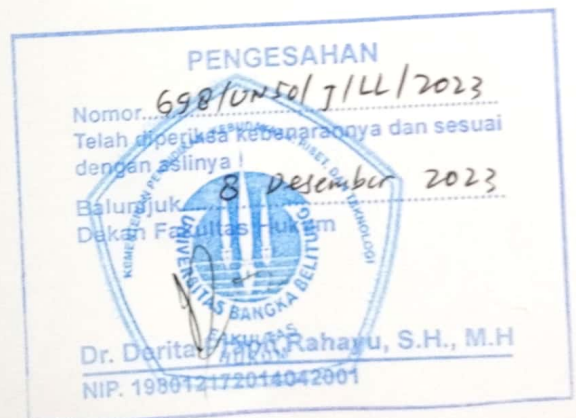


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Progressive Consideration of Judges in Deciding Sentencing Under Indonesia New Criminal Code

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Abstract

The WvS Criminal Code of the Dutch colonial legacy does not formulate the objectives and guidelines of punishment in it, there are only rules for retaliatory criminal provision. The National Criminal Code has formulated explicitly the purpose and guidelines of punishment in it as a reference for judges in sentencing crimes. The purpose of this study is to analyze the basic idea of the objectives and guidelines of punishment which then the objectives and guidelines of the punishment will be a progressive consideration of judges in deciding the criminal conviction of criminal offenders. The research method used is normative legal research. The focus of the research analysis is on the concept of norms Article 51 to Article 54 of the National Criminal Code concerning the objectives and guidelines for punishment. Using the Law approach and analytical approach in explaining problems with the study of literature literature. The results of the study concluded that the basic idea of the purpose and guidelines of punishment is how criminal punishment can be humanist and in accordance with the values of Pancasila. There are at least 3 points that are considered as the basic idea of the goals and guidelines for punishment, namely uphold goals,

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strengthen principles and review guidelines. Furthermore, the purpose and guidelines of sentencing will be the affirmation and progressive consideration of the judge in sentencing the crime. Judges in enforcing the law become less rigid so that the balance between intellectual and spiritual intelligence plays an important role. Imposing crimes with a sense of humanity and justice. Punishment must contain humanitarian, educative and justice elements.

Keywords: National Criminal Code, Penal Guidelines, Progressive, Value Balance

A. Introduction

One of the problems faced by Indonesia today in law enforcement is how to enforce the law fairly, so that all citizens have confidence that their security is guaranteed by law and their rights are respected.¹ Therefore, law enforcement requires an efficient legal system as well as an independent and fair judiciary. In addition, basic conditions are observed, such as the rights of all people are protected regardless of ethnic, religious and cultural backgrounds.² If these things are not considered and manifested in the administration of the law, then the law will become unfair, the public will lose trust in the government, thus making the authority of the law decline and what will arise is violence (disorder).³

Speaking of law, the most essential thing to pay attention to is the actual purpose rather than the law. Conventionally, as Radbruch said, the purpose of law is to bring about justice, expediency and legal certainty. Of the three goals, it should be sought to be realized together and in tandem because it allows conflict to occur between the three goals. Law is certainly very closely related to justice, so the ultimate goal of justice is substantial justice and not just proce-

1 Faisal, *Pemaknaan Kebijakan Kriminal Perbuatan Santet dalam RUU KUHP*, Jurnal Pembangunan Hukum Indonesia, Vol.55, No.1, 2023, hlm.220-232

2 Muhari Agus Santoso, *Paradigma Baru Hukum Pidana*, Averroes Press, Malang, 2002, hlm. 2-3.

3 Tubagus Heru Dharma Wijaya and Pathorang Halim, *Punishment on Criminal Law Reform in Indonesia*, International Conference on Law Reform, Advances in Economics, Bussiness and Management Reseach, Vo.121, pp 35-37

dural justice. It is wrong if the justice that is manifested is procedural justice, because procedural justice can be easily engineered. So real justice is true justice.⁴

