

SENTENCING GUIDELINES IN THE NATIONAL CRIMINAL CODE: IMPLEMENTATION IN JUDICIAL DECISIONS

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Abstract

Law Number 1 of 2023 concerning the Criminal Code introduces sentencing guidelines as an important component of the reform of Indonesia's sentencing system. The introduction of these guidelines aims to control the use of judicial discretion, enhance rationality in sentencing decisions, and reduce sentencing disparities in criminal justice practice. This study aims to examine the concept of sentencing guidelines in the National Criminal Code and to analyze their implementation in judicial decisions. This research employs normative legal research using statutory and conceptual approaches. The results show that the sentencing guidelines in the National Criminal Code are systematically structured, covering general provisions, sentencing guidelines for individual offenders and corporations, guidelines for the application of imprisonment, as well as other provisions related to the implementation of punishment. These guidelines are not intended to restrict judicial independence but rather to provide a framework of consideration to ensure that sentencing decisions are based on rational, proportional, and just reasoning. The implementation of sentencing guidelines is expected to improve the quality of legal reasoning in judicial decisions, prevent irrational sentencing disparities, and strengthen public trust in the criminal justice system.

Keywords: *Sentencing guidelines, National Criminal Code, implementation, judicial decisions*

INTRODUCTION

Law Number 1 of 2023 concerning the Criminal Code (the National Criminal Code) introduces several significant reforms in Indonesia's substantive criminal law. One of these reforms is the regulation of sentencing guidelines, which are stipulated in Articles 53 to 63 of the National Criminal Code. The introduction of sentencing guidelines aims to provide direction for judges in imposing punishments in a more measurable, proportional, and just manner. Through these guidelines, judges are expected to consider various relevant factors in sentencing decisions, including both aggravating and mitigating circumstances. Conceptually, sentencing guidelines aim to control the exercise of judicial authority in sentencing while ensuring fairness in the sentencing process. In the criminal justice system, judges possess the discretion to determine the type and severity of punishment based on their judicial conviction. However, without a clear framework for consideration, such discretion may lead to significant differences in sentencing outcomes for cases with similar characteristics (Zahlan, M., & Fakrulloh, Z. A., 2024). Therefore, sentencing guidelines are expected to function as an official reference for judges in assessing various aspects related to both the criminal act and the offender.

One of the major issues that prompted the introduction of sentencing guidelines is the practice of sentencing disparity within the Indonesian criminal justice system. Sentencing disparity occurs when cases with similar characteristics result in different types or levels of punishment without rational and accountable justification. Such conditions often attract criticism toward the criminal justice system because they may undermine the sense of justice and create legal uncertainty. Prior to the enactment of the National Criminal Code, the Supreme Court had attempted to reduce sentencing disparities through several policies. One of these efforts is Supreme Court Regulation Number 1 of 2020 concerning Sentencing Guidelines in Corruption Cases, particularly regarding the application of Articles 2 and 3 of the Anti-Corruption Law. This regulation aims to provide technical guidance for judges so that sentencing decisions in corruption cases with similar characteristics can be more consistent and proportional. Nevertheless, the scope of this regulation remains limited to specific types of criminal offenses and does not yet cover the entire sentencing system (Irmawanti, N. D., & Arief, B. N., 2021).

The regulation of sentencing guidelines in the National Criminal Code is not intended to restrict judicial independence or reduce the freedom of judges to impose decisions based on their conviction of justice. These guidelines also do not aim to determine fixed sentencing outcomes. Instead, sentencing guidelines provide a more systematic framework by offering various categories and sentencing ranges that judges may use to assess each case more objectively. Thus, the existence of sentencing guidelines in the National Criminal Code can be viewed as an important reform within Indonesia's criminal law system. These guidelines are expected to encourage judicial decisions that are more consistent, accountable, and proportional (O.G. Andini & N. Nilasari, 2021). Although challenges may arise in their implementation, this approach provides an opportunity to improve the quality of judicial decisions while strengthening public trust in Indonesia's criminal justice system. Based on this background, this article addresses two main issues. First, what is the concept of sentencing guidelines in the National Criminal Code? Second, how will sentencing guidelines be implemented in judicial decisions in the future? This study aims to examine the concept of sentencing guidelines in the National Criminal Code and to analyze their implementation in judicial decisions, with the expectation of supporting judges in delivering more fair, objective, and consistent sentencing decisions.

