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The Urgency of Renewing the Theory of Punishment in the Formation of National Criminal Law Policy

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Abstract. *The formulation of the National Criminal Code through Law Number 1 of 2023 highlights the importance of reforming sentencing theory to anticipate legal and social developments in Indonesia. This study adopts a normative qualitative approach, taking into account the evolution of sentencing paradigms. The findings reveal that the sentencing theory in the new Criminal Code has shifted from a retributive model to an integrative model. It combines restorative justice, absolute, and relative theories. Sentencing today is not solely aimed at punishment, but also at restoring social relations and protecting human rights. The introduction of more diverse types of punishment, the recognition of corporations as legal subjects, and the establishment of sentencing standards as judicial guidelines reflect this reform. In conclusion, a more humanistic and responsive national criminal law policy depends on the development of sentencing theory.*

Keywords: *Sentencing Theory, New Criminal Code, Criminal Law Policy, Restorative Justice, Legal Reform*

1. BACKGROUND

The punishment system in Indonesia until now is still very much oriented towards a retributive or retaliatory approach through imprisonment (Soponyono, 2012). Without considering effectiveness, substantive justice, and social impact, this model of punishment uses imprisonment as the main tool to punish criminals. Prisons in Indonesia experience chronic and prolonged overcapacity as a result of the dominance of imprisonment.

According to data from the Directorate General of Corrections, the number of prison inmates nationally often exceeds capacity by up to two times, even in some areas reaching more than 300% of ideal capacity. This condition triggers various problems, such as suboptimal guidance, violations of prisoners' rights, and increased potential for violence in prisons. In addition, the approach to punishment in Indonesia has not fully accommodated the principle of restorative justice. Although there have been discourses and policies related to restorative justice, such as in the National Police Chief Regulation Number 8 of 2021 and several regulations in the prosecutor's office, their implementation is still limited and has not touched all types of criminal offenses, especially those with broad impacts such as corruption and crimes against children.

Cases of light sentences against perpetrators of corruption often draw public criticism, such as in the COVID-19 social assistance corruption case involving former Minister of Social Affairs Juliari Batubara. The 12-year prison sentence handed down by the Corruption Court was not proportional to the impact of the crime committed, despite having harmed the

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state and society at large in an emergency situation. Very many people questioned the fairness of the sentence, especially as the perpetrators were public officials who abused their authority during a time of crisis. In contrast, cases such as the cocoa thieving grandmother or the theft of flip-flops by a child in Central Sulawesi, both of which were criminally punished despite the small loss. This suggests that there are discrepancies or errors in the sentencing process, which is not only inefficient but also creates public doubt in the criminal justice system.

Looking at the reality of the current punishment system, it is important to highlight the role of punishment theory as the foundation in formulating the form, type, and purpose of punishment in national criminal law. These theories, such as absolute (retribution), relative (deterrence), and combination (integrative) theories, should be the main footing in designing punishment policies that are not only repressive but also progressive and just (Rivanie, et al. 2022). However, there is still a noticeable difference between the theory of punishment and its practice in the real world. For example, the national criminal law system continues to use a punitive approach through imprisonment, even though contemporary punishment theory prioritizes rehabilitative and restorative elements that emphasize the restoration of relationships between perpetrators and victims. As a result, sentencing policies are often stagnant and do not keep up with the evolving needs of society. They also fail to solve structural problems such as prison overcrowding and unfair sentencing. Due to these gaps, a renewal of punishment theory is essential to encourage national criminal law policy reforms that are more just, humane, and efficient.

Another fundamental problem lies in the limitations of conventional theories of punishment, such as the absolute theory which is oriented towards retribution alone and the relative theory which focuses on deterrence through deterrent effects (Putra, 2024). Over the years, these two theories have been crucial to the development of criminal law. However, in a complex modern society, these theories are often considered no longer relevant. Retaliation theories tend to ignore the human factor of the offender and the importance of victim care, while deterrence theories often favour repressive methods, resulting in domino outcomes such as over-criminalization and prison overcrowding. In addition, older theories of punishment do not fully match the demands of restorative justice, restoring social relations, and recognizing victims' rights that are gaining popularity around the world. The focus on classical theory in the practice of national criminal law policy often hinders the application of punishment approaches that are more adaptive to modern values of justice. Therefore, the renewal of the theory of punishment becomes a necessity in order to answer

the evolving needs of society and urge the presence of a more just, humane, and solutive punishment system.