Fairness in the process of administering law is reflected in the final verdict of conviction from a judge in court. Judges play an important role in giving and creating justice. Judges are guaranteed freedom in deciding cases in order to uphold law and justice. In upholding law and justice, it certainly requires guidelines or principles that are firmly held by a judge as a clear parameter in deciding a criminal case. In addition, it is also to maintain the integrity and independence of a judge.⁵

Criminal law reform essentially means an effort to reorient and reform criminal law in accordance with the central, socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia. Criminal law reform should be carried out thoroughly and be comprehensive and not fragmentary and adapted to existing values and life in society so that the aspired law (*ius constituendum*) is closer to the character of Indonesian society which is monodualistic and pluralistic.⁶

The penal system is a law related to sanctions and punishment. In essence, it is a system of authority or power to impose crimes.⁷ It should be understood that “criminal” is not seen in a narrow/formal sense, but also seen in a broad/material sense.⁸ In a narrow/form-

4 Sukarna et al, *Kajian Kebijakan Hukum Pidana Terhadap Hapusnya Kewenangan Penyidik Pada Kepolisian Sektor Berdasarkan Keputusan Kapolri Nomor: Kep/613/III//2021*, Jurnal Ilmu Hukum Universitas Riau, Vol.12, No.1, hlm.178-183

5 Failin, *Sistem Pidana dan Pemidanaan di Dalam Pembaharuan Hukum Pidana Indonesia*, Jurnal Cendekia Hukum, Vo.3, No.1, pp 14-29

6 Juhari D. Kusuma, *Tujuan dan Pedoman Pemidanaan dalam Pembaharuan Sistem Pemidanaan di Indonesia*, Jurnal Muhakkamah, Vol 1 No 2, November 2016, hlm. 95.

7 Eddyono et al, *Envisioning Indonesian Criminal Code Reform: Challenges in Reforming Criminal System and Protecting Civil Liberties*, Institute for Criminal Justice Reform (ICJR), hlm.1-21

8 Noveria Devy Irmawanti, Barda Nawawi Arief, *Urgensi Tujuan dan Pedoman Pemidanaan dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana*,

mal sense, the penal system means the authority to impose/impose criminal sanctions according to law by authorized officials (judges). Meanwhile, in a broad / material sense, the penal system is a link in the process of legal action from authorized officials, starting from the process of investigation, prosecution to criminal verdicts handed down by the court and carried out by the implementing apparatus. The sub-system of the penal system which is a strategic position is about the objectives and guidelines of penalties. The penal system basically talks about criminal politics.⁹ Criminal politics is the rational effort of society to tackle crime. Penalgoals and guidelines are important aspects of the crime response framework.¹⁰ This is a strategy in an effort to create the same perception for law enforcement officials. With respect to criminal matters as a means to an end, it must be decided in advance about the objectives and guidelines of criminal imposition in order to achieve the main goal, namely the protection of society.

The objectives and guidelines of punishment in the Dutch colonial legacy Criminal Code (WvS) before the reform, do not contain the objectives and guidelines of punishment (strafdoelstellingen) as parameters that contain principles that need to be considered by judges in sentencing crimes, there are only rules for granting crimes (strafdoelstellingen).¹¹ In order to reconstruct the national criminal law system, in contrast to the National Criminal Code that will apply, in the General Rules Book I of the National Criminal Code is included a formulation of the objectives and guidelines for punishment.¹²

Jurnal Pembangunan Hukum Indonesia, Vol 3 No 2, 2021, hlm. 219

9 Tody Sasmitha Jiwa Utama, *Hukum Yang Hidup Dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP): Antara Akomodasi dan Negasi*, Jurnal Masalah-Masalah Hukum, Jilid 49 (1), 2020, hlm. 14-25

10 Muhari Agus Santoso, *Paradigma Baru Hukum Pidana*, Op. Cit, hlm. 56.

11 Dwi Oktafia Ariyanti, Muhammad Ramadhan, *Pedoman Pemidanaan dalam Konteks Pembaharuan Hukum Pidana Indonesia di Masa Mendatang*, Jurnal Kajian Hukum, Vol 7 No 1, Mei 2022, hlm. 93.

