

Juridical Analysis of the Application of Criminal Sanctions Against Recidivist Offenders in the Indonesian Criminal Justice System

Andi Musahar

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
andimusahar.std@unissula.ac.id

Abstract. *The background of this study stems from the high rate of recidivism in Indonesia, which serves as an indicator of the failure and ineffectiveness of criminal sanctions within the current criminal justice system. Empirically, the handling of recidivist offenders remains trapped in a formalistic and retributive legal approach, focusing primarily on imposing enhanced criminal penalties without evaluating the effectiveness of previous correctional programs or addressing the criminogenic factors underlying criminal behavior. The failure of this prison-centered approach has led to systemic anomalies, including prison overcrowding and the phenomenon of criminal contagion within correctional institutions. This study aims to identify and analyze: (1) the application of criminal sanctions against recidivist offenders; (2) the weaknesses in the implementation of criminal sanctions against recidivists within the Indonesian criminal justice system; and (3) the future direction of criminal sanction policies for recidivist offenders in Indonesia. The research employs statutory, conceptual, and case approaches. The data consists of primary, secondary, and tertiary legal materials collected through library research and analyzed using a prescriptive qualitative method. The findings reveal that: First, the current application of criminal sanctions against recidivists remains confined to retributive legal formalism, whereby sentence enhancement in the form of an additional one-third of the maximum penalty is applied mechanically without considering criminogenic factors or the effectiveness of previous rehabilitation efforts. Second, the weaknesses in addressing recidivism originate from imbalances within the three pillars of law enforcement: weaknesses in legal substance (rigid requirements for “similar” repeat offenses and prison-centric sanction formulations), weaknesses in legal structure (the absence of an integrated real-time criminal data system and overcrowding in correctional institutions), and weaknesses in legal culture (law enforcement pragmatism and social stigmatization). Third, the future implementation of criminal sanctions requires a transformation of legal civilization through harmonization with Law No. 1 of 2023 (the National Criminal Code) and Law no. 20 of 2025 (the New Criminal Procedure Code). This transformation can be realized through the*

extension of the recidivism limitation period, the implementation of alternative sanctions (community service and rehabilitation), asset recovery measures for economic crime recidivists, and structural modernization through the integration of a cross-sectoral biometric criminal record database to achieve legal certainty, justice, and social utility comprehensively.

Keywords: Criminal; Justice; Recidivists; Sanctions; System.

1. Introduction

Indonesia, as a state governed by the rule of law (*rechtsstaat*) based on Pancasila and the 1945 Constitution of the Republic of Indonesia, places the supremacy of law as a means of protecting all citizens and ensuring public security. However, the ideal objectives of the criminal justice system often clash with the empirical reality of a high recidivism rate. A recidivist is an offender who, after serving a criminal sentence, commits another criminal offense.

This phenomenon reflects the failure of the Integrated Criminal Justice System to provide either a deterrent effect or behavioral rehabilitation. Based on empirical data from the jurisdiction of the Jambi District Court (2020–2024), the recidivism rate has continued to increase, rising from 15.07% in 2020 to 23.97% in 2024, with an average recidivism rate of 19.94%, a figure considered alarming.

The paradigm shift in Indonesian criminal law through the enactment of Law No. 1 of 2023 concerning the National Criminal Code introduces new implications, how recidivism is categorized as an aggravating factor that may increase the principal sentence by one-third. Nevertheless, the rigid application of enhanced sanctions often fails to address the root causes of criminal behavior and may conflict with the spirit of Law No. 22 of 2022 on Corrections, which emphasizes the restoration of inmates' social relationships. Therefore, an in-depth analysis is necessary to evaluate whether the current sentence enhancement mechanism remains relevant or whether a more corrective and rehabilitative approach is required.

The literature review in this study is developed through several theoretical and conceptual foundations:

1) Sentencing Theory

Sentencing theories generally encompass three major schools of thought: the Absolute or Retributive Theory (pure retribution), the Relative or Utilitarian Theory (general and specific deterrence), and the Integrative Theory (a combination of just retribution and rehabilitative utility). The National Criminal Code (Law No. 1 of 2023) explicitly adopts the Integrative Theory with a restorative justice orientation under Article 51.

2) Concept of Criminal Offenses and Offenders

A criminal offense is an act punishable by criminal sanctions and/or measures under statutory regulations (Article 12 of Law No. 1 of 2023). Meanwhile, offenders include those who commit, order, participate in, or instigate criminal acts (Article 20 of Law No. 1 of 2023).

3) Concept of Recidivism

A recidivist is a person who commits another criminal offense within five years after serving all or part of a principal sentence (imprisonment) imposed through a final and binding court judgment, as specified in Article 23 of Law No. 1 of 2023. This new provision transforms the former special recidivism system (requiring the same type of offense) under the old Criminal Code into a general recidivism system.

4) Integrated Criminal Justice System

The Integrated Criminal Justice System consists of the Police, Prosecutor's Office, Courts, and Correctional Institutions, all of which are interdependent in controlling crime and restoring social order.