LITERATURE REVIEW

The Concept of Sentencing Guidelines in Criminal Law

Sentencing guidelines are one of the important instruments in the criminal justice system aimed at providing direction for judges in imposing penalties proportionally and consistently. In modern criminal law theory, sentencing guidelines are understood as a set of principles or criteria that assist judges in considering various relevant factors when determining the type and severity of punishment (Assegaf, 2018). These factors generally include the degree of the offender's culpability, the impact of the offense on victims or society, and the personal circumstances of the offender. In the context of criminal law reform in Indonesia, sentencing guidelines have become an essential part of the national criminal law reform introduced through Law Number 1 of 2023 concerning the Criminal Code, particularly in Articles 53 to 63. These provisions provide a framework for judges to determine punishment by considering various aggravating and mitigating factors. Conceptually, sentencing guidelines function to maintain a balance between judicial discretion in making decisions and the need to ensure consistency in sentencing. Without clear guidelines, judicial discretion may potentially lead to significant differences in sentencing for cases with similar characteristics.

Sentencing Disparity in the Criminal Justice System

Sentencing disparity is one of the frequently discussed issues in criminal law studies, referring to differences in sentencing for cases with similar characteristics without rationally justifiable reasons. This phenomenon generally arises due to the absence of clear standards in determining the severity of punishment imposed by judges. Various studies indicate that sentencing disparity frequently occurs in criminal justice practice, often resulting from differences in judicial perspectives in assessing the offender's level of culpability, case circumstances, and sentencing objectives. Consequently, decisions in cases with similar characteristics may result in significantly different punishments. This condition often triggers criticism of the criminal justice system because it is considered capable of reducing the sense of justice and creating legal uncertainty (Oktavianto, 2025). To address this issue, many countries have developed sentencing guidelines as a framework for judges in imposing penalties, thereby making the sentencing process more structured and consistent. Nevertheless, the implementation of sentencing guidelines also generates debate, particularly regarding concerns that such guidelines may limit judicial independence.

Theoretical Framework of Sentencing Objectives

Sentencing guidelines cannot be separated from theories concerning the objectives of punishment in criminal law. In criminal law literature, sentencing objectives are generally associated with several major approaches, namely retributive theory, deterrence theory, and rehabilitation and restoration theories. Retributive theory views punishment as a form of moral accountability for the offender's actions, whereby punishment is imposed as a proportionate consequence of the offender's wrongdoing. Meanwhile, deterrence theory considers punishment as a means to prevent the occurrence of future crimes, both by deterring the individual offender and by discouraging the broader public from committing similar offenses. In the development of modern criminal law, sentencing approaches tend to integrate these objectives. This integration is also reflected in the National Criminal Code, which not only views punishment as retribution but also as a means to protect society, restore social balance, and encourage behavioral

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change in offenders (Faisal, 2023). Therefore, sentencing guidelines in the National Criminal Code represent an effort to integrate these various sentencing objectives into a more systematic framework.

The Development of Sentencing Guidelines in Indonesian Judicial Practice

Before sentencing guidelines were explicitly regulated in the National Criminal Code, efforts to reduce sentencing disparity had already been undertaken through several policies issued by the Supreme Court. One notable example is Supreme Court Regulation Number 1 of 2020 concerning Sentencing Guidelines in corruption cases, which provides guidance for judges in imposing penalties on corruption offenders. The regulation aims to improve consistency in judicial decisions and reduce sentencing disparities in corruption cases with similar characteristics. However, the scope of this regulation is limited to specific types of crimes and does not yet apply broadly within the national sentencing system. With the enactment of the National Criminal Code, sentencing guidelines have now become an integral part of Indonesia's criminal law system. This reflects an effort to develop a more structured, transparent, and accountable sentencing system. Nevertheless, the implementation of sentencing guidelines in judicial practice still faces several challenges, particularly in ensuring that these guidelines are genuinely used as a basis for judicial consideration in court decisions (Paulina et al, 2024).