12 Johan Setiawan et al, *Understanding Indonesian History*, Interest in Learning History and National Insight with Nationalism Attitude, International Journal of Evaluation and Research in Education (IJERE) Vol. 9, No. 2, pp.

Based on the description above, the author will discuss more about the objectives and guidelines for punishment in the National Criminal Code. So there are two formulations of research problems that will be discussed in this paper. First, what is the basic idea of the purpose and guidelines of punishment? Second, what are the judges' progressive considerations in sentencing them?. The focus of the research analysis is on the concept of norms Article 51 to Article 54 of the National Criminal Code (Law Number 1 of 2023). Using the statutory approach method (statute approach) to find out and analyze policies, formulation of objectives and guidelines for punishment in the National Criminal Code. As well as using an analytical approach to find meaning in legal terms contained in laws and regulations so as to obtain understanding or meaning, rules, principles and concepts from these laws and regulations.¹³

The primary legal ingredients are the WvS Criminal Code and the National Criminal Code. In addition, using secondary legal materials obtained from literature, journals, books and research results. The technique of searching for legal materials is carried out by the method of document study or library research, namely the collection of legal materials by conducting research in the library on a number of literature, documents, expert opinions, and articles that can explain legal concepts. The technique of analysis of legal materials used is Diskiptrif analysis which refers to a particular problem which is then associated with literature, legal expert opinions, and based on applicable laws and regulations.

B. Basic Ideas of Penal Purpose and Guidelines

The reform of Indonesian criminal law after the enactment of Law No. 1 of 2023 concerning the Criminal Code has brought a number of fundamental changes in three domains, namely paradigm, norm substance, and legal technicalization. The colonial criminal law para-

364-373

13 Creutzfeldt, N., Mason, M., & McConnachie, K. (2019). *Routledge handbook of sociolegal theory and methods*. Routledge. <https://doi.org/10.4324/9780429952814>

digim which was still loaded with retaliatory or retributive teachings was replaced with a criminal law paradigm that brought rehabilitative, restorative, and substantive justice values.¹⁴ This shift is a form of adjustment to the cultural values of the Indonesian nation which are no longer relevant to the teachings of colonial law. Furthermore, in the substance of the norm, a number of new articles have been presented to replace the old articles that are no longer appropriate, in addition to introducing articles containing the definition of criminal acts and the purpose of punishment. Meanwhile, in the technical aspect of legal law, Indonesia's new Criminal Code provides a wide space for the enforcement of substantive justice for judges and all law enforcement officials, by ensuring the fulfillment of all elements of objective consideration before imposing a crime.

So far, the goals and guidelines for punishment have never been formulated since Indonesia's independence, because the applicable criminal law is a colonial legacy. The colonial regime did not see the need to formulate penal goals and guidelines because the penal code was created with the primary aim of protecting the interests of the colonial government without regard to the humanitarian aspects of criminal punishment.¹⁵ In other words, the criminal law was used as a tool of oppression against the colonized indigenous peoples. In other words, the principle of the WvS Criminal Code is the principle of no forgiveness for you.

After independence, the Indonesian nation adopted and adapted the criminal law left by the Dutch colonial so that there would be no legal vacuum.¹⁶ Considering that Indonesian independence was carried out in the shortest possible time. However, it neglects to add the formulation of goals and guidelines for punishment to overcome

14 Mulya Norpiansyah dan Derita Prapti Rahayu, *Kontribusi Hukum Progresif Dalam Perubahan Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan*, Jurnal KeadilaN, VI.21, No.1, Februari 2023, hlm.52-53

15 Tongat, *The Ambiguous Authority of Living Law Application in New Indonesian Penal Code: Between Justice and the Rule of LaW*, International Journal of Criminal Justice Sciences, Vol.17, Issue 2, hlm.188-209

