



Penal Alternatives Without Non-Penal Infrastructure: Reconstructing Integral Criminal Policy in Indonesia's New Criminal Code

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ABSTRACT

This study examined why Indonesia's correctional population failed to decline after Law Number 1 of 2023 on the Criminal Code entered into force on January 2, 2026, notwithstanding the Code's explicit reorientation of punishment toward resocialization, conflict resolution, and the restoration of social equilibrium. The research applied normative legal method using statutory, conceptual, and comparative approaches. The study found that the integration of the treatment of offenders and the treatment of society was already substantially complete at the formulation stage, so that the persistent deficit lay elsewhere. Three execution discontinuities were identified. The non-custodial alternatives did not reach the narcotics population that constituted the majority of correctional occupants; community supervision capacity remained far below the caseload the alternatives presupposed; and community placement depended on voluntary cooperation agreements rather than any legal obligation. The study concluded that the treatment of society must be reconstructed from a social aspiration into an enforceable institutional precondition, and proposed an execution-capacity model comprising statutory duty, budgetary anchoring, judicial verification, and periodic reporting.

Kata Kunci:

kebijakan kriminal integral; pidana alternatif; pembimbingan kemasyarakatan; kapasitas eksekusi; KUHP; reformasi pemidanaan

ABSTRAK

Penelitian ini mengkaji sebab tidak menurunnya jumlah penghuni pemasyarakatan di Indonesia setelah Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana berlaku pada 2 Januari 2026, meskipun undang-undang tersebut secara tegas mengarahkan pemidanaan pada pemasyarakatan terpidana, penyelesaian konflik, dan pemulihan keseimbangan sosial. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan. Hasil penelitian menunjukkan bahwa integrasi treatment of offenders dan treatment of society sesungguhnya telah tuntas pada tahap formulasi, sehingga defisit yang bertahan terletak di tempat lain. Ditemukan tiga diskontinuitas eksekusi. Pidana alternatif tidak menjangkau populasi narkoba yang merupakan mayoritas penghuni; kapasitas pembimbingan kemasyarakatan jauh di bawah beban perkara yang diandaikan oleh pidana alternatif tersebut; dan penempatan kerja sosial bergantung pada perjanjian kerja sama sukarela, bukan kewajiban hukum. Penelitian menyimpulkan bahwa treatment of society harus direkonstruksi dari cita-cita sosial menjadi prasyarat kelembagaan yang dapat ditegakkan, dan mengajukan model



kapasitas eksekusi yang terdiri atas kewajiban undang-undang, penambatan anggaran, verifikasi yudisial, dan pelaporan berkala.



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A. Introduction

Law Number 1 of 2023 on the Criminal Code entered into force on 2 January 2026, replacing the *Wetboek van Strafrecht* that had governed Indonesian criminal law since 1918.¹ The Code introduced, for the first time in Indonesian legislative history, an express statement of the purposes of punishment. Article 51 provides that punishment aims to prevent the commission of criminal offences by upholding legal norms for the protection of society, to resocialise the convicted person through guidance and supervision so that he becomes a good and useful person, to resolve the conflict caused by the offence and restore equilibrium so as to bring about security and peace in society, and to cultivate remorse and free the convicted person from guilt. Article 52 adds that punishment is not intended to degrade human dignity.² Read together, these provisions displace retribution as the organising principle of the sentencing system and install resocialisation, conflict resolution, and social restoration in its place.

That reorientation has not produced the effect its architecture anticipated. The Correctional Database System maintained by the Directorate General of Corrections shows a correctional population that has remained close to 275,000 persons against an official capacity of roughly 147,000.³ In the hearing of 8 June 2026, six months after the Code took effect, the Directorate General reported to Commission XIII of the House of Representatives that the population stood at 272,577 persons as at 2 June 2026 against a capacity of 146,860, an overcrowding

¹ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 6842.

² Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 51 and Pasal 52.

³ Direktorat Jenderal Pemasyarakatan, "Jumlah Penghuni Pemasyarakatan," *Sistem Database Pemasyarakatan Publik* (Kementerian Imigrasi dan Pemasyarakatan, August 26, 2026), <https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>.



rate of 86 per cent.⁴ The comparison with the Directorate General's own figure for June 2025, when 279,537 occupants were held against a capacity of 147,414, or 89.64 per cent above capacity, is the decisive one.⁵ Between the two dates the Criminal Code entered into force. The population did not fall in consequence; it moved by less than three per cent, within the range of ordinary annual variation. Any credible account of Indonesian criminal policy must begin from this discrepancy between normative reorientation and penal reality.

Three features of that discrepancy are visible in the statutory material itself. The first concerns reach. Research data presented by the Directorate General of Corrections in June 2026 recorded 146,365 occupants held in connection with narcotics offences, comprising 96,030 traffickers, dealers, receivers, and producers and 50,335 users.⁶ Those cases are governed by the Narcotics Law, a *lex specialis* whose principal offences carry statutory threats far above the thresholds to which the Criminal Code keys its alternatives.⁷ Article 71 permits a fine where the offence is threatened with less than five years' imprisonment; Article 75(1) permits supervision where the threat is at most five years; Article 85(1) permits community service where the threat is below five years and the court would otherwise impose no more than six months' imprisonment or a category II fine.⁸ More than half of the correctional population therefore falls outside the reach of the very instruments designed to reduce it.

