



NORMATIVE ANALYSIS OF LEGAL CERTAINTY FOR COMMUNITY SERVICE AS ALTERNATIVE PUNISHMENT UNDER THE NEW CRIMINAL CODE

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Abstract :

The revision of Indonesian criminal law through Law No. 1 of 2023 on the Criminal Code (New Criminal Code) introduces community service as an alternative punishment intended to reduce reliance on imprisonment and promote offender rehabilitation. However, its effectiveness depends on the legal certainty provided by the applicable regulatory framework. This study analyzes the legal certainty of community service as an alternative punishment under the New Criminal Code and examines its implications for penal reform in Indonesia. Using normative legal research, the study applies statutory, conceptual, and comparative approaches. Primary, secondary, and tertiary legal materials were analyzed qualitatively through systematic legal interpretation and legal argumentation. The findings indicate that the New Criminal Code provides a legal basis for the imposition, duration, and general implementation of community service. Nevertheless, legal certainty remains incomplete due to regulatory gaps concerning judicial discretion, implementation standards, institutional coordination, and oversight mechanisms, which may lead to inconsistent judicial practices. The study concludes that legal certainty depends not only on the existence of legal norms but also on a coherent regulatory framework that ensures clarity, consistency, and predictability. Strengthening implementing regulations, practical guidelines, and institutional capacity is therefore essential to ensure the effective implementation of community service and support Indonesia's criminal justice reform.

Keywords : Legal Certainty, Community Service, Criminal Code.

INTRODUCTION

Developments in modern criminal law demonstrate a shift in sentencing orientation from a predominantly retributive approach toward a framework that balances the protection of society, offender rehabilitation, victim restoration, and broader social interests. This shift is driven by the limitations of imprisonment in achieving the objectives of punishment, particularly because short-term imprisonment may increase recidivism, prisonization, disruption of offenders' social and economic relationships, and state expenditure. Consequently, non-custodial sanctions have increasingly been promoted as more proportionate alternatives oriented toward social reintegration, as reflected in the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) 1990 (Hirsch, 1996).

This development has also influenced criminal law reform in Indonesia through Law No. 1 of 2023 on the Criminal Code, which replaces the colonial-era Criminal Code and reformulates the philosophy of punishment in accordance



with Pancasila and the demands of a modern criminal justice system. One significant reform is the introduction of community service as a principal punishment that may serve as an alternative to imprisonment under certain conditions. This policy reflects a shift from the dominance of imprisonment toward a more flexible sentencing system that considers the objectives of punishment, the offender's degree of culpability, and societal interests (Barda Nawawi Arief, 2016). Community service also expands judicial discretion by enabling courts to impose sanctions that are not merely punitive but also promote offenders' social responsibility through work that benefits the community while preserving their social and economic relationships.

The urgency of alternative sentencing is further reinforced by persistent prison overcrowding in Indonesia. In early 2025, the number of inmates in prisons and detention centers exceeded 270,000, while available capacity was approximately 140,000. This condition has affected the quality of rehabilitation, prison security, and the state budget, thereby strengthening the need to treat imprisonment as an *ultimum remedium*. Following the entry into force of the new Criminal Code on January 2, 2026, the government and law enforcement agencies have begun preparing implementation instruments for new forms of punishment, including Attorney General Guideline No. 1 of 2025 concerning conditional sentences, supervised sentences, and community service. This development indicates that community service has moved beyond a purely normative provision toward an implementation stage requiring regulatory and institutional preparedness.

However, the success of legal reform depends not only on the enactment of new norms but also on their capacity to provide legal certainty in practice. As a relatively new form of punishment, community service requires clarity regarding sentencing criteria, types and locations of work, supervision mechanisms, inter-agency coordination, and legal consequences for non-compliance. From the perspective of the rule of law, legal certainty is essential to ensure consistent application, prevent multiple interpretations, and provide clear guidance for law enforcement officials and the public (Fuller, 1969). Although the new Criminal Code provides a legal basis for judges to impose community service by considering the offender's characteristics, consent, and sentencing objectives, normative gaps remain concerning implementation standards, coordination mechanisms, and measures of effectiveness, potentially resulting in variations in practice across regions (Friedman, 1975).