16 Andi Masyarah, *Perubahan dan Perkembangan Sistem Hukum di Indonesia*, Jurnal Warta Edisi 52, pp 1-14

crime, which is in accordance with the socio-cultural conditions of Indonesian society. Therefore, it is not surprising that there is a discontinuity between criminal determination and criminal provision and criminal execution. The three stages should have a unified orientation in the effort to tackle crime. So in this case it is necessary to know what exactly are the objectives and guidelines of Indonesian penalties.¹⁷

Broadly speaking, in the objectives and guidelines of punishment, the focus of attention is on the perpetrator's past actions or for future interests.¹⁸ If the focus of attention is on the perpetrator's past actions, it can be seen that the purpose and guidelines for punishment are retribution. However, if the focus of attention is on future interests, then the purpose and guidelines for punishment are to improve the behavior of criminal offenders.

In line with the opinion of Herbert L. Packer who states, there are two conceptual views that each have different moral implications from each other, namely the retributive view (retributive view) and utilitarian view (utilitarian view).¹⁹ According to the retributive view, punishment as a negative reward for deviant behavior committed by society so that this view assesses punishment as retribution for mistakes committed on the basis of their respective moral responsibilities. It is said that this view is backward-looking. According to the retributive view, punishment as a negative reward for deviant behavior committed by society so that this view assesses punishment as retribution for mistakes committed on the basis of their respective moral responsibilities. It is said that this view is backward-looking. Utilitarian view, assessing punishment in terms of benefits or usefulness where what is seen is the situation or situation that wants to be produced by criminal conviction. So on the one hand, punishment

17 Mokhammad Najih, *Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila*, Journal of Indonesian Legal Studies, Vol.3, No.2, pp.149-174. <https://doi.org/10.15294/jils.v3i02.27510>

18 Agung Purnomo, *Rekonstruksi Tuntutan Pidana yang Responsif dalam Sistem Peradilan Pidana*, Jurnal IUS, Vol 5 No 3, Desember 2017, hlm. 355.

19 Marcus Priyo Gunarto, *Sikap Memidana yang Berorientasi pada Tujuan Pembedanaan*, Jurnal Mimbar Hukum, Vol 21 No 1, Februari 2009, hlm. 100-101.

is intended to improve the attitude or behavior of the convict, on the other hand punishment is also intended to prevent others from possibly committing criminal acts. So this view is considered forward-looking and at the same time has a preventive nature (deterrence).²⁰

Muhari Agus Santoso²¹In his book, he emphasized that punishment must contain elements that are humanitarian, in the sense that punishment upholds the dignity and dignity of a person. Educational, that punishment is able to make people fully aware of the actions committed. Finally, justice, that the punishment is felt to be fair by the convicted, the victim or by the community.²²

Before discussing the basic idea of the objectives and guidelines for the punishment of the National Criminal Code, it is necessary to know three reasons for the purpose and guidelines for which the objectives and guidelines for punishment need to be formulated, namely:²³

- a. The existence of penal goals and guidelines can function to create synchronization that can be physical or cultural. Physical synchronization is structural and substantial synchronization. The form of structural synchronization is harmony in the mechanism of criminal justice administration, while substantial synchronization is related to positive law in force and cultural synchronization in relation to living the views, attitudes and philosophies that thoroughly underlie the course of the criminal justice system.
- b. The formulation of the purpose of punishment is intended as a “control control function” while providing a clear and directed philosophical foundation, rationality and motivation for

20 Faisal, Derita Prapti Rahayu, Yokotani, *Criminal Sanctions Reformulation in the Reclamation of the Mining Community*, *Fiat Justica*, Vol.16, No.1, hlm.11-30

21 Muhari Agus Santoso, *Paradigma Baru Hukum Pidana*, *Op. Cit*, hlm. 60.

22 Butt, S., & Lindsey, T. (2020). “The Criminal Code. In *Crime and Punishment in Indonesia*” (pp. 21-43). Routledge. <https://doi.org/10.4324/9780429455247-3>

23 Yasmirah Mandasari Saragih, Ariansyah, *Kebijakan Pedoman Pemidanaan terhadap Pelaku Tindak Pidana Korupsi*, *Jurnal Sosial Ekonomi dan Humaniora*, Vol 8 No 1, Maret 2022, hlm. 115.

punishment.