The second feature concerns capacity. Supervision and community service are not self-executing sentences. Both presuppose an officer who supervises the convicted person in the community. The figures the Directorate General placed

⁴ Komisi XIII Dewan Perwakilan Rakyat Republik Indonesia, "Rapat Dengar Pendapat dengan Direktur Jenderal Pemasyarakatan" (Gedung Nusantara II, Kompleks Parlemen, 2026).

⁵ Direktorat Jenderal Pemasyarakatan, "Ditjenpas Gandeng Media Perkuat Edukasi Publik soal Program Prioritas" (Kementerian Imigrasi dan Pemasyarakatan, August 26, 2026), <https://www.ditjenpas.go.id/ditjenpas-gandeng-media-perkuat-edukasi-publik-soal-program-prioritas>.

⁶ Komisi XIII Dewan Perwakilan Rakyat Republik Indonesia, "Rapat Dengar Pendapat dengan Direktur Jenderal Pemasyarakatan."

⁷ Republik Indonesia, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika, Pasal 111-114 and Pasal 127, Lembaran Negara Republik Indonesia Tahun 2009 Nomor 143, Tambahan Lembaran Negara Republik Indonesia Nomor 5062.

⁸ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 71, Pasal 75 ayat (1), and Pasal 85 ayat (1).



before Commission XIII are stark. Indonesia operates 94 Correctional Centres against a stated national requirement of 514, and employs 2,623 correctional counsellors against a stated requirement of 16,422. Operational funding for the Correctional Centres was put at Rp168 billion for 2026 and Rp338 billion for 2027, against budgetary support described as very limited.⁹ In April 2026, expert testimony before the Constitutional Court in Case Number 31/PUU-XXIV/2026 characterised the development of Correctional Centres and the correctional counsellor function as suboptimal and noted that the probation and parole role now attached to that function is frequently disregarded across the criminal process.¹⁰ A sentence whose execution depends on an officer available at sixteen per cent of establishment is a sentence that a rational court will hesitate to impose.

The third feature concerns obligation. Article 85(3) provides that the execution of community service may not be commercialised, and Article 85(8) assigns supervision to the correctional counsellor.¹¹ The implementing guideline issued by the Directorate General of Corrections in 2025 operationalises this by requiring the Correctional Centre to assess a prospective host institution and then formalise the arrangement through a cooperation agreement.¹² Nothing in the Code or in the guideline obliges a hospital, a school, an orphanage, a home for the elderly, or any other social institution to enter such an agreement. The executability of a criminal sentence is thus made contingent on the voluntary consent of a third party who owes no legal duty to the criminal justice system.

These three features are not accidents of implementation. They are consequences of how the reform was designed, and they are legible through a framework that Indonesian criminal law scholarship has possessed for decades.

⁹ Komisi XIII Dewan Perwakilan Rakyat Republik Indonesia, “Rapat Dengar Pendapat dengan Direktur Jenderal Pemasyarakatan.”

¹⁰ Mahkamah Konstitusi Republik Indonesia, “Perkembangan Bapas dan Pembimbing Kemasyarakatan Dinilai Tak Optimal,” August 26, 2026, <https://www.mkri.id/berita/perkembangan-bapas-dan-pembimbing-kemasyarakatan-dinilai-tak-optimal-24970>.

¹¹ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85 ayat (3) and Pasal 85 ayat (8).

¹² Direktorat Jenderal Pemasyarakatan, “Keputusan Direktur Jenderal Pemasyarakatan Nomor PAS-145.OT.02.02 Tahun 2025 tentang Pedoman Pembimbingan Kemasyarakatan Klien Pidana Kerja Sosial” (2025).



Hoefnagels defined criminal policy as the rational organisation of the social response to crime, a definition that locates policy in the arrangement of institutions rather than in the content of prohibitions.¹³ Sudarto transposed that conception into Indonesian doctrine as kebijakan kriminal, the rational effort of society to control crime.¹⁴ Barda Nawawi Arief developed it further into the proposition that criminal policy must be integral, combining penal and non-penal means, and that any penal policy passes through three successive stages: formulation, application, and execution.¹⁵ On that account, a reform that succeeds at the formulation stage but is not matched at the execution stage will not produce the outcome the formulation promises, however well drafted the formulation may be.¹⁶

Indonesian scholarship has examined the components of this problem separately but has not connected them. Three bodies of work are relevant. The first consists of doctrinal commentary on the 2023 Code, which has mapped the new sanction design, the reorientation of sentencing purposes, and the introduction of supervision and community service as principal punishments. This literature is largely expository. It establishes what the Code provides without asking whether what it provides can be carried out. The second consists of research on correctional overcrowding, which has documented the capacity deficit of custodial institutions and traced its consequences for rehabilitative programming, the fulfilment of prisoners' rights, and institutional security.¹⁷ This literature diagnoses the problem accurately but treats it as a problem of the prison, and therefore proposes remedies internal to the prison: additional capacity, improved classification, expanded conditional release. The third consists of work on restorative justice and the social inquiry report, which has identified an implementation gap between the normative availability of diversionary and community-based outcomes and their actual use,

¹³ G. Peter Hoefnagels, *The Other Side of Criminology: An Inversion of the Concept of Crime*, trans. Jan G. M. Hulsman (Deventer: Kluwer, 1973), p 57. Compare Marc Ancel, *Social Defence: A Modern Approach to Criminal Problems* (London: Routledge & Kegan Paul, 1965), p 38.