Updating the theory of punishment is essential as classical theories of punishment are no longer fully relevant to the needs of modern society. A basic theory that is more contextual, humanist, and in accordance with the principles of social justice is needed for Indonesia's current system of punishment. The approach to punishment should not only focus on retribution or deterrence; it should also allow for recovery, social reintegration, and proportionate protection of the rights of offenders and victims.

The move to reform the criminal law has become more evident with the passing of Law Number 1 Year 2023 on the new Criminal Code, which replaces the Dutch colonial Criminal Code that has been in force since the early 20th century (Padang, et al., 2024). Until now, Indonesia's criminal law system has relied on the Wetboek van Strafrecht voor Nederlandsch-Indië, which is clearly no longer relevant to the social changes taking place today. Soedarto stated that the law will change along with the development of rationality, welfare, and the mindset of society because the law cannot be separated from social change. Therefore, changes to the theory of punishment are not only an academic necessity, but also part of structural changes in national criminal law. This change begins with the 2023 Criminal Code with the aim of adjusting the punishment system to the needs of society and the principles of justice today.

The establishment of the new Criminal Code through Law Number 1 Year 2023 reflects a fundamental reform in the Indonesian criminal law system, not only structurally, but also in its philosophical approach (Faisal, et al., 2023). The colonial concept of punishment was incompatible with modern law and society, which led to this reform. The new paradigm was brought by the National Criminal Code, which started in 2026, with a focus on restoration, protection of human rights, and restorative justice, especially for vulnerable groups. The Criminal Code has recently begun to focus sentencing on the goals of prevention, rehabilitation, and social reintegration rather than a retributive approach focused on revenge (Wulandari, 2023). The 2023 Penal Code stipulates that the "purpose of punishment" should be incorporated into the legal process and is part of social engineering to create a balance between the interests of the offender, victim, and society. This suggests that the theory of punishment should be changed to meet the principles of justice that are more contextual and humanist.

Based on this, the researcher intends to analyse the urgency of renewing the theory of punishment and how its implications for the formation of a more just, effective, and humanist national criminal law policy.

2. THEORETICAL STUDY

Criminal punishment theory in criminal law serves as the philosophical and legal foundation for the formulation of national criminal law policies. In its development, classical punishment theory (retributive theory), which emphasizes retribution against criminals, has been widely criticized for being irrelevant to the dynamics of modern crime and the need to protect society. More modern theories of punishment, such as the utilitarian theory and the integrative theory, emphasize punishment as a means to prevent crime, rehabilitate offenders, and restore relationships between victims, offenders, and society. Therefore, updating theories of punishment is important so that national criminal law policies are not only repressive but also more humane, responsive, and adaptive to social developments (Laksana, 2021).

National criminal law policy cannot be separated from the philosophical foundations that underpin the formulation of legislation. Criminal theory serves as a guideline in formulating criminal penalties, types of sanctions, and the objectives of punishment in line with the values of Pancasila and human rights. In the Indonesian context, the urgency of updating criminal punishment theory is also reflected in efforts to reform the Criminal Code (KUHP), which has been heavily influenced by Dutch colonial law. By updating criminal punishment theory, national criminal law policy will be able to formulate a criminal punishment system that is in line with the social and cultural context and values of justice of Indonesian society (Jerman, 2017).

The renewal of criminal punishment theory will have important implications for the direction of national criminal law policy, including in the formulation of types of punishment (imprisonment, alternative punishment, rehabilitative punishment), the application of restorative justice, and the protection of the rights of perpetrators and victims. With this approach, criminal law will not only function as a repressive tool, but also as a preventive and corrective means to build a more just and civilized society. Therefore, updating criminal punishment theory is an urgent necessity so that national criminal law policy is not only relevant to the challenges of the times, but also reflects the nation's aspirations in realizing substantive justice (Amalia, et al. 2025)

3. RESEARCH METHODS

This normative legal research uses a qualitative descriptive research approach. To conduct normative legal research, relevant laws, doctrines, and legal principles are reviewed and analysed. The main focus of this research is to evaluate the importance of the renewal of the theory of punishment in relation to the formation of national criminal law policies, particularly as stipulated in Law Number 1 Year 2023 on the National Criminal Code (National Criminal Code). This research uses a qualitative descriptive approach to describe the actual situation of the punishment system in Indonesia. This includes problems in sentencing practices that still focus on a retributive approach, the overcapacity of correctional institutions, and the lack of implementation of restorative justice. This research analyses the data qualitatively and analyses classical and modern theories and norms of punishment, as well as their relationship with emerging criminal law policies. Therefore, this research not only emphasizes normative analysis of legislation, but also offers theoretical arguments on how the theory of punishment should be changed to be more contextual, humanist, and oriented towards social justice as the basis of criminal law.