- c. By formulating the objectives and guidelines for punishment, it will be known the supporting function of the criminal law function in general to be achieved as the ultimate goal in the form of realizing public welfare and protection (social defense and social welfare).

After knowing the reasons for the need to formulate goals and guidelines for punishment, it is time to investigate, analyze, explore the basic ideas contained in the formulation of goals and guidelines for punishment in the National Criminal Code. The objectives and guidelines of punishment in the National Criminal Code are listed in Chapter III (Punishment, Crime and Act) Part One concerning the Objectives and Guidelines of Penalties. This explanation will only focus on Articles 51 to 54 of the National Criminal Code.

In the previous Criminal Code, the purpose of punishment was not stated exactly, so it was considered self-explanatory.²⁴ The absence of this criminal purpose makes law enforcement tend to be instrumental and procedural, oriented towards the enforcement of articles in criminal law. While in the National Criminal Code, the purpose of punishment is implicitly introduced in Article 51, that stated below:

“Punishment aims:

- a. Prevent criminal acts from being committed by enforcing legal norms for the protection and protection of the community;
- b. Socialize convicts by conducting coaching and guidance to become good and useful people;
- c. Resolving conflicts arising from criminal acts, restoring balance, and bringing a sense of security and peace in society
- d. Fostering a sense of remorse and absolving guilt in the convict”.

Furthermore, in Article 52 it is affirmed that; “Punishment is not intended to degrade human dignity”.

The conceptualization of the purpose of punishment in the

24 Burns, P., 2004. *The Leiden legacy: Concepts of law in Indonesia*. KITLV Press Leiden.

New Criminal Code shifts the paradigm of retaliation promoted in the Dutch Colonial Criminal Code into a genuine paradigm with corrective, rehabilitative, restorative, and substantive justice values.²⁵ The purpose of punishment does not focus on retaliation for the perpetrator's actions, but rather the comprehensive protection of the victim, the perpetrator, and society as a single subject matter that must be protected in the national criminal code.²⁶ The purpose of punishment reflects the human beauty of law.

In addition to providing guarantees for the implementation of punishment not to have a retributive character, the purpose of punishment also provides space for judges not to impose punishment for perpetrators of criminal acts with insignificant acts. This understanding can be explored in Article 54 (1) which requires judges to consider 11 aspects in giving a decision. Among these considerations are the form of guilt of the perpetrator of the crime, the motive and purpose of committing the crime, the inner attitude of the perpetrator of the crime, the criminal act is carried out planned or unplanned, the way of committing the crime, the attitude and actions of the perpetrator after committing the crime, curriculum vitae, social conditions, and economic conditions of the criminal offender, the influence of the criminal on the future of the criminal offender, the influence of criminal acts on victims or victims' families, forgiveness from victims and/or victims' families, and the value of law and justice that lives in society.

Looking at the formulation of Articles 51 and 52 of the National Criminal Code, it is clear to formulate what is the purpose of punishment. However, when examined further, there are basic ideas or values contained in it as the basis for the purpose of punishment itself. The basic values or ideas contained include:

- a. The value of community protection (social defense) and

25 Hariman Satria, *Restorative Justice: Paradigma Baru Peradilan Pidana*, Media Hukum, Vol.25, No.1, pp 111-123

26 Butt, S. 2018. *Religious conservatism, Islamic criminal law and the judiciary in Indonesia: a tale of three courts*. *The Journal of legal Pluralism and unofficial law*, 50(3), 402-434. <https://doi.org/10.1080/07329113.2018.1532025>

community welfare (social welfare). In the dimension of social defense and social welfare, the importance is the welfare / protection of the community which is immaterial, especially the values of trust, truth, honesty and justice.²⁷ Crime reduction must be carried out with an integral approach, namely the balance of penal and non-penal facilities.