¹⁴ Sudarto, *Hukum dan Hukum Pidana* (Bandung: Alumni, 2007), p 113-114.

¹⁵ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana, 2010), p 27-28.

¹⁶ Arief, *Bunga Rampai Kebijakan Hukum Pidana*, p 24-26.

¹⁷ Hamja, "Implikasi Overcrowding terhadap Lembaga Pemasyarakatan di Indonesia," *Mimbar Hukum* 34, no. 1 (2022): 296–324.



and which has located part of that gap in the working conditions of correctional counsellors.¹⁸ This literature comes closest to the present inquiry, but it is oriented toward the quality of a particular procedural instrument rather than toward the executability of the sanction regime as a whole.

What remains absent is an analysis that treats the non-custodial sanctions created by the Code and the non-penal institutional capacity those sanctions presuppose as a single object of legal inquiry. The three literatures pass one another without meeting: the first describes sanctions without capacity, the second describes capacity without sanctions, and the third describes an instrument that connects them without generalising from it. The consequence is that the prevailing scholarly claim, namely that Indonesia needs to integrate the treatment of offenders with the treatment of society, has become obsolete without being retired. That integration has been legislated. The operative question is no longer whether to integrate but why the legislated integration does not execute, and that question cannot be answered from within any of the three literatures taken alone.

This study addresses two questions. First, to what extent did the 2023 Criminal Code complete the formulation stage of integral criminal policy in Indonesia? Second, what institutional and legal conditions must be satisfied for the Code's non-custodial alternatives to become executable, and how should the treatment of society be reconstructed in order to supply them? The contribution of the study lies in reframing the treatment of society. In the received Indonesian literature it appears as a diffuse aspiration toward social development, expressed in the language of poverty reduction, education, and community solidarity, and therefore incapable of generating legal consequences. This study reconstructs it as a set of specifiable institutional preconditions on which the validity and executability of penal alternatives depend, and proposes a four-element execution-capacity model that can be embedded in positive law and reviewed by courts

¹⁸ Trio Sandra Wijaya and Muhamad Adystia Sunggara, "Implementation Gap of Social Inquiry Report in Restorative Justice Processes for Adult Offenders in Minor Criminal Cases," *Jurnal Ilmiah Kebijakan Hukum* 19, no. 3 (2025): 185–96.



B. Research Method

This study applies normative legal research using statutory, conceptual, and comparative approaches. The primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 on the Criminal Code together with its Elucidation, Law Number 22 of 2022 on Corrections, Law Number 35 of 2009 on Narcotics, Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 20 of 2025 on the Criminal Procedure Code, and the implementing guideline on correctional guidance for community-service clients issued by the Directorate General of Corrections in 2025. Official correctional statistics published through the Correctional Database System, together with figures presented by the Directorate General of Corrections in parliamentary hearings, are used as institutional facts against which the operation of those norms is assessed rather than as empirical data generated by the author. Secondary materials comprise the doctrinal literature on criminal policy, in particular the tripartite formulation-application-execution framework, and journal scholarship on correctional overcrowding and community supervision. The analysis is prescriptive: statutory provisions are tested against the execution conditions they themselves presuppose, and the gap between the two is used to construct a normative model. Comparative material is not transplanted. It is filtered through the penal-systems typology developed by Cavadino and Dignan, which treats penal outcomes as functions of political economy, so that foreign arrangements are used to identify transferable institutional mechanisms rather than to recommend importation of foreign outcomes.

C. Results and Discussion

1. The Completed Formulation of Integral Criminal Policy

a. Reorientation of the Purposes of Punishment

The four purposes enumerated in Article 51 are not variations on a single theme. Protection of society through norm enforcement is a general-preventive purpose; resocialisation through guidance and supervision is a special-preventive and rehabilitative purpose; resolution of conflict and restoration of equilibrium is a



restorative purpose; and the cultivation of remorse coupled with release from guilt is an expressive purpose directed at the convicted person's moral condition.¹⁹ The Code does not rank them. Article 52 then imposes an outer limit by providing that punishment is not intended to degrade human dignity.²⁰ The structure is significant because it converts sentencing from an exercise in tariff-matching into a reasoned selection among competing purposes, and because two of the four purposes cannot be pursued inside a prison at all. Restoration of equilibrium between offender, victim, and community, and resocialisation understood as guidance in the community, are by definition activities that occur outside the institution.