Academically, studies on community service in Indonesia have generally focused on philosophical considerations, sentencing policy, prison overcrowding, restorative justice, and comparative legal approaches. Research specifically examining legal certainty within the normative framework of community service remains limited. Yet, the effectiveness of a legal norm depends not only on its underlying objectives but also on the clarity with which it guides law enforcement officials. Accordingly, this study focuses on legal certainty by examining the normative construction of community service under the new Criminal Code, the relationship among relevant provisions, the

readiness of implementing regulations, and their implications for sentencing practice, while comparing community service with the conventional sentencing system dominated by imprisonment.

Thus, this study is expected not only to contribute to the development of criminal law scholarship but also to offer normative recommendations to policymakers and law enforcement officials for implementing community service more consistently. Clarity in regulations is an essential prerequisite for effectively realizing, in practice, the goal of criminal law reform namely, establishing a sentencing system that is fairer, more proportionate, and oriented toward social reintegration. Based on the above discussion, this study poses two research questions, namely: (1) how is community service regulated as an alternative punishment in the new Criminal Code; and (2) does this regulation provide legal certainty in its application? In line with these research questions, this study aims to analyze the normative framework of community service as a form of punishment in the new Criminal Code and to evaluate its level of legal certainty as the basis for applying alternative punishments within the Indonesian criminal justice system.

RESEARCH METHOD

This study employs normative legal research to examine the legal norms governing community service as an alternative punishment under Law No. 1 of 2023 on the Criminal Code. This approach is appropriate because the study focuses on the construction of legal norms, legal certainty, and regulatory consistency rather than empirical behavior or implementation. The research applies statutory, conceptual, and comparative approaches. The statutory approach analyzes provisions on community service and related sentencing regulations; the conceptual approach examines legal certainty and theories of punishment; and the comparative approach contrasts community service with conventional imprisonment to determine its position within Indonesia's criminal law reform (Marzuki, 2017). The legal materials consist of primary, secondary, and tertiary sources. Primary materials include the new Criminal Code, implementing regulations, and other relevant legislation; secondary materials comprise criminal law textbooks, national and international journal articles, previous studies, and academic documents; while tertiary materials include legal dictionaries, encyclopedias, and other relevant references. These materials were collected through library research, then inventoried, classified, and selected according to their relevance, with priority given to recent scholarly literature while retaining authoritative classical sources.

Legal materials were analyzed qualitatively using a prescriptive-analytical method. The analysis began by identifying the provisions governing community service, followed by grammatical, systematic, and teleological interpretation to determine their meaning and scope. The resulting norms were then examined through the theory of legal certainty, particularly regarding clarity, consistency, and predictability of application in criminal justice practice. The analysis was subsequently compared with the conventional imprisonment-

based sentencing system to assess the position and function of community service as an alternative sanction. This method is intended to formulate prescriptive legal arguments and recommendations for strengthening legal certainty in the implementation of community service within Indonesia's criminal justice system (Mertokusumo, 2019).

FINDINGS AND DISCUSSION

A. The Regulation of Community Service in the New Criminal Code: A New Paradigm for Indonesia's Penal System

The Philosophy and Legal Policy of Community Service

The reform of Indonesia's criminal law through Law No. 1 of 2023 on the Criminal Code not only replaces the colonial-era codification but also reorients the philosophy of punishment. Under the former Criminal Code, imprisonment dominated sentencing as the primary means of achieving penal objectives. Modern criminal justice, however, evaluates punishment not only by deterrence but also by its capacity to prevent recidivism, promote social reintegration, and achieve proportional and rehabilitative outcomes. Accordingly, punishment is increasingly understood as an instrument of social protection and offender rehabilitation that balances the interests of the state, victims, offenders, and society (Gultom, 2022). Imprisonment is therefore considered less appropriate as the primary response to less serious offenses or offenders with strong rehabilitative potential.

This development aligns with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) 1990, which encourage states to reduce excessive reliance on imprisonment while enabling offenders to maintain family, employment, and community relationships. In Indonesia, this orientation is reflected in the Academic Draft of the Criminal Code, which emphasizes balance among individual and societal interests, legal certainty, justice, and public benefit. Within this framework, community service functions as a non-custodial sanction that preserves offenders' relative freedom while requiring socially beneficial work for a specified period (Listiyanto et al., 2025). It is particularly relevant to less serious offenses and offenders with rehabilitative potential and reflects the principle of individualized punishment by requiring consideration of the offense, culpability, personal circumstances, consequences, and prospects for rehabilitation (Ahimsya, 2026).