The Debate on Judicial Independence and Sentencing Guidelines

The existence of sentencing guidelines also raises debates in criminal law scholarship. Some scholars argue that sentencing guidelines can help improve consistency in judicial decisions and reduce sentencing disparity by providing a more systematic framework for determining the type and severity of punishment. However, others argue that sentencing guidelines may potentially limit judicial independence in delivering judgments. Judges, as the executors of judicial power, have the authority to assess each case independently based on the facts and circumstances revealed during the trial. Therefore, the application of sentencing guidelines must still allow judges sufficient discretion to consider the specific conditions of each case (Palimai, 2026). Within the context of the National Criminal Code, sentencing guidelines are not intended to determine the exact amount of punishment to be imposed but rather to provide a framework of consideration that assists judges in exercising judicial discretion in a more rational and proportional manner.

Research Gap

Although numerous studies have examined the concept of punishment and the phenomenon of sentencing disparity in criminal justice systems, research focusing on the implementation of sentencing guidelines in the National Criminal Code in relation to judicial decisions remains relatively limited. Most previous studies tend to focus on the theoretical aspects of sentencing objectives or on the analysis of sentencing disparities in judicial practice. Meanwhile, studies examining how sentencing guidelines under the National Criminal Code will be implemented in judicial practice and how they may influence the consistency of judicial decisions remain insufficiently explored. Therefore, this research is important to examine the concept of sentencing guidelines in the National Criminal Code while also analyzing their implementation in judicial decisions. Through this analysis, the study is expected to contribute to the development of a sentencing system that is more consistent, proportional, and accountable within the Indonesian criminal justice system.

METHOD

This research employs a doctrinal legal research method, which focuses on the examination of legal norms contained in legislation, legal doctrines, and various legal documents relevant to the research problem. This research aims to analyze the concept of sentencing guidelines in the National Criminal Code and their implementation in judicial decisions through the examination of applicable legal norms. The object of this research is the provisions concerning sentencing guidelines regulated in Law Number 1 of 2023 concerning the Criminal Code, particularly those related to the principles, objectives, and guidelines used by judges in imposing criminal sanctions. This research does not involve respondents or field samples but focuses on analyzing legal norms and documents related to the sentencing system. The sources of data in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include legislation related to the research object, such as Law Number 1 of 2023 concerning the Criminal Code, as well as other relevant legal documents. Secondary legal materials consist of legal literature such as books, academic journals, research reports, and other scholarly works related to the concept of punishment and sentencing guidelines. Meanwhile, tertiary legal materials serve as supporting references to provide additional explanations and assist in understanding primary and secondary legal

materials, such as legal dictionaries and legal encyclopedias. The approaches used in this research include the statute approach, conceptual approach, analytical approach, and comparative approach. The statute approach is used to examine legal provisions governing sentencing guidelines. The conceptual approach is employed to analyze legal concepts and theories related to sentencing objectives and the sentencing system. The analytical approach is used to systematically and critically analyze existing legal provisions, while the comparative approach is applied to observe the development of sentencing guideline concepts in legal practice. Data collection techniques in this research are conducted through library research by collecting legal materials from legislation, academic literature, and documents relevant to the research topic. The collected legal materials are then analyzed qualitatively by interpreting, examining, and connecting various legal provisions and concepts related to sentencing guidelines in the National Criminal Code in order to answer the research questions.

RESULTS AND DISCUSSION

The Concept of Sentencing Guidelines in the National Criminal Code

Sentencing guidelines play an important role in providing direction for judges in determining and imposing punishment on offenders. These guidelines function not only as a normative reference but also as a control mechanism to ensure that the punishment imposed is clear in its orientation, proportional, and beneficial for law enforcement. In the National Criminal Code, sentencing guidelines are systematically structured and consist of several main components, namely general provisions, sentencing guidelines for individual offenders, sentencing guidelines for corporations as subjects of criminal liability, guidelines for the application of imprisonment with single and alternative formulations, provisions regarding aggravating circumstances, as well as other provisions related to the implementation of punishment.