This structure is not an eclectic compromise. It is the statutory expression of the integrative theory of punishment developed in Indonesian criminal law scholarship, which holds that no single justificatory theory can account for the plural interests engaged by a criminal sanction and that punishment must therefore be justified by reference to a balanced set of purposes encompassing the protection of society, the interests of the victim, and the recovery of the offender.²¹ The Code adopts that position and, by placing it in the operative text rather than the Elucidation, converts what had been a doctrinal preference into a binding legislative instruction.

Article 53 requires the court to weigh legal certainty, justice, and utility, with the caveat that where these conflict the court must give priority to justice.²² Article 54 then prescribes eleven matters the court must consider in sentencing, including the offender's degree of culpability, personal circumstances, attitude and conduct after the offence, and the influence of the punishment on the offender's future, and provides that the lightness of the act or the offender's circumstances may ground a decision not to impose punishment or a measure at all.²³ A sentencing

¹⁹ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 51.

²⁰ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 51.

²¹ Muladi and Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung: Alumni, 1984).

²² Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 53.

²³ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 54 ayat (1) and ayat (2).

court operating under Articles 51 through 54 is therefore directed, as a matter of statutory obligation rather than of judicial grace, to consider whether an outcome other than imprisonment better serves the enumerated purposes. The obligation has a constitutional dimension as well, since Article 28D(1) of the 1945 Constitution guarantees fair legal certainty, and a sentencing regime that announces purposes it cannot pursue satisfies certainty only formally.²⁴

b. The Architecture of Non-Custodial Alternatives

The Code gives that direction concrete form. Article 65(1) lists five principal punishments: imprisonment, confinement, supervision, fine, and community service; short-term detention as a separate category has been abolished.²⁵ Article 70 instructs the court, so far as possible, not to impose imprisonment where specified circumstances are present.²⁶ Article 71 permits a fine where the offence carries a threat below five years and the court considers imprisonment unnecessary after weighing the purposes and guidelines of sentencing.²⁷ Article 75(1) permits supervision for offences threatened with at most five years, expressly conditioned on the court having regard to Articles 51 through 54 and Article 70, with a maximum supervision period of three years and provision for general and special conditions.²⁸ Article 85(1) permits community service in the narrower band described above, for a minimum of eight and a maximum of 240 hours.²⁹

The Elucidation makes the design intention explicit. Supervision is characterised as a mode of executing imprisonment outside the institution, comparable to the conditional sentence of the earlier law, and community service

²⁴ Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28D ayat (1).

²⁵ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 65 ayat (1).

²⁶ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 70 ayat (1) and ayat (2).

²⁷ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 71.

²⁸ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 75 ayat (1) and Pasal 76.

²⁹ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85 ayat (1) and ayat (4).



is characterised as an alternative to short-term custodial sentences.³⁰ This is the penal side of integral policy rendered in statutory form. It is matched on the correctional side by Law Number 22 of 2022, which reconstitutes the correctional system around the functions of service, guidance, treatment, and supervision, and which situates community reintegration as a statutory objective rather than an administrative aspiration.³¹ The correctional counsellor is given a defined role in that system,³² and a comparable community-facing architecture had already been established for juveniles through the diversion mechanism of the Juvenile Criminal Justice System Law.³³

c. Why the Formulation Stage Is No Longer the Deficit

Taken together, these provisions answer the first research question. The integration of the treatment of offenders and the treatment of society is, at the level of formulation, substantially complete. The Code states rehabilitative and restorative purposes, prescribes their consideration, creates sanctions that can only be executed in the community, restricts recourse to imprisonment, and is accompanied by a corrections statute organised around reintegration. Subsequent legislative activity has continued to refine the design rather than to reverse it.³⁴ It is no longer tenable to argue, as much of the Indonesian literature continues to argue, that the country's criminal policy remains trapped in a retributive paradigm because integral policy has not been adopted. It has been adopted. The retributive outcome persists in spite of its adoption, which is a different problem and requires a different explanation.

³⁰ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Penjelasan Pasal 75 and Penjelasan Pasal 85.

³¹ Republik Indonesia, Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan, Pasal 2, Pasal 3, and Pasal 8, Lembaran Negara Republik Indonesia Tahun 2022 Nomor 165, Tambahan Lembaran Negara Republik Indonesia Nomor 6811.

³² Kementerian Imigrasi dan Pemasyarakatan, "RDP Komisi XIII DPR RI, Ditjenpas Sampaikan Upaya Reformasi Sistem Pemasyarakatan," August 26, 2026, <https://kemenimipas.go.id/berita-utama/rdp-komisi-xiii-dpr-ri-ditjenpas-sampaikan-upaya-reformasi-sistem-pemasyarakatan>.

³³ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2026 tentang Penyesuaian Pidana, Pasal VII, Lembaran Negara Republik Indonesia Tahun 2026 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 7153.

³⁴ Komisi XIII Dewan Perwakilan Rakyat Republik Indonesia, "Rapat Dengar Pendapat dengan Direktur Jenderal Pemasyarakatan."

