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Non-Custodial Sentences in Indonesia's Sentencing System: Legal Interconnections among Sentencing Purposes, Sentence Execution, and Selective Decarceration

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ABSTRACT

The enactment of Law Number 1 of 2023 expands sentencing options through supervisory sentences, fines, and community service sentences. These sentences cannot be evaluated solely on the basis that their execution does not begin in prison. The regulation of convicted persons' obligations, the execution of judgments, and the legal consequences of noncompliance may maintain a legal connection between these sentences and imprisonment. This study aims to analyze the legal interconnections among sentencing purposes, the imposition and execution of non-custodial sentences, and selective decarceration within Indonesia's sentencing system. This analytical-prescriptive normative legal study employs the statute approach and the conceptual approach. The analysis classifies the relevant provisions according to sentencing purposes, sentencing requirements, forms of restriction, sentence execution, and legal consequences of noncompliance. The provisions are then examined through grammatical, systematic, and teleological interpretation. The findings demonstrate that the capacity to avoid initial imprisonment must be distinguished from the continued execution of a sentence outside prison. A supervisory sentence remains legally connected to imprisonment. The continued execution of a fine outside prison depends on payment and property enforcement. A community service sentence may replace either short-term imprisonment or a low-level fine, but the consequences of noncompliance depend on the underlying sentence. Selective decarceration is formulated through descriptive, evaluative, and prescriptive dimensions that govern both sentence imposition and legal consequences at the execution stage.

Keywords: *Individualized Sentencing; Non-Custodial Sentences; Selective Decarceration; Sentence Execution; Sentencing Purposes.*

INTRODUCTION

The enactment of Law Number 1 of 2023 changes the legal relationship among sentencing purposes, sentencing considerations, sentence classifications, and judicial authority to select the appropriate sentence. This reform extends beyond replacing a colonial-era codification. The Law also broadens sentencing options so that censure of a criminal offense does not always require deprivation of liberty. The literature indicates a shift from a system that prioritizes imprisonment toward one that distinguishes the types and functions of sentences in greater detail. Nevertheless, changes in sentencing provisions do not establish that sentencing practices have also changed ([Malau, 2023](#); [Nugraha et al., 2025](#); [Prameswari, 2026](#)). Law Number 1 of 2023 entered into force on January 2, 2026, and several of its provisions were adjusted through Law Number 1 of 2026.

Imprisonment remains available as a form of censure, prevention, and protection of society when deprivation of liberty is necessary. However, imposing imprisonment for every criminal offense is not always consistent with proportionality, individualized sentencing, and sentencing purposes. Imprisonment may disrupt family and employment relationships, increase stigma, and impede social reintegration. The judge must therefore determine whether deprivation of liberty is genuinely necessary ([Morris & Tonry, 1990](#)). The selective use of imprisonment does not eliminate criminal responsibility. It adjusts the type and severity of the sentence to culpability,

the seriousness of the offense, the victim's interests, and the need to protect society (Muladi & Arief, 1992).

Conditions in Penitentiaries and State Detention Centers demonstrate the policy relevance of limiting the use of imprisonment. An official publication by the [Ministry of Immigration and Corrections \(2026\)](#) recorded 271,468 occupants, consisting of 215,156 prisoners and 56,312 detainees. The available capacity was 146,860 persons, resulting in overcrowding of approximately 85 percent. The distinction between prisoners and detainees is important because non-custodial sentences are imposed through judgments, whereas the number of detainees is primarily affected by pre-judgment detention. Overcrowding is also associated with criminalization, detention, prosecution patterns, sentencing patterns, sentence length, and the execution of judgments ([Saputra & Isnawati, 2022](#)). These conditions affect accommodation, services, security, prisoner development, and the fulfillment of the rights of persons in correctional custody ([Gusron & Hariansah, 2025](#)).

The legal framework of this study consists of Law Number 1 of 2023 as amended by Law Number 1 of 2026, Law Number 20 of 2025, and Law Number 22 of 2022. Law Number 1 of 2023 regulates sentencing purposes, sentencing considerations, sentence classifications, sentencing requirements, and the legal consequences of each sentence. Law Number 20 of 2025 regulates the execution of judgments and sentence enforcement. Law Number 22 of 2022 regulates Community Guidance within the integrated criminal justice system. These Laws must be interpreted systematically because the procedural status of a defendant at the sentencing stage changes to that of a convicted person at the execution stage. Juvenile sentencing is excluded because it is governed by separate provisions and procedures.

The plurality of sentencing purposes requires sentences to be distinguished according to their functions and restrictive effects. Retribution, prevention, rehabilitation, protection of society, and restoration should not be treated as mutually exclusive purposes ([Rivanie et al., 2022](#)). Censure remains necessary to ensure that a sentence corresponds to the offender's culpability and criminal responsibility. However, censure does not always require confinement. Including restoration as a sentencing purpose does not mean that every sentence executed in the community is restorative. Restoration depends on offender accountability, victim participation, and the form of restoration achieved ([Putra et al., 2026](#); [Rahmi et al., 2026](#)).