The main philosophical foundation of sentencing guidelines in the National Criminal Code is reflected in Article 53 of the National Criminal Code. This provision emphasizes that in imposing a sentence, judges must prioritize two fundamental values, namely the enforcement of law and the realization of justice. In the event of a conflict between legal certainty and justice, judges are required to prioritize justice (Haldemann, F., 2005). The significance of this provision lies in its emphasis that the law should not be applied rigidly or in a purely formalistic manner. Judges are expected to consider substantive justice and employ legal reasoning that takes into account moral and humanitarian considerations in every judicial decision. Furthermore, Article 54 paragraph (1) of the National Criminal Code regulates various factors that must be considered by judges when imposing a sentence. This provision provides an objective framework for judges in determining the type and severity of punishment. Several aspects that must be considered include the degree of the offender's culpability, the motives and objectives of the crime, the manner in which the offense was committed, and the impact caused by the act. Through these guidelines, judges are expected to assess more comprehensively the level of the offender's responsibility so that the punishment imposed reflects a sense of justice for both society and the offender.

In addition, Article 54 paragraph (2) of the National Criminal Code introduces the concept of *rechterlijk pardon* or judicial pardon. This provision allows judges not to impose punishment even though the defendant has been proven to have committed a criminal offense. Judicial pardon may be granted by considering several aspects, such as the minor nature of the offense, the personal circumstances of the offender, the situation at the time the crime was committed, and subsequent developments after the offense occurred. In essence, this provision constitutes a ground for the elimination of punishment based on considerations of justice and humanity. However, the court decision must still state that the defendant is proven to have committed the criminal offense charged against them. This provision provides interpretative space for judges to assess whether the circumstances surrounding the offense justify the granting of such pardon.

The regulation of sentencing guidelines also covers criminal offenses committed by corporations as subjects of criminal law. This is regulated in Article 56 of the National Criminal Code, which provides guidance for judges in imposing punishment on corporations. Under this provision, judges are required to consider several factors related to corporate liability, including the role of the corporation in the commission of the offense and the impact caused by such actions. This regulation indicates that the National Criminal Code has given greater attention to the development of corporate crime, while also providing a clearer framework for judges in imposing sanctions on corporate entities. Furthermore, Article 57 of the National Criminal Code specifically regulates the application of imprisonment by introducing the concepts of single formulation and alternative formulation. Through this provision, judges are directed to prioritize the imposition of a lighter principal punishment when a criminal offense is threatened with alternative principal penalties (Z. Delti Rahmawati, 2021). This approach reflects a shift in the paradigm of sentencing that emphasizes prevention and proportionality, so that imprisonment is not always the primary option in

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every case. In addition, the National Criminal Code also contains several other provisions related to the implementation of punishment, both for convicted persons and for law enforcement officials responsible for executing criminal sanctions. These provisions are regulated in Articles 60 to 63 of the National Criminal Code. These regulations reflect the commitment of the National Criminal Code to establish a sentencing system that is more orderly, structured, and protective of the rights of convicted persons. Through these provisions, the implementation of punishment is expected to be carried out more transparently and to prevent arbitrary practices in the execution of sentences. With these various provisions, sentencing guidelines in the National Criminal Code do not merely function as technical guidance for judges in imposing punishment but also serve as an important instrument to ensure that judicial decisions fulfill the principles of justice, proportionality, and legal utility. The presence of sentencing guidelines is expected to improve the consistency of judicial decisions while strengthening the legitimacy of the criminal justice system in the eyes of society.

The Implementation of Sentencing Guidelines in Judicial Decisions

Prior to the regulation of sentencing guidelines in the National Criminal Code, the practice of sentencing by judges was generally based on considerations related to the circumstances and characteristics of the offender. These considerations were usually reflected in the reasoning section of judicial decisions, which contained factors that could aggravate or mitigate the defendant's responsibility. In judicial practice, this condition provided judges with considerable discretion to impose sentences based on their conviction and conscience (Lilik Mulyadi et al, 2019). Such discretion constitutes an essential part of judicial independence in exercising judicial authority. However, the formulation of sentencing guidelines in the National Criminal Code is not intended to restrict the freedom of judges as guaranteed by law. Instead, sentencing guidelines serve as a framework of accountability for judges to ensure that the punishment imposed is based on rational, proportional, and fair considerations for the offender. Through these guidelines, judges are expected to explain more systematically the reasons underlying the sentencing decisions in each case.