That explanation is available within Barda Nawawi Arief's own framework, which distinguishes the formulation stage from the application and execution stages and treats the three as sequentially dependent. The framework predicts that a completed formulation will not generate its intended outcome where the later stages lack the institutional means to carry it. What the framework does not supply, and what the following section develops, is an account of the specific institutional means that the 2023 Code presupposes but does not create.

2. Three Execution Discontinuities

a. Reach: Alternative Sanctions and the Lex Specialis Population

Each of the Code's principal alternatives is keyed to a statutory threat threshold. That drafting choice is defensible in itself, since it confines non-custodial disposal to offences of lesser gravity. Its consequence, however, is that the alternatives are calibrated to the offence structure of the Code and not to the offence structure of the prison. The Directorate General's own research places 146,365 persons in the correctional system for narcotics offences, of whom 50,335 are classified as users rather than as traffickers or producers.³⁵ The distinction matters, because it is precisely the user population for whom non-custodial disposal would be least controversial, and precisely that population which the threshold structure of the Narcotics Law places beyond reach.

The result is a structural mismatch. The instruments that could reduce the correctional population are unavailable in the cases that generate it. This is not remedied by the Code's transitional provision requiring adjustment of criminal provisions in statutes outside the Code,³⁶ because adjustment of penalty categories is not the same as extension of the alternative-sanction regime to conduct currently subject to minimum terms. Until the threshold structure of the special criminal legislation is reconsidered, the Code's alternatives will operate at the periphery of the problem they were designed to address.

b. Capacity: Community Supervision as an Unfunded Precondition

³⁵ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 187.

³⁶ Komisi XIII Dewan Perwakilan Rakyat Republik Indonesia, "Rapat Dengar Pendapat dengan Direktur Jenderal Pemasyarakatan."



Supervision under Article 76 and community service under Article 85(8) both depend on the correctional counsellor. That officer conducts the social inquiry that informs sentencing, supervises compliance with conditions, and reports breach. The establishment gap reported to Commission XIII—2,623 counsellors against a requirement of 16,422, and 94 Correctional Centres against a requirement of 514—indicates that the function is being performed at roughly one-sixth of the intensity the system itself considers necessary.³⁷ Expert testimony before the Constitutional Court in 2026 located the difficulty further upstream, in the limited institutional recognition accorded to Correctional Centres and to the probation and parole function itself.³⁸ The deficit is therefore not a transient staffing shortfall but a structural feature of the institution on which two of the Code's five principal punishments depend.

The legal significance of this is not merely administrative. Articles 77 and 85(7) provide that breach of conditions may result in revocation and the substitution of imprisonment.³⁹ A breach regime presupposes a monitoring capacity adequate to detect breach. Where that capacity is absent, the alternative sanction is unsupervised in fact while remaining conditional in law. Two consequences follow, and both are consequences for the convicted person rather than for the administration. First, undetected compliance is not rewarded: a person who observes every condition accumulates no record of having done so, because no one was available to observe. Second, detection becomes selective rather than systematic, so that revocation is triggered by whichever breaches happen to come to official attention rather than by a consistent standard applied to all. Article 76 permits the court to attach special conditions requiring the convicted person to do or refrain from doing specified things,⁴⁰ and the more demanding those conditions, the more acute the asymmetry becomes.

³⁷ Mahkamah Konstitusi Republik Indonesia, "Perkembangan Bapas dan Pembimbing Kemasyarakatan Dinilai Tak Optimal."

³⁸ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 77 and Pasal 85 ayat (7).

³⁹ Republik Indonesia, Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 76 ayat (2) and ayat (3).

⁴⁰ Wijaya and Sunggara, "Implementation Gap of Social Inquiry Report in Restorative Justice Processes for Adult Offenders in Minor Criminal Cases.", 190-193.



This engages the guarantee of fair legal certainty in Article 28D(1) of the Constitution directly. Certainty in the sentencing context requires not only that the sanction be prescribed by law but that its conditions be capable of consistent administration, since a condition enforced at random is functionally indistinguishable from a discretionary power. The point is reinforced by the quality problem identified in the social inquiry literature: where the report that informs the choice of sanction is itself produced under caseload pressure, the informational basis for the sentence is compromised at the outset.⁴¹ The capacity deficit therefore does not merely reduce the number of alternative sentences imposed. It degrades the legal quality of those that are imposed.

A court aware of this will reasonably prefer imprisonment, not from punitive inclination but from an assessment that the alternative cannot be administered. That preference is rational at the level of the individual case and destructive at the level of the system, since every such decision returns a person to an institution already operating at close to twice its official capacity.⁴² The capacity deficit thus operates as a silent constraint on judicial choice, and it does so without ever appearing in the reasons for judgment. Nothing in the present procedural framework requires a court to disclose that it declined to impose supervision because supervision was unavailable, and nothing therefore makes the constraint visible to the legislature that would have to remedy it.

c. Obligation: Community Placement Without a Legal Duty

Community service must be performed somewhere. The 2025 implementing guideline directs the Correctional Centre to identify a suitable institution, assess its suitability, and formalise the relationship through a cooperation agreement,⁴³ and official material identifies hospitals, schools,

⁴¹ Direktorat Jenderal Pemasyarakatan, "Jumlah Penghuni Pemasyarakatan."