4. DISCUSS AND ANALYSIS

Theory and Purpose of Punishment in Law Number 1 Year 2023

With Law Number 1 Year 2023 on the Criminal Code, the Indonesian criminal law system underwent changes that showed a paradigm shift in the theory of punishment. The new KUHP, which comes into force in 2026, explicitly adopts a combined or integrative approach that combines various theories of punishment into a comprehensive framework. This approach is no longer rigidly bound to one school of thought, but combines absolute theory (retributive), relative theory (utilitarian), and combined theory (integrative) in its formulation (Kamal, 2023).

Conceptually, this approach is designed so that punishment is not only a means of revenge for crime (retributive), but also a preventive and corrective instrument that is oriented towards the future (Rohmat). The purpose of punishment stated in Article 51 of the Criminal Code is the normative basis for this approach, which includes:

- Retributive

  Punishment is imposed as a moral consequence of the criminal act committed, making the offender ethically and legally responsible.

- Prevention

  Punishment is expected to have a deterrent effect not only for the perpetrators, but also for the general public so as not to commit similar crimes.

- Rehabilitation and Corrections

  Convicts are fostered and guided so that they are able to improve themselves and return to function productively in social life.

- Community Protection

  Criminal enforcement is carried out to maintain public order, protect legal norms, and create a sense of security for the community.

- Conflict Resolution and Restoration of Social Balance

  Punishment is expected not only to end the legal conflict, but also to improve the relationship between the perpetrator, the victim and the community in order to create restorative justice.

- Cultivating Regret and Releasing Guilt

  Punishment also serves to raise the offender's moral awareness of his or her wrongdoing, as a step towards repentance and personal responsibility.

In this context, the new KUHP positions punishment as an adaptive and contextual social tool, where the judge's decision is not solely based on the principles of formal justice, but also pays attention to aspects of substantive justice (Hamzani, 2022). By using an integrative approach, the new KUHP provides broader authority to judges to adjust criminal sanctions to the specific conditions of the perpetrators and criminal events, while prioritizing social justice and human values.

The new Criminal Code offers a much more comprehensive and humanist approach than the previous version, which emphasized repressive and retributive elements, with punishment used as a form of retribution for offenses. Punishment is now seen as part of a process of social and moral restoration, rather than as a means of revenge, as indicated by the concepts of restorative and rehabilitative justice.

Continuing the integrative approach outlined earlier, the new Criminal Code focuses on restoring the balance between the offender, the victim, and the community. This means that the offender is given the opportunity to acknowledge his/her guilt, regret, and improve his/her life in the future by considering the rights of the victim.

This method also gives greater attention to the protection of vulnerable groups, such as children, women, people with disabilities, and marginalized communities. These groups

are often the main victims of criminal acts. According to the new Criminal Code, punishment should be just and dignified by considering human values when imposing sanctions, not just protecting them from the impact of crime. This shows that the revision of the Criminal Code does not only bring technical changes, but also a paradigm shift: from criminal law that only punishes to criminal law that educates, repairs, and rebalances social relations.

The regulation on the guideline of punishment and the subject of criminal law also undergoes major changes as a consequence of the paradigm shift of punishment towards a more humanist and equitable direction in the new KUHP. It is stipulated in Articles 53 to 56 of the new KUHP that punishment must be based on comprehensive considerations, including the background of the perpetrator, the consequences of the criminal offense, as well as the impact of the criminal offense on the victim and society. What is interesting about the new KUHP is that it now limits the subject of criminal law only to individuals; it also recognizes that corporations can be held criminally liable. This represents a significant development in Indonesia's criminal law system, which is increasingly responding to more complex modern crimes, such as corporate crime, money laundering, environmental offenses, or economic crimes committed in a systematic and organized manner by legal entities.