The adoption of community service is also related to persistent problems in Indonesia's correctional system, particularly overcrowding, limited rehabilitation resources, and increased state expenditure resulting from excessive reliance on imprisonment (Saputra & Isnawati, 2022). Accordingly, alternative sanctions form part of criminal policy aimed at improving penal effectiveness while maintaining public protection. Community service, however, is not intended to abolish imprisonment but to function selectively for offenses and offenders meeting specified criteria, thereby expanding judicial sentencing options and strengthening proportionality and individualization (Falah, 2025). Its introduction seeks to restore imprisonment as an ultimum remedium when

other sanctions are insufficient. Thus, community service under the new Criminal Code represents a shift toward a penal system that balances legal certainty, justice, and public benefit, while emphasizing proportionality, rehabilitation, and social reintegration.

The Normative Framework for Community Service as a Criminal Sentence in the New Criminal Code

The New Criminal Code broadens sentencing options by granting judges greater discretion to impose sanctions according to the offense and offender's circumstances. Within this framework, community service functions as an alternative to imprisonment, particularly for less serious offenses, and reflects the principle of individualized punishment by promoting proportionality, rehabilitation, social responsibility, and reintegration (Sugiharto, 2016). It is therefore not a form of leniency, but an alternative form of criminal accountability that allows offenders to maintain their social, family, and employment relationships while fulfilling obligations to society.

However, the normative framework remains incomplete. Although the New Criminal Code regulates the basic requirements for imposing community service, it does not provide sufficiently detailed criteria concerning offender eligibility, the preference for community service over imprisonment, or the evaluation of its effectiveness. Regulation of implementation, including the types of service, placement, occupational safety, institutional authority, and evaluation mechanisms, is also limited. These gaps may expand judicial discretion, create dependence on local institutional policies, and result in regional variations. From Friedman's legal system perspective, this demonstrates that legal reform at the substantive level has not been fully supported by adequate legal structures and culture. Therefore, further implementing regulations and technical guidelines are necessary to bridge statutory norms and practical enforcement and to ensure that community service is applied consistently, fairly, and predictably.

Preliminary Analysis of the Status of Community Service as a Criminal Sentence from the Perspective of Legal Certainty

Community service under the New Criminal Code represents a significant reform of Indonesia's penal system by reducing reliance on imprisonment and promoting proportionality, rehabilitation, and social reintegration. Although it expands judicial sentencing options, its effectiveness depends on clear, consistent, and predictable legal norms in accordance with the principle of legal certainty (Fuller, 1969). In line with Radbruch's values of justice, utility, and legal certainty (Radbruch, 2006), community service provides a useful alternative to imprisonment while allowing consideration of offenders' circumstances. However, its normative framework remains incomplete, particularly regarding criteria for imposing community service, implementation standards, institutional supervision, evaluation mechanisms, and consequences for non-compliance. These gaps may create inconsistent interpretation and application, especially given the absence of established judicial practice. Therefore, implementing regulations, technical guidelines, and operational standards are necessary to strengthen legal certainty while preserving community service as a progressive

instrument of proportional and socially reintegrative sentencing.

B. Legal Certainty Regarding the Regulation of Community Service in the New Criminal Code

The Concept of Legal Certainty as a Parameter for Evaluating Legal Norms

Legal certainty is a fundamental element of the rule of law, requiring legal norms to be clear, consistent, and predictable, particularly in criminal law where their application directly affects individual liberty (Duff, 2018). In Indonesia, this principle is constitutionally guaranteed through Article 1(3) and Article 28D(1) of the 1945 Constitution, making legal certainty an essential basis for criminal law reform, including community service. Radbruch places legal certainty alongside justice and utility as fundamental legal values (Radbruch, 2006), while Fuller's principles of legality emphasize clarity and consistency in the formulation and application of legal rules (Fuller, 1969). These principles require community service provisions to provide understandable standards for judges and ensure consistent treatment of similar cases.