⁴² Direktorat Jenderal Pemasyarakatan, Keputusan Direktur Jenderal Pemasyarakatan Nomor PAS-145.OT.02.02 Tahun 2025 tentang Pedoman Pembimbingan Kemasyarakatan Klien Pidana Kerja Sosial, on the assesment of prospective host institutions and the conclusion of cooperation agreements.

⁴³ Direktprat Jenderal Pemasyarakatan, "Pidana Kerja Sosial dan Pelayanan Masyarakat: Alternatif Pemidanaan Humanis dalam KUHP Baru dan UU SPPA" (Kementerian Imigrasi dan Pemasyarakatan, August 26, 2026), <https://www.ditjenpas.go.id/pidana-kerja-sosial-dan-pelayanan-masyarakat-alternatif-pemidanaan-humanis-dalam-kuhp-baru-dan-uu-sppa>.

orphanages, homes for the elderly, and other social institutions as intended venues.⁴⁴ No provision imposes a duty on any of these bodies to participate. Their participation is a gratuitous act. The prohibition on commercialisation in Article 85(3) forecloses the obvious substitute, namely the purchase of placements on the open market, without supplying a public-law alternative.

The doctrinal problem this creates is more serious than a shortage of placements. A criminal sentence is an exercise of state power whose execution ought not to depend on the willingness of a private or semi-public body to accommodate it. Where it does, three consequences follow. Availability varies geographically according to the density of cooperative institutions, so that identically situated offenders receive different sentences in different regions. The sentencing court cannot know at the moment of imposition whether the sentence it pronounces can be carried out. And an institution that withdraws from a cooperation agreement alters the penal position of a convicted person without any judicial act. Table 1 summarises the three discontinuities.

Table 1. Execution Discontinuities in the 2023 Criminal Code

Discontinuity	Statutory premise	Missing condition	Observable effect
Reach	Arts. 71, 75(1), 85(1) key alternatives to offences threatened with less than or up to five years	No corresponding adjustment in the Narcotics Law, which governs the majority of occupants	Alternatives structurally unavailable for most of the correctional population
Capacity	Arts. 76 and 85(8) presuppose supervision by correctional counsellors	No statutory staffing standard or caseload ceiling for Correctional Centres	Supervision capacity far below the caseload the alternatives assume
Obligation	Art. 85(3) prohibits commercialisation; placement occurs in social institutions	No legal duty on host institutions; placement rests on voluntary cooperation agreements	Executability of a criminal sentence contingent on third-party consent

⁴⁴ Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*, p 28.



Source: Prepared by the author from Law Number 1 of 2023, Law Number 22 of 2022, Law Number 35 of 2009, and Directorate General of Corrections Decree Number PAS-145.OT.02.02 of 2025

The three discontinuities share a common form. In each case the Code creates a penal instrument whose operation depends on a non-penal condition, and in each case the Code declines to create that condition. This is precisely the failure mode that the formulation-application-execution framework anticipates, but it is a specific instance of it, and specificity is what makes it legally tractable. The conditions can be named, and what can be named can be imposed.

3. Reconstructing the Treatment of Society as an Institutional Obligation

a. From Social Aspiration to Legal Precondition

In the received Indonesian literature the treatment of society denotes efforts to reduce criminogenic conditions through social development: poverty reduction, education, employment, family stability, and the strengthening of community solidarity. So conceived it is unobjectionable and largely inert. It cannot be pleaded, it cannot be reviewed, and it generates no consequence when it is not done. It functions as an exhortation attached to the end of criminal policy analyses rather than as a component of them.⁴⁵

The three discontinuities suggest a narrower and more useful conception. On the evidence assembled above, the non-penal condition that Indonesian criminal policy actually lacks is not general social development but a specific and enumerable institutional infrastructure: officers who can supervise, venues that must receive, budgets that must be allocated, and information that must be published. These are not aspirations. They are the operating requirements of sanctions that the legislature has already enacted. Reconceived in this way, the treatment of society becomes a matter of institutional design that positive law can prescribe, and its absence becomes a defect in the execution of an existing statutory scheme rather than a general societal shortcoming.

⁴⁵ Michael Cavadino and James Dignan, *Penal Systems: A Comparative Approach* (London: SAGE Publications, 2006).



This reconception has a doctrinal consequence. If the executability of a sanction is a condition of its lawful imposition, then the state's failure to establish the infrastructure on which a sanction depends is not politically regrettable but legally significant. It converts a legislative promise into an unfulfilled obligation, and it gives the sentencing court a reason to inquire into execution capacity before it selects a disposition.

b. Comparative Reference Points

Comparison must be handled carefully here, because the Indonesian literature has a habit of invoking Norwegian recidivism rates or Japanese volunteer probation officers as models without asking whether the conditions that sustain them are present. Cavadino and Dignan supply the necessary control. Their comparative study, which is a different work from their textbook on the penal system of England and Wales, relates penal outcomes to political economy and distinguishes neoliberal, conservative corporatist, social democratic, and oriental corporatist penal systems, predicting that low imprisonment and humane conditions are functions of welfare provision, income equality, and social solidarity rather than of penal technique.⁴⁶ Pratt's account of Scandinavian exceptionalism reaches the same conclusion from the other direction, locating Nordic penal moderation in cultures of equality embedded through universal welfare provision.⁴⁷