This study uses non-custodial sentences as an analytical category encompassing supervisory sentences, fines, and community service sentences. None of these sentences initially places the convicted person in a closed institution. A supervisory sentence primarily restricts conduct and autonomy. A fine primarily restricts property interests. A community service sentence primarily restricts time, labor, and discipline. A confinement sentence is excluded because it remains custodial. Fines must also be distinguished between fines prescribed as penalties for an offense and fines imposed

under Article 71 of Law Number 1 of 2023. Supervisory sentences and community service sentences are both executed in the community, but they involve different requirements, burdens, and legal consequences of noncompliance (Ulfah, 2021; Laia, 2024; Rohmat et al., 2025; Sutanti et al., 2026).

Decarceration has a broader scope than non-custodial sentencing. It may include diversion before imprisonment, reduced detention, limitations on custodial sentences, and the release of persons already held in correctional institutions (Wang et al., 2020). This study focuses on sentencing defendants and executing sentences against convicted persons. Decarceration differs from decriminalization because the conduct remains a criminal offense and criminal responsibility continues to be imposed. The legal issues concern each sentence's capacity to avoid initial imprisonment, its continued execution outside prison, the legal consequences of noncompliance, and *net-widening*. The latter risk arises when community-based sentences are imposed on defendants who should receive a less restrictive response (Morris & Tonry, 1990).

Previous studies have examined sentencing transformation (Malau, 2023; Harefa et al., 2025; Nugraha et al., 2025), supervisory sentences (Btr et al., 2024; Rohmat et al., 2025; Sutanti et al., 2026), community service sentences (Ulfah, 2021; Laia, 2024), and overcrowding (Saputra & Isnawati, 2022; Gusron & Hariansah, 2025; Yofarrel, 2025). However, these studies have not provided an integrated analysis of sentencing requirements, forms of restriction on defendants' legally protected interests, the capacity to avoid initial imprisonment, the continued execution of sentences outside prison, and the legal consequences of noncompliance under Indonesia's legal framework following the 2026 amendments.

The novelty of this study does not lie in creating a new category for the three sentences. It consists of four propositions. First, the non-custodial character of a sentence cannot be assessed solely at the time of sentencing. Second, the capacity to avoid initial imprisonment must be distinguished from the continued execution of a sentence outside prison. Third, the legal consequences of noncompliance determine the decarcerative capacity of each sentence. Fourth, selective decarceration requires legal control at both the sentencing and execution stages. On this basis, the study aims to analyze the legal interconnections among sentencing purposes, the imposition and execution of non-custodial sentences, and selective decarceration within Indonesia's sentencing system.

METHOD

This study constitutes analytical-prescriptive normative legal research employing the statute approach and the conceptual approach (Qamar & Rezah, 2020). The statute approach analyzes Law Number 1 of 2023 as amended by Law Number 1 of 2026, Law Number 20 of 2025, and Law Number 22 of 2022. The analysis is limited to provisions governing sentencing purposes, supervisory sentences, fines,

community service sentences, the execution of judgments, the legal consequences of noncompliance, and Community Guidance. Presidential Decision Number 37 of 2025 is used only to explain the program for drafting implementing regulations and is not treated as an operative procedure. The conceptual approach applies theories of sentencing purposes, individualized sentencing, intermediate punishments, penal parsimony, interchangeability of punishments, back-up sanctions, net-widening, and decarceration (Morris & Tonry, 1990; Muladi & Arief, 1992). These concepts operate as analytical tools for examining Indonesian law. They do not replace national legal terminology or legal structures.

The research materials consist of primary and secondary legal materials (Sampara & Husen, 2016). The primary legal materials comprise laws and regulations directly related to the research focus. The secondary legal materials include books and scholarly articles on criminal law reform, non-custodial sentencing, sentencing purposes, restorative justice, sentence execution, criminal policy, and the Correctional System. The study also uses official documents concerning the number of occupants and the capacity of Penitentiaries and State Detention Centers. These data provide policy context and are not used to establish causation.

The analysis proceeds through six stages. First, it identifies provisions governing sentencing purposes, sentence classifications, sentencing requirements, sentence execution, and legal consequences of noncompliance. Second, it classifies the provisions according to supervisory sentences, fines, and community service sentences. Third, it compares the forms of restriction, the capacity to avoid initial imprisonment, and the continued execution of each sentence outside prison. Fourth, it interprets the relationship among the provisions through grammatical, systematic, and teleological interpretation. Fifth, it evaluates the results through proportionality, individualized sentencing, penal parsimony, back-up sanctions, and the risk of net-widening. Sixth, it formulates selective decarceration based on the analysis.

The analysis distinguishes four categories of propositions. The first category consists of the applicable law. The second consists of the author's interpretation of the relationship among legal provisions. The third identifies regulatory deficiencies or procedural gaps. The fourth consists of legal recommendations. This distinction prevents the applicable law from being conflated with proposed legal reform.

RESULTS AND DISCUSSION

A. Sentencing Purposes and the Normative Grounds for Imposing Non-Custodial Sentences

Law Number 1 of 2023 regulates the relationship among sentencing purposes, sentencing considerations, sentence classifications, and sentence selection. These provisions require judges to assess culpability, the consequences of the offense, the defendant's circumstances, the victim's interests, and the need to protect

society. Under retributive theory, punishment constitutes a consequence of the offender's culpability. Under preventive theory, punishment aims to prevent crime and rehabilitate the offender. Integrative theory considers the interests of the defendant, the victim