- b. The value of resocialization (improvement). Coaching convicts so that they can live again socializing in the community. This is also done to prevent convicts from becoming recidivists.
- c. The value of conflict resolution. Resolving conflicts through constructive problem solving aims to restore balance and bring a sense of security and peace in society.
- d. The value of honesty and truth. Confession of guilt and remorse of acts committed by the convict so that there is an effort to absolve guilt on the convict,
- e. Human values. Upholding human dignity and dignity is not the other way around. Have a sense of humanity in criminal punishment as the purpose of punishment. Human values must certainly be in harmony with the values previously described. This is done so that the imposition of punishment can be humanist.

Furthermore, it turns to the formulation of Article 53 of the National Criminal Code regarding sentencing guidelines. This article is the principle for a judge in deciding sentencing. The basic idea or value contained in Article 53 of the National Criminal Code is that in trying a criminal case, the value of justice becomes the highest value as the main value or priority of criminal law enforcement if there is a conflict or conflict between legal certainty and justice. So the judge must prioritize justice.

Finally, the basic idea or value contained in Article 54 of the National Criminal Code as a guideline for punishment. This article is a review of guidelines for judges in deciding sentences. The so-called basic idea or value in this article is the value of balance. The point is that criminal law is oriented towards the perpetrator, not on his

²⁷ Faisal, *Politik Hukum Pidana*, Rangkang Education, Tangerang, 2020, hlm. 84.

actions. This is evidenced in Article 54 Paragraph (1) letters a to k where these points are all as considerations for criminal convictions by a judge oriented towards criminal offenders. In addition, Article 54 Paragraph (2) which considers aspects of justice and humanity.

So based on the description above, there are 3 basic ideas of the objectives and guidelines for the punishment of the National Criminal Code which are seen from the formulation of Article 51 to Article 54 of the National Criminal Code, namely: First, uphold the objectives (Article 51 and Article 52). Second, uphold the principles (Article 53) and Third, Review the Guidelines (Article 54).

C. Judges' Progressive Considerations in Imposing Crimes

Justice is not a thorough verification of the general intent of the implicative sentences formulated in articles of law. Justice is not a routine task of knocking the gavel on the courthouse. What is needed is that justice is the courage of interpretation of laws to uplift human dignity and dignity.²⁸ This spirit is in line with the vision and mission in progressive law.

Satjipto Rahardjo²⁹ In his book said, progressive law enforcement is carrying out the law not just the black-and-white words of the regulation (according to the letter), but according to the spirit and deeper meaning (to very meaning) of the regulation. So that in law enforcement what is required is not only intellectual intelligence, but with spiritual intelligence. In other words, law enforcement carried out nuances of determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find another way than usual.

The judge as the determining officer should act as a professional case breaker. Judges are components of the criminal justice system that hold judicial power. An independent power to administer justice in order to uphold law and justice. So that through the judge's deci-

28 Mukhidin, *Hukum Progresif sebagai Solusi Hukum yang Mensejahterakan Rakyat*, Jurnal Pembaharuan Hukum, Vol 1 No 3, 2014, hlm. 269.

29 Satjipto Rahardjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Genta Publishing, Yogyakarta, 2009, hlm. 13.

sion can restore balance, bring a sense of peace and resolve conflicts that occur.

In legal practice, the ways of lawing are progressively reflected in the progressive decisions of judges. Of course, the presence of the National Criminal Code can be a reference for progressive consideration of judges in imposing sentences. As said earlier, progressive law does not see law based only on black and white words in regulations. Therefore, this explanation sheds light on the judge's progressive considerations in sentencing them.

The progressive consideration of judges in imposing sentences on the National Criminal Code can be seen in the formulation of Article 54 Paragraphs (1) and (2). In article 54 Paragraph (1) there are 11 points of mandatory consideration by the judge in imposing a sentence, including considering the form of guilt of the criminal offender, the motive and purpose of committing the delict, the mental attitude of the delict offender, the offense carried out whether planned or unplanned, the way it is carried out in doing the delict, the attitude of the delict offender's behavior after committing the delict, the background and profile of the delict offender, The influence of the criminal on the future of the delict person, the influence of the offense on the victim or the victim's family, forgiveness from the victim and/or his family, finally consider how legal values live in society.