The methodological implication is that Norwegian outcomes are not available to Indonesia by adopting Norwegian prison design, and Japanese outcomes are not available by recruiting volunteers. What comparison can legitimately yield is narrower: the identification of institutional mechanisms that are separable from the political economy that produced them. The obligation of public bodies to receive community-service placements is such a mechanism, because it operates through administrative law rather than through social solidarity. A statutory staffing ratio for supervision is another, because it operates through budget law. A judicial duty to verify execution capacity before sentencing is a third,

⁴⁶ John Pratt, "Scandinavian Exceptionalism in an Era of Penal Excess: Part I: The Nature and Roots of Scandinavian Exceptionalism," *The British Journal of Criminology* 48, no. 2 (2008): 119–37, <https://doi.org/10.1093/bjc/azm072>.

⁴⁷ Cavadino and Dignan, *Penal Systems: A Comparative Approach*, p 25-33.

because it operates through procedure. Each can be transplanted without importing the welfare state that surrounds it, and each addresses one of the discontinuities identified above.⁴⁸

c. An Execution-Capacity Model

The model proposed here comprises four cumulative elements, set out in Table 2. They are cumulative in the sense that each addresses a distinct failure point and none compensates for the absence of another. A statutory duty to receive placements is of no use where no counsellor exists to supervise them; a staffing ratio is of no use where courts are not required to ascertain whether it has been met in the particular case; and neither can be enforced where the relevant data are not published.

Table 2. Execution-Capacity Model for Non-Custodial Sanctions

Element	Content	Legal instrument
Statutory duty	Public hospitals, schools, social institutions, and regional agencies are obliged to accept community-service placements within a stated quota, subject to reasoned refusal on grounds of safety or capacity	Amendment to the Corrections Law or a Government Regulation issued under it
Budgetary anchoring	A dedicated budget line for Correctional Centres calculated from projected non-custodial caseload, with a maximum counsellor-to-client ratio fixed by regulation	Government Regulation on correctional guidance; annual budget documents
Judicial verification	Before imposing supervision or community service, the court must obtain and record confirmation that a supervising counsellor and, where relevant, a placement are available	Supreme Court Regulation on sentencing under the new Criminal Code
Periodic reporting	Annual public reporting of the number of non-custodial sentences imposed, executed,	Ministerial regulation; Correctional Database System disclosure

⁴⁸ Republik Indonesia, Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan, Pasal 8.



and breached, disaggregated by
region and offence category

Source: Prepared by the author.

The first element converts community placement from a gratuitous act into an administrative obligation, subject to reasoned refusal so that safety and capacity constraints are respected. The reasoned-refusal qualification matters: an unqualified duty would be unworkable in institutions with genuine safeguarding obligations, such as schools and paediatric wards, and would invite either evasion or unsafe placement. A duty subject to stated grounds of refusal, recorded and reviewable, produces a defensible allocation while removing the present position in which refusal requires no reason at all. The second element gives content to the correctional counsellor function by fixing a maximum caseload and tying budget allocation to projected demand, so that supervision capacity expands with the sanctions that require it rather than lagging behind them. The Corrections Law already assigns guidance and supervision functions to the correctional system,⁴⁹ so the amendment required is one of specification rather than of principle.

The third element is the most novel and the most immediately available, because it requires no legislative amendment. Article 54 already obliges the sentencing court to consider the influence of the punishment on the offender's future,⁵⁰ and Articles 75 and 85 already condition the alternatives on the court's regard for Articles 51 through 54 and Article 70. A Supreme Court Regulation could give these obligations operational content by requiring the court, before imposing supervision or community service, to obtain and record confirmation from the Correctional Centre that a supervising counsellor and, where applicable, a placement are actually available. The confirmation would be recorded in the minutes and reflected in the reasons for judgment, in the same way that Article 85(6) and (9) already require the judgment to specify the hours, the pattern of execution, and the consequences of non-performance.⁵¹ This converts execution

⁴⁹ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 54.

⁵⁰ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85 ayat (6) and ayat (9).

⁵¹ Hamja, "Implikasi Overcrowding terhadap Lembaga Pemasyarakatan di Indonesia.", 310-315.



capacity from an invisible constraint on judicial choice into a documented and reviewable element of the sentence, and it produces, as a by-product, precisely the record of unmet demand that the fourth element requires.