Legal certainty is further reinforced by the principle of legality (*nullum crimen, nulla poena sine lege*), which requires criminal sanctions to have a clear statutory basis and prevents excessive interpretation (Barda Nawawi Arief, 2016). Accordingly, assessing community service must extend beyond its formal recognition as a principal punishment to the clarity of its conditions, scope, implementation, supervision, and consequences of non-compliance. This study therefore evaluates its normative framework through three indicators: normative clarity, systematic consistency, and predictability of application. These indicators are particularly important because community service is a new legal institution without the established jurisprudence and implementation practices associated with imprisonment. Thus, legal certainty is understood not merely as the existence of written provisions, but as the capacity of the regulatory framework to provide clear, consistent, and predictable guidance for sentencing and enforcement.

Analysis of Legal Certainty Regarding the Criminal Provisions on Community Service in the New Criminal Code

An assessment of legal certainty in community service begins with its normative framework. The New Criminal Code represents progressive reform by expanding sentencing alternatives and promoting a more adaptive and rehabilitative system (Barda Nawawi Arief, 2016). Consistent with Fuller's view that legal norms must provide clear and predictable guidance (Fuller, 1969), Article 85 establishes formal limits by allowing community service for offenses punishable by less than five years' imprisonment where the sentence would generally not exceed six months or a Category II fine, with service ranging from 8 to 240 hours within six months. However, normative clarity remains incomplete. Article 85 requires judges to consider the offender's admission of guilt, work capacity, consent, social history, occupational safety, religion or beliefs, and ability to pay a fine, but does not specify their respective weight or interrelationship. This leaves broad judicial discretion, potentially producing divergent decisions in similar cases and reducing predictability. The consent

requirement reflects respect for human dignity and prevents forced labor, but its form, procedure, and timing are not sufficiently regulated. Implementation also presents regulatory gaps. Although community service must be non-commercial and compatible with the offender's employment and activities, the Criminal Code does not adequately regulate the types of work, safety standards, receiving institutions, or inter-agency coordination. Likewise, supervision by prosecutors and guidance by social workers lacks detailed coordination, reporting, and evaluation mechanisms, creating potential regional variations (Friedman, 1975). Article 85(7) also provides consequences for non-compliance, including repetition of service, execution of substituted imprisonment, or payment of a fine, but does not establish clear criteria for selecting the applicable consequence.

Thus, community service partially fulfills legal certainty through its statutory basis, sentencing conditions, duration, supervision, and non-compliance consequences. Nevertheless, substantial gaps remain regarding judicial discretion, technical implementation, inter-agency coordination, and enforcement standards. The primary issue therefore lies not in the recognition of community service but in the incompleteness of its normative framework. Implementing regulations and technical guidelines are necessary to reduce interpretive disparities while preserving judicial discretion and ensuring community service functions as a humane, consistent, and legally certain alternative to imprisonment.

Legal Implications of Criminal Regulations on Community Service for Criminal Justice Practices

The inclusion of community service in the New Criminal Code expands judicial sentencing options and changes the approach to determining appropriate criminal liability. Its effectiveness depends on the legal system's ability to translate statutory norms into consistent practice. Under Friedman's legal system theory, implementation requires the integration of legal substance, structure, and culture, particularly because community service is a new institution within Indonesia's criminal justice system (Friedman, 1975; Herlina, 2024). Community service also broadens judicial discretion by enabling judges to impose alternatives to imprisonment based on the offense, offender's circumstances, and sentencing objectives (Rayfindratama, 2023). However, insufficient normative criteria may increase sentencing disparities, particularly where similar cases receive different outcomes without objectively justified grounds (Idrus, 2023; Manuputty et al., 2026). Its implementation further requires coordination among courts, prosecutors, probation officers, local governments, and receiving institutions, supported by clear national standards for service types, placement, supervision, and reporting (Abdullah et al., 2024; Tyas & Iskandar, 2025; Syam et al., 2025).

Legal certainty also requires implementation that protects human dignity, occupational safety, and freedom from exploitation. The absence of standards concerning work, working hours, conditions, and supervision may create administrative, human rights, and constitutional concerns (Jamilah & Disemadi, 2020). Consistent interpretation among law enforcement institutions is therefore

essential and requires nationally applicable guidelines oriented toward social reintegration (Putra et al., 2025). Accordingly, the main challenge is not the conceptual acceptance of community service but the readiness of the legal system to implement it consistently. Strengthening implementing regulations, technical guidelines, institutional capacity, and integrated supervision is necessary to ensure that community service achieves a balance between legal certainty, justice, and public benefit.