2. Research Methods

This study constitutes normative (doctrinal) legal research aimed at identifying legal rules, principles, and doctrines to address existing legal issues. The research employs a statutory approach, a conceptual approach, and a case approach. The study is descriptive-analytical in nature, describing applicable legal regulations in relation to legal theories and analyzing their implementation in practice. The study utilizes primary legal materials (the 1945 Constitution, the National Criminal Code, the Criminal Procedure Code, and the Corrections Law), secondary legal materials (books and scientific journals), and tertiary legal materials collected through library research and the examination of court decisions. The data are analyzed using a prescriptive qualitative method through the systematization of legal materials to generate solutions to normative gaps and conflicts.

3. Findings and Discussion

3.1. Current Application of Criminal Sanctions Against Recidivists

At the investigation stage, the Police identify recidivist status through criminal records, biometric identification (fingerprints and facial recognition), and investigation reports. During prosecution, prosecutors examine the legal requirements for recidivism under the Criminal Code or special legislation and formulate cumulative indictments by including prior convictions as aggravating circumstances.

At the judicial stage, judges exercise discretion. Most judges impose sentences below the statutory maximum due to mitigating factors such as family responsibilities and prison overcrowding. However, for heinous crimes or organized narcotics offenses, judges tend to impose the maximum imprisonment term plus the one-third sentence enhancement. In correctional institutions, sentence execution involves stricter measures, including inmate classification systems and more stringent requirements for remission and social reintegration programs.

3.2. Weaknesses in the Current Application of Criminal Sanctions

a. Weaknesses in Legal Substance

Previous regulations under the Dutch Colonial Criminal Code (WvS) were constrained by rigid special recidivism requirements that required repeat offenses to be of the same type. As a result, habitual offenders who changed their modus operandi often escaped enhanced punishment. Furthermore, sanction formulations remain excessively prison-oriented, neglecting the psychological and economic factors underlying criminal behavior.

b. Weaknesses in Legal Structure

Indonesia lacks a nationally integrated, real-time criminal data system among law enforcement institutions. As a result, offenders who relocate between jurisdictions are frequently prosecuted as first-time offenders. Another structural weakness is the prison overcrowding crisis, which contributes to prisonization, whereby prisons become breeding grounds for further criminal activity.

c. Weaknesses in Legal Culture

Law enforcement officers often adopt a pragmatic approach focused solely on meeting administrative targets rather than investigating the underlying causes of repeat offending. At the societal level, former prisoners face persistent stigmatization, limiting their access to legitimate employment opportunities and often compelling them to return to criminal activities for survival.

3.3. Future Application of Criminal Sanctions

a. Harmonization with the New Criminal Code (Law No. 1 of 2023)

The contextualization of recidivism provisions under Article 65 of the New Criminal Code abolishes the requirement of “similar offenses” and adopts a general recidivism model, while extending the limitation period for recidivism to five years. Judges are provided with flexible sentencing guidelines under Articles 53 and 54, enabling them to tailor sentences according to the offender's personal circumstances and motives rather than automatically imposing maximum penalties.

b. Paradigm Shift Toward Corrective and Rehabilitative Justice

For recidivists who commit minor offenses, alternative sanctions such as probation and community service (Article 85) are prioritized to prevent criminal contagion within correctional institutions. For recidivist drug addicts, treatment measures in the form of medical rehabilitation are emphasized (Article 112). Conversely, recidivists involved in economic crimes, such as corruption or large-scale financial offenses, are subject to aggressive asset confiscation measures under Article 119 and broader asset recovery mechanisms.

c. Modernization of the Integrated Criminal Data System

The implementation of the New Criminal Procedure Code (Law No. 20 of 2025) mandates the digitalization of criminal investigation administration. This information-sharing system will rely on advanced biometric technologies, including fingerprint and facial recognition systems linked to national civil registration databases. Consequently, recidivist status can be identified instantly and accurately across all jurisdictions in Indonesia.

4. Conclusion

The application of criminal sanctions against recidivists within the Indonesian Criminal Justice System remains heavily influenced by retributive legal formalism, whereby sentence enhancements of one-third of the maximum penalty are imposed mechanically without addressing the criminogenic roots of offending behavior. This situation is exacerbated by systemic weaknesses, including rigid and prison-centric legal provisions, structural deficiencies caused by the absence of an integrated criminal database and prison overcrowding, as well as a legal culture characterized by institutional pragmatism and social stigmatization that hinders social reintegration. In the future, the application of sanctions against recidivists is expected to evolve toward a more rehabilitative, corrective, and technology-based model through harmonization with the National Criminal Code (Law No. 1 of 2023) and the New Criminal Procedure Code (Law No. 20 of 2025). Recidivists who commit minor offenses will be directed toward alternative sanctions such as community service and probation, while recidivists involved in economic crimes will face asset conflict measures. These reforms must be supported by a biometric-based Integrated Criminal Data System to ensure rapid and accurate identification of recidivists, thereby enhancing legal certainty, public protection, and the overall effectiveness of the criminal justice system.

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