The fourth element supplies the feedback mechanism without which the first three cannot be evaluated. Correctional occupancy is published; the imposition and execution of non-custodial sanctions is not. Without disaggregated reporting of sentences imposed, executed, and breached, neither the legislature nor the judiciary can determine whether the alternatives are failing because courts decline to impose them or because the system cannot execute what is imposed. The distinction matters, because the two diagnoses call for opposite remedies, and existing scholarship on overcrowding has repeatedly noted that policy responses have been formulated in the absence of this information.⁵² Publishing it is an administrative act, not a legislative one, and it is the least costly element of the model.

d. Objections and Limits

Three objections merit direct response. The first is fiscal. Fixing a maximum caseload for correctional counsellors implies recruitment, training, and recurrent salary cost, and it is fair to ask whether the state can afford it. The answer is that the comparison is not between expenditure and no expenditure but between two forms of expenditure. Each person diverted from custody removes a recurrent custodial cost, and the present response to overcrowding, namely the construction of additional institutions, is itself capital-intensive and generates its own recurrent obligations. The relevant question is therefore the marginal cost of a supervised community sentence relative to the marginal cost of a custodial place. The order of magnitude is instructive: the operational requirement stated for the entire national network of Correctional Centres was Rp168 billion for 2026 and Rp338 billion for 2027,⁵³ figures that must be set against the recurrent cost of holding more than 270,000 people in custody. A precise comparison is nevertheless unavailable,

⁵² Komisi XIII Dewan Perwakilan Rakyat Republik Indonesia, “Rapat Dengar Pendapat dengan Direktur Jenderal Pemasyarakatan.”

⁵³ Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Cambridge: Polity Press, 1985), p 44-56.



because the necessary disaggregated data are not published. This is a further reason to treat disclosure as prior rather than incidental.

The second objection concerns judicial independence. A duty to verify execution capacity before imposing a community sanction might be said to subordinate the sentencing decision to an administrative report, allowing the executive to determine the outcome by declining to confirm availability. The objection has force but does not defeat the proposal, for two reasons. The confirmation would be a statement of fact about the availability of supervision, not an opinion about the appropriate sentence, and its function would be to make an existing constraint explicit rather than to create a new one. Courts already take unavailability into account; they simply do so without saying so. Moreover, once refusal must be stated, it becomes contestable, and a pattern of refusals becomes evidence of systemic under-resourcing rather than an invisible determinant of sentencing outcomes. The proposal therefore increases rather than reduces the transparency of the judicial function.

The third objection concerns net-widening. The literature on community sanctions has long warned that expanding non-custodial options may draw into the penal system persons who would otherwise have been dealt with informally or not at all, so that the alternative supplements custody rather than replacing it.⁵⁴ The risk is real and the model does not eliminate it. It is mitigated in part by the Code's own drafting, since supervision and community service are keyed to offences already threatened with imprisonment rather than to conduct newly brought within the criminal law, and Article 54 permits the court to impose no punishment at all where the act is slight.⁵⁵ It is mitigated further by the reporting element, which would make any expansion of the sentenced population visible. But mitigation is not elimination, and the point should be conceded rather than argued away.

Two limits of the present study should also be stated. First, it is normative rather than empirical. It reasons from the statutory text and from official

⁵⁴ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 54 ayat (2).

⁵⁵ Cavadino and Dignan, *Penal Systems: A Comparative Approach*, p 339-348.



institutional facts to conclusions about executability, and it does not establish by fieldwork how sentencing courts in fact reason about the availability of alternatives. That question is important and is left open. Second, the comparative material is used at a high level of generality. The typology employed here explains why foreign penal outcomes are not directly transferable, but it does not by itself establish that the three mechanisms identified are transferable, and a fuller study would test each against the administrative-law environment in which it would have to operate.

D. Conclusion

The 2023 Criminal Code completed the formulation stage of integral criminal policy in Indonesia. It states the purposes of punishment, subordinates imprisonment to those purposes, creates sanctions that can be executed only in the community, and is accompanied by a corrections statute organised around reintegration. The persistence of correctional overcrowding after the Code entered into force is therefore not evidence that Indonesia has failed to adopt integral criminal policy. It is evidence that the adopted policy cannot execute. Three discontinuities account for this. The alternatives are keyed to statutory thresholds that exclude the narcotics population constituting the majority of correctional occupants; supervision depends on a correctional counsellor function whose caseload ratio places individualised supervision beyond reach; and community placement depends on cooperation agreements that no institution is obliged to conclude. In each case the Code creates a penal instrument while declining to create the non-penal condition on which that instrument depends.

The treatment of society should accordingly be reconstructed from a diffuse commitment to social development into an enforceable set of institutional preconditions, comprising a statutory duty on public bodies to receive community-service placements, a regulated maximum caseload for correctional counsellors with a corresponding budgetary anchor, a judicial duty to verify execution capacity before imposing a community sanction, and periodic public reporting of non-custodial sentences imposed, executed, and breached. The House of Representatives and the Government should amend the Corrections Law, or issue a

Government Regulation under it, to establish the placement duty and the caseload standard, and should revisit the threshold structure of the Narcotics Law so that the Code's alternatives can reach the population that generates the overcrowding. The Supreme Court should issue a Regulation requiring courts to obtain and record confirmation of execution capacity before imposing supervision or community service. The Ministry of Immigration and Corrections should extend the Correctional Database System to publish disaggregated data on non-custodial sanctions. Integral criminal policy in Indonesia does not require further formulation. It requires an executable non-penal infrastructure, and that infrastructure is a matter for law rather than for exhortation.

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