It is very clear that the formulation of ² article 54 Paragraph (1) of the National Criminal Code has progressive nuances as a reference for consideration guidelines for judges in sentencing crimes. How in the formulation of the article really considers the position of both the perpetrator and the victim. So that through these considerations can realize the expected goals and guidelines for punishment.

Progressive considerations are further reflected in ² Article 54 Paragraph (2) of the National Criminal Code. The article is clearly based on Rechterlijke Pardon or known as the judge's pardon. The concept of ² Rechterlijke Pardon is considered in accordance with living legal values and national legal values oriented to the value of Pancasila. The concept of ² Rechterlijke Pardon is the basis for judges

to consider the purpose and guidelines of punishment, in addition to criminal acts (objective /legality requirements) and errors (subjective requirements) in justifying the conviction of a person.

Keeping in mind the objectives and guidelines of punishment, under certain conditions judges are still given the authority to apologize and not impose any crime or action (non imposing of a penalty) even though criminal acts and mistakes have been proven.³⁰ With the guidelines not to impose crimes, the courts will become more humane, so it is said conceptually there has been a shift that is rigid / absolute will change to a flexible balance.³¹

Of course, in giving *Rechterlijke Pardon* there are crucial things that need to be considered, not only a judge gives *Rechterlijke Pardon* to perpetrators of criminal acts, including the lightness of actions or insignificant acts committed, such as the case of *mbok minah*. In addition, the background of the perpetrator, such as life history, social conditions and economic conditions of the perpetrator of the crime. The circumstances at the time of committing the offense, whether forced in self-defense, the emotional shock of the perpetrator, and so on. And judges are obliged to uphold human values and justice.

So that with the objectives and guidelines of punishment in the National Criminal Code, the judge's decision in imposing a sentence can progressively use a balance between intellectual and spiritual intelligence.³² Considering juridical, sociological and philosophical aspects of realizing justice oriented to moral justice, social justice and legal justice. Eliminating the concept of retaliation "no sorry for you" so far which is a reflection of the WvS Criminal Code. With the new formulation in the National Criminal Code, it is hoped that

30 Annisa Dian Permata Herista, Aristo Evandy A. Barlian, *Rechterlijk Pardon dalam Kebijakan dan Penerapan Pidana Indonesia*, Jurnal Pranata Hukum, Vol 15 No 2, Juli 2020, hlm. 140.

31 Marcus Priyo Gunarto, *Asas Keseimbangan dalam Konsep Rancangan Undang-Undang Kitab Undang Hukum Pidana*, Jurnal Mimbar Hukum, Vol 24 No 1, Februari 2012, hlm. 13.

32 Dwi Haryadi, Ibrahim, Darwance, Environmental Issues Related to Tin Mining in Bangka Belitung Islands, PEOPLE: International Journal of Social Sciences, Vol.18, Issue 3, hlm.67-85

it can be a reflection of a more humane punishment in accordance with the values of Pancasila, implemented properly in accordance with the objectives of criminal law.

D. Conclusion

The National Criminal Code has explicitly stated the purpose of the guidelines and punishment in it which is useful for judge judges in the process of imposing criminal law. In the objectives and guidelines of punishment, there is a basic idea of formulating goals and guidelines for punishment which is not just reading in the formulation of articles. The basic idea is to uphold goals such as the meaning of Articles 51 and 52. Uphold principles such as the meaning of Article 53. Finally, review the guidelines as a form of progressive consideration of judges in sentencing them, the meaning of Article 54.

The current way of law must be progressively manifested in a legal way that is not status quo, out of the conventional habit of enforcing the law only limited to black and white words in rigid laws and regulations. In the National Criminal Code, especially on the purpose and guidelines of sentencing, judges have flexibility in imposing sentences, balancing between the intellectual ability and spirituality of a judge. This is supported by the concept of *Rechterlijke Pardon* in criminal convictions. That way, in the imposition of punishment in accordance with the objectives and guidelines that have been set, it can be humanist and in accordance with the balance of Pancasila values as the philosophy of the Indonesian nation.

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