to legal considerations, judges must also consider all aspects, such as the child's personal circumstances, relationships with family, environment, and society, to determine which sanctions are more appropriate to be imposed on the child to protect the child's future.

In Indonesia, corporations were first recognized as subjects of criminal law through Law Number 17 of 1951 concerning the hoarding of goods. In the 1950s, corporations began to be described as subjects of criminal law in the renewal of Indonesian criminal law. Criminal liability imposed on corporations in criminal law is also known as "corporate criminal liability" or corporate criminal liability. (Faturachman, Hutasoit, & Hosnah, 2024)

Corporations can be held criminally liable since 1955, with the implementation of Emergency Law No. 7 1955 concerning Economic Crimes. From this concept, outside the Criminal Code, it is also regulated that not only natural persons can be subject to criminal penalties, but also legal persons. According to available data, few criminal proceedings have prosecuted corporations and imposed penalties. This gave rise to corporate liability, which recognizes corporations as subjects of criminal law. (Faturachman et al., 2024) Corporations can be considered to have committed a crime based on the actions of the person who controls the corporation's management. The difference in the regulation of criminal liability for corporations that commit crimes in Indonesian law will result in weak law enforcement against corporate crimes. The role of the Government, the DPR and the community is very much needed to fix this problem because the development of forms of crime follows the development of the era. (Wahyuni, 2024) In addition to being subject to punishment, corporations can be subject to sanctions in the National Criminal Code. Article 56 of the National Criminal Code, the imposition of sanctions on Corporations, judges must consider: a. level of loss or impact caused; b. level of involvement of management who have functional positions in the Corporation and/or roles as order givers, controllers, and/or beneficial owners of the Corporation; c. duration of Criminal Acts that have been committed; d. frequency of Criminal Acts by the Corporation; e. form of Criminal Act error; f. involvement of Officials; g. legal and justice values that exist in society; h. track record of the Corporation in conducting business or activities; i. influence of criminal sanctions on the Corporation and/or j. cooperation of the Corporation in handling Criminal Acts.

B. Types and Enforcement of Measures

The type and enforcement of measures can be seen in Chapter III, Part Two, Paragraph Two. Article 103 of the National Criminal Code regulates measures that can be imposed together with punishment, namely:

1. Counseling

Counselling is the process of providing guidance or assistance in order to overcome problems and change behaviour to be positive and constructive.

2. Rehabilitation

Rehabilitation includes medical or social rehabilitation as an integrated physical, mental, and social recovery process so that the person concerned can return to carrying out positive and constructive social functions and becoming and becoming excellent and functional citizens.

3. Job training

Job training is an activity of providing skills to people who are given actions to prepare them to return to society and enter the workforce

4. Treatment in institutions

The institution here is an institution that organizes affairs in the field of social welfare, both government and private

5. Improvement due to criminal acts

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Improving all the consequences that arise, including the impact or consequences of the criminal act.

Measures above are formulated in a combined manner, namely "and/or," meaning that measures can be imposed on one type or more than one type.

In addition to the measures for these measures, special measures are imposed on people who experience "disabilities", as stated in Articles 38 and 39 of the National Criminal Code. Specifically for people who experience mental and intellectual disabilities, whether ordinary or acute or moderate/severe, the following measures can be imposed:

1. rehabilitation;

"rehabilitation" in this provision is a service process provided to someone who has a disability either since birth or not since birth to restore and maintain function and develop independence so that they can be active and participate fully in all aspects of life

2. handover to someone;

Someone here is the perpetrator's family, who can care for or another party who cares and can care for the person concerned

3. care in an institution;

4. handover to the government and/or

5. care in a mental hospital

The perpetrator can be treated in a mental hospital to be given rehabilitation both medically, socially, and psychosocially.

In deciding on the form of imposing sanctions, the judge must state the decision in detail, including type, duration, place, and/or implementation. In sentencing, the judge must pay attention to the objectives and guidelines for sentencing as stated in Articles 51 to 54 of the National Criminal Code, namely:

1. Purpose of Sentencing: Preventing the commission of Criminal Acts by enforcing legal norms for the protection and protection of society, socializing convicts by providing guidance and mentoring to become excellent and valuable people; resolving conflicts caused by Criminal Acts, restoring balance and bringing a sense of security and peace in society, and fostering a sense of regret and freeing the convict from guilt

2. Sentencing guidelines:

a. Judges are required to uphold the law and justice. Justice must be prioritized if there is a conflict between legal certainty and justice. This is based on the purpose of the law itself; Prof. Satjipto Rahardjo said that the law is for humans, not humans for the law (progressive law). If seeking a legal solution, then what is sought is not certainty but justice that can be felt by all parties (perpetrators, victims, and society)

b. In imposing sanctions, judges must consider: 1) the form of the perpetrator's mistake in the Criminal Act; 1) motive and purpose of committing a crime; 2) the mental attitude of the perpetrator of the crime; 3) whether the crime was committed with or without planning; 4) how to commit the crime; 5) the attitude and actions of the perpetrator after committing the crime; 6) life history, social conditions, and economic conditions of the perpetrator of the crime; 7) the influence of the crime on the future of the perpetrator of the crime; 8) the influence of the crime on the victim or the victim's family; 9) forgiveness from the victim and the victim's family; and/or 10) the values of law and justice that live in society.

3. Regarding rechterlijk pardon or the judge's forgiveness

4. In addition to the above, sanctions can be given to children and corporations as subjects of criminal law. Regarding children, there are further details regarding the requirements for imposing criminal sanctions and Measures.

Children under 14 (fourteen) years cannot be subject to punishment, but only measures. The sanctions that can be imposed on children are: 1. return to parents/guardians; 2. surrender to someone; 3. treatment in a mental hospital; 4. treatment in an institution; 5. obligation to attend formal education and/or training held by the government or private agencies; 6. revocation of driving license; and 7. improvement due to criminal acts. Corporations are subjects of criminal law that are not in the WvS Criminal Code. Corporate legal subjects emerge not based on the WvS Criminal Code but rather on laws outside the Criminal Code. The sanctions that can be imposed on corporations are 1. Takeover of the Corporation; 2. Placement under supervision; and/or 3. Placement of the Corporation under guardianship.

V. CONCLUSIONS

There are several conditions for criminal law subjects to be subject to measures, including individuals, including perpetrators with mental and intellectual disabilities. The mental and intellectual disabilities may be in normal conditions or acute relapse or moderate/severe degrees. In addition to perpetrators with disabilities, measures can also be imposed on children, but the child must be under 14 (fourteen) years old. Corporations are also one of the subjects of criminal law that can be subject to measures. In imposing measures, the objectives and guidelines for sentencing must be considered as in Articles 51 to 54 of the National Criminal Code.

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Forms and implementation of measures for ordinary perpetrators and those with mental or intellectual disabilities include Counseling, Rehabilitation, Job training, Treatment in Institutions, Improvement due to criminal acts, surrender to someone, and treatment in a mental hospital. For children under 14 (fourteen) years of age are: return to parents/guardians, surrender to someone, treatment in a mental hospital, treatment in an institution, obligation to attend formal education and/or training held by the government or private agencies, revocation of driving license; and/or improvement due to criminal acts. In addition to perpetrators, perpetrators with mental or intellectual disabilities, and children, sanctions that can be imposed on corporations include takeover of the corporation, placement under supervision, and/or placement of the corporation under guardianship.

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