The recognition of corporations as subjects of criminal law shows normative progress and legal alignments towards the protection of society, especially in the context of power imbalances between individuals and institutions. In this context, the new Criminal Code prioritizes the principles of restorative justice and proportionality, by giving judges the space to contextually assess the situation and impose sanctions that are not merely punitive, but also encourage social responsibility, system improvement, and prevention of future criminal acts (Amanda, 2024).

The new Penal Code also brings a more diverse and flexible variety of basic punishments, in line with the aim of updating the punishment system to make it more humane and in line with social developments. The new Penal Code introduces alternative sentences that are intended to reflect the principles of restorative justice, effectiveness, and a balance between the interests of society, victims, and offenders. They also avoid the dominance of imprisonment.

Some of the forms of punishment regulated in the new Criminal Code include:

- Imprisonment, which remains an option for serious crimes;

- Closing punishment, which is detention in a special place for certain offenders, such as offenders who require special treatment or with certain conditions;
- Supervision punishment, where the offender is subject to restrictions and supervision without having to serve the punishment in a correctional institution;
- Fines, which can be applied as a form of financial sanction;
- Social work punishment, where the offender is asked to make a direct contribution to the community as a form of social responsibility.

The introduction of this new type of punishment is a concrete effort to reduce dependence on imprisonment, which has been considered not always effective in rehabilitating offenders or reducing recidivism rates. In addition, this alternative type of punishment allows judges to choose a more contextual and proportional punishment that is in accordance with the characteristics of the offender, the severity of the criminal offense, and the impact of the criminal offense on society.

By providing this modifiable criminal sanction, the new KUHP strengthens the position of the integrative approach previously mentioned and provides a solid legal basis for the application of preventive, rehabilitative, and repressive punishment. This shows that the punishment system in Indonesia is undergoing a transformation towards a more progressive model, prioritizing human values, and responding to contemporary law enforcement challenges.

Analysis of the Novelty of Punishment Theory in the National Criminal Code

The purpose of punishment is an issue that is considered in the process of reforming the punishment system that is more contextual and just. This is due to the many different purposes of punishment, which are derived from various theories of punishment. Each theory takes a different philosophical approach to punishment and its essence. Retributive theories, for example, pay attention to the retaliatory aspect of violating the law, while utilitarian theories focus on how to prevent crimes from occurring, and restorative theories consider the restoration of relationships between offenders, victims, and society as the basis of justice. These three approaches represent a paradigm shift from punishment alone to a more balanced punishment that focuses on social benefit. The 2023 Criminal Code, which adopts restorative justice values, reflects this shift.

One of the classic approaches in the theory of punishment is the retributive view, which views punishment as a form of moral consequence for violating the law (Andito, et al., 2022). In this view, punishment is imposed in response to an offense that violates the

law, with the assumption that the offender is entitled to retribution for his or her wrongdoing. This model is retrospective, or backward-looking, as the main focus is on the offender's past actions. However, utilitarian theory argues that punishment should benefit society. This method places deterrence, behavioural improvement, and deterrent effects as the main goals, focusing on the outcomes to be achieved after the punishment is imposed. The utilitarian approach is therefore prospective (forward- looking), with punishment considered as a tool to establish a safer and more orderly social order. These two approaches, although different, form an important basis for understanding the changing dynamics of sentencing policy. This includes in the context of the 2023 Criminal Code, which seeks to create a more adaptive and effective punishment model.

Muladi (2002) identifies three main approaches to the purpose of criminal sanctions, adding to the diversity of opinions on punishment. First, the absolute approach views punishment as moral retribution for violations of the law, which upholds justice by avenging wrongdoing. Second, the teleological approach views punishment as a tool to achieve social benefits such as legal protection and public order. This approach views punishment not merely as retribution, but as a tool to achieve social benefits such as public order. Third, the mixed approach, or retributive-teleological, tries to bridge the two previous perspectives by emphasizing that punishment does not only contain the value of retaliation, but must also be directed at the rehabilitation of the perpetrator as well as the protection and prevention of crime in society. In this integrative approach, punishment is considered as a mechanism to maintain social balance, prevent reoffending, and ensure that the substantive justice of the offender is met.