The absence of sentencing guidelines in the previous legal system often created difficulties for judges in determining appropriate punishments, particularly in cases that presented dilemmas between legal considerations and the sense of justice. In such situations, judges were required to make decisions that were often situated in highly sensitive areas. The lack of clear legal provisions regulating the framework of sentencing considerations could lead to uncertainty in determining decisions that most closely reflected justice. Consequently, some decisions were sometimes perceived as disproportionate or difficult for the public to understand, especially when there were significant differences between judgments in cases with similar characteristics. In this context, the regulation of sentencing guidelines is not intended to standardize judicial decisions for similar cases. Rather, the primary objective of sentencing guidelines is to prevent excessive sentencing disparities that lack rational justification. With the existence of these guidelines, the sentencing process is expected to emphasize rationality and clear legal reasoning. Sentencing decisions will not only reflect more structured legal considerations but will also provide flexibility for judges to take into account the concrete circumstances of each case. Therefore, although disparities in decisions cannot be entirely avoided, each judgment can still be rationally justified (Muladi & Diah Sulistyani, 2020).

Ultimately, the implementation of sentencing guidelines in judicial decisions is expected to realize the principle expressed in the preamble of every court decision: "For the Sake of Justice Based on the Belief in the Almighty God" (A. Jayadi, 2018). This phrase signifies that judicial decisions are not merely an act of law enforcement but also an effort to achieve justice that can be accounted for. Such accountability is not only horizontal toward society and the parties involved in the case but also vertical toward the Almighty God as the highest moral value within the Indonesian judicial system. Therefore, sentencing guidelines are expected to assist judges in delivering decisions that are not only legally valid but also reflective of the values of justice upheld within society.

CONCLUSION

Sentencing guidelines as regulated in the National Criminal Code represent one of the significant reforms in Indonesia's criminal law system. These guidelines are systematically structured and include several main components, namely general provisions, sentencing guidelines for individual offenders, sentencing guidelines for corporations as subjects of criminal liability, guidelines for the application of imprisonment with both single and alternative formulations, provisions regarding aggravating circumstances, as well as other provisions related to the implementation of punishment. This regulatory structure indicates that the legislators aim to establish a sentencing framework that is more directed and systematically organized.

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The existence of sentencing guidelines in the National Criminal Code is expected to provide a clearer foundation for judges in imposing punishment. With the presence of these guidelines, the sentencing process is not solely based on the subjective conviction of judges but also on a framework of considerations that are more rational, systematic, and accountable. This is important to ensure that sentencing decisions meet the standards of justice and legal utility expected by society and are consistent with the objectives of punishment within the criminal law system. Nevertheless, the regulation of sentencing guidelines in the National Criminal Code is not intended to restrict judicial freedom in delivering decisions. Judicial independence remains a fundamental principle within the judicial system. Sentencing guidelines instead function to maintain a balance between judicial discretion in assessing each case and the need to create consistency in sentencing decisions. Therefore, sentencing guidelines do not eliminate judicial discretion but rather provide a clearer framework for consideration in the decision-making process.

From a broader perspective, sentencing guidelines also serve as an instrument to improve the quality of judicial decisions. Through these guidelines, judges are expected to formulate legal reasoning that is more rational, transparent, and understandable to the public. As a result, judicial decisions will not only be legally valid but will also reflect the sense of justice that exists within society and strengthen public trust in the criminal justice system. Ultimately, the successful implementation of sentencing guidelines in the National Criminal Code largely depends on the consistency of law enforcement authorities, particularly judges, in using them as a basis for consideration in every decision. If these guidelines are properly applied, the sentencing system in Indonesia is expected to develop toward a more consistent, proportional, and just system.

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