Comparison of Community Service with the Conventional Penal System

Table 1. Comparison of Community Service with the Conventional Penal System

Criminal	Criminal Penalty: Imprisonment	Community Service
Purpose of Punishment	Retribution, prevention, protection of society	Rehabilitation, social reintegration, social responsibility
Legal certainty	High, as the system is well- established	Still developing; requires implementing regulations
Effectiveness	Effective for serious crimes, but faces overcrowding issues	Potentially effective for certain criminal offenses provided there are clear implementation guidelines
Human Rights Protection	Restrictions on liberty as a consequence of criminal punishment	Restrictions are more proportionate while maintaining human dignity

Source: Compiled by the author based on Law No. 1 of 2023 on the Criminal Code, Law No. 22 of 2022 on Corrections, and the results of a research analysis (2026).

C. Implications for the Reform of Indonesian Criminal Law

The enactment of Law No. 1 of 2023 on the Criminal Code marks a significant development in Indonesia’s criminal law reform through the introduction of community service as an alternative to imprisonment under specified conditions. This policy shifts sentencing from a predominantly liberty-deprivation model toward one emphasizing proportionality, social reintegration, and effectiveness, positioning community service as both a new sanction and an expression of a more modern and humane penal paradigm. Although conceptually consistent with contemporary non-custodial sentencing, its implementation remains insufficiently supported by a framework ensuring legal certainty. The New Criminal Code establishes basic requirements, duration, and general mechanisms, but leaves gaps concerning eligibility, implementation procedures, interagency coordination, and supervision, indicating that

substantive reform has not been fully accompanied by institutional and implementation reforms.

Legal certainty requires more than statutory recognition; it demands coherence among legal norms, institutions, and enforcement mechanisms while preserving judicial independence and individualized sentencing. Four areas therefore require strengthening: (1) implementing regulations specifying procedures for offender placement, types of service, occupational safety, supervision, reporting, and evaluation; (2) institutional arrangements establishing clear authority, standardized coordination, and communication among relevant agencies; (3) national guidelines providing objective indicators for judges and other officials to promote consistency while maintaining judicial discretion; and (4) integrated monitoring and evaluation, including national records of implementation, compliance, types of service, and rehabilitation outcomes. These measures should support implementation without restricting judicial independence. The findings confirm that criminal law reform extends beyond the enactment of the New Criminal Code and requires continuous harmonization of legal substance, institutional capacity, and legal culture. Legal certainty in community service can therefore be strengthened through four interrelated pillars: clear legal norms, institutional capacity, implementation guidelines, and effective supervision. While community service offers significant potential for a more proportional, humane, and socially reintegrative sentencing system, its effectiveness depends on the legal system's capacity to ensure consistent implementation. Strengthening implementing regulations, establishing national standards, developing law enforcement capacity, and improving monitoring mechanisms are consequently essential to its effective and legally certain application as an alternative sanction in Indonesia.

CONCLUSION

This study concludes that the regulation of community service under Law No. 1 of 2023 on the Criminal Code represents a significant reform of Indonesia's penal system by shifting sentencing from the dominance of imprisonment toward alternatives emphasizing proportionality, humanity, and social reintegration. Although the New Criminal Code establishes the legal basis for the imposition, duration, supervision, and consequences of community service, its provisions remain insufficient to ensure legal certainty due to limited normative guidance on sentencing criteria, implementation standards, interagency coordination, judicial discretion, and oversight, creating potential for inconsistent interpretation and application. These findings demonstrate that legal certainty requires not only statutory recognition but also a coherent, clear, consistent, and predictable regulatory framework supported by institutional capacity and effective implementation mechanisms. Accordingly, this study recommends comprehensive implementing regulations, objective sentencing guidelines, stronger interagency coordination, and effective oversight to ensure consistent application throughout Indonesia. The study contributes to criminal law scholarship by applying Gustav Radbruch's theory of the fundamental

values of law and Lon L. Fuller's principles of legality to assess the normative quality of community service regulation, while proposing a four-pillar framework comprising legal substance, implementing regulations, institutional capacity, and oversight as a practical basis for policymakers, law enforcement authorities, and academics to strengthen legal certainty and ensure the effective implementation of community service as an alternative to imprisonment.

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