New dynamics have emerged as a result of shifting perspectives on punishment, particularly in relation to rehabilitative methods, which have begun to be questioned for their effectiveness. In the 1970s, many people began to doubt the efficacy of rehabilitative goals in the sentencing system because they were perceived to lack consistent standards and tended to create uncertainty in judicial practice. To address this issue, the justice model-also referred to as the "justice model"-was created and popularized by Sue Titus Reid. It combines two key principles, deterrence and retribution, to provide a more systematic and logical basis for sentencing. Through the *just desert* approach, punishment is determined proportionally based on the offenders level of culpability, with the hope that commensurate punishment not only provides a deterrent effect for the offender, but also serves as a warning to the wider community not to commit similar crimes (Fasrial, 2014).

According to the concept of just desert, people who commit offenses should receive punishment proportional to the degree of their crime. In other words, people who commit offenses with the same degree of guilt are expected to receive the same punishment, while more severe offenses should be punished more strictly. This method has not escaped criticism, even though it seems like a fair system. Firstly, other important factors, such as the socio-economic status of the offender, their background, or the social impact of the conviction on them and their family, are often ignored when the main focus is on how proportional the crime and punishment are. As a result, the system may rigidly treat cases that should be treated differently. Secondly, although *just desert* seeks to ensure consistency through the categorization of crimes, this approach can have certain psychological effects on both offenders and law enforcement officials, which in turn can create bias in sentencing decisions (Hakim, 2020).

The purpose of punishment in the new Criminal Code in Article 51 which states that punishment aims:

- "preventing the commission of criminal offenses by enforcing legal norms for the protection and protection of society;
- to socialize convicts by providing guidance and mentoring so that they become good and useful people;
- resolving conflicts arising from Criminal Offenses, restoring balance, and bringing a sense of peace and tranquillity in society; and
- foster a sense of remorse and relieve the convicted person of guilt."

Article 52 also states that "The punishment is not intended to degrade human dignity."

In the new Penal Code, the four formulations of the objectives of punishment demonstrate a dual approach that balances the public interest and the rights of the individual. The zeal to protect society from the dangers of crime is in contrast with a strong zeal for the recovery and social reintegration of offenders. In the new Criminal Code, punishments that torture or degrade human dignity are prohibited. This is a major shift in the paradigm of Indonesian criminal law. The neo-classical school was very influential in this policy direction; they not only emphasized proportional punishment limits through minimum and maximum provisions, but also allowed for individualized consideration of the offender's background and his/her development needs. This method shows how important it is to maintain a balance between substantive and normative justice during the sentencing process.

The purpose of punishment in the new Criminal Code shows an orientation based on the theory of relative punishment, which emphasizes the social function and benefits of punishment for the wider community. According to this perspective, punishment is no longer used as retribution for violations, but rather as a preventive tool to prevent subsequent violations. This method follows the utilitarian principle, which considers the existence of punishment based on the use value it can produce to protect society, resolve conflicts, and restore social harmony. By considering these objectives, the new KUHP directs punishment as a proactive and future-oriented effort to create sustainable order, security, and social welfare. This method also supports the idea that, rather than simply imposing punishment, punishment should be able to improve social conditions.

In Article 65, the new KUHP stipulates a variety of main punishments, which are systematically arranged based on their severity, as part of the improvement of a forward-looking punishment system. The types of punishment include imprisonment (Article 68-71), closure punishment (Article 74), supervision punishment (Article 75-77), fine (Article 78-84), and social work punishment (Article 85). This arrangement reflects the division of punishment based on the severity of punishment (strafmaat), where punishments such as exile, supervision, and community service are offered as alternatives to imprisonment. This policy is in line with contemporary sentencing approaches that do not only prioritize imprisonment but also take a more humanist and corrective approach. In addition to the main punishment, the New Criminal Code regulates several types of additional punishment in Article 66, such as revocation of certain rights (Article 86-90), forfeiture of goods and/or bills (Article 91-92), announcement of judge's decision (Article 93), payment of compensation (Article 94), revocation of license (Article 95), and fulfilment of customary obligations (Article 96). This series of additional punishment shows the commitment of the new KUHP to use a more legal approach.

The new Criminal Code also considers the existence of mitigating factors for criminal offenders as well as considering objective conditions in the criminal sentencing process, in line with the spirit of criminal law reform which emphasizes a humanist and functional approach. Articles 53 and 54, which contain sentencing guidelines, regulate this matter. Both articles show a tendency towards the theory of relative punishment. Nevertheless, this method has the characteristics of an integrative theory, as it is a method that does not only prioritize one punishment objective. This theory combines elements from various theories, such as utilitarian retribution, which sees punishment as not only retribution but also a means of prevention and rehabilitation. Thus, the new Criminal Code provides room for judges to

impose decisions that are more proportional, contextual, and aimed at achieving optimal punishment outcomes, both for the perpetrators, victims, and the wider community.

According to the new Criminal Code, the death penalty is considered an alternative last resort and is usually combined with life imprisonment or a maximum of twenty years. Only very serious and dangerous criminal offenses can be used for the death penalty, such as terrorism, corruption, narcotics, and gross violations of human rights. This suggests extreme measures to stop crime and protect society. Article 99 of the Criminal Code states that the execution of the death penalty is carried out in a way that is not carried out in public, usually through shooting by a firing squad or other methods stipulated by law, after the clemency filed by the convicted person has been rejected by the President of the Republic.

There is a new idea on the implementation of death penalty in the new Criminal Code, namely death penalty with probation period which is regulated in Article 100. This idea allows the judge to impose death penalty despite the probation period. The death penalty can be changed to life imprisonment through a Presidential decree after consideration from the Supreme Court if the convict shows good behaviour and regrets during the probation period. Conversely, if the convict does not show any improvement in behaviour, the death penalty can be executed through an order from the Attorney General. This probation period lasts for 10 years, depending on the attitude of remorse of the convicted person, the possibility of rehabilitation, or the role of the convicted person. According to Article 191 of the new Criminal Code, the offense of treason against the President and/or Vice President is one example of this application.

Article 38 states that perpetrators with mental or intellectual disabilities can be sentenced to special measures in lieu of ordinary punishment, while Article 39 underlines that perpetrators who experience acute relapse due to mental disability accompanied by psychotic disorders, or perpetrators with intellectual disabilities who cannot function properly, or perpetrators with intellectual disabilities.

Rehabilitation, surrender to a specific individual, treatment in a specialized facility, surrender to the government, or treatment in a mental hospital are some examples of measures that can be taken. The court's decision determines the type, duration, place, and implementation of these measures. This arrangement emphasizes that understanding and applying the objectives and guidelines of punishment is crucial to choosing the right type of punishment. This method emphasizes the principle of restorative justice to achieve community welfare. Due to the new Criminal Code, judges can choose sanctions freely, but

remain within the confines of the law. This allows judges to set appropriate sanctions while considering the established objectives and guidelines of punishment.

The partiality of punishment in the new Criminal Code reflects the characteristics of the integrative model, which is reflected in the provisions that include various considerations such as the socio-economic background of the perpetrator, the impact of the punishment on the future of the perpetrator, the forgiveness of the victim or his family, as well as the community's view of the crime committed. By taking these considerations into account, judges have the freedom to include other relevant elements, as stipulated in the relevant article, to ensure that the punishment imposed remains proportional and can be understood by the community and the convicted person. In addition, judges have the authority to apply the principle of "legal forgiveness", or the granting of forgiveness to perpetrators of crimes that are considered minor. Judges must include this apology in their decision, even if the defendant is still found guilty. This concept shows that looking at the situation of the offender, victim, and society as a whole is very important, and leads to a more humanist approach to sentencing.

Under Articles 51 and 52 of the new Penal Code, the purpose of retaliation is clearly stated, but letters c and d indicate a more implicit purpose, given the importance of rehabilitation and crime prevention to protect society.

5. CONCLUSION

One of the important milestones in Indonesia's criminal law reform is the passing of Law Number 1 Year 2023 on the new Criminal Code. The old rules in the new Criminal Code are not only updated, but also incorporate more humane and responsive methods of punishment, by prioritizing the principles of restorative justice and the protection of human rights. Now, sentencing is seen as a means of rehabilitation and social recovery rather than simply a means of revenge. In addition, the KUHP sets out comprehensive sentencing guidelines, which help judges to impose fair, proportionate and effective sanctions. These guidelines serve as an important tool in legislative policy to ensure the application of punishment remains in line with the principles of social justice and the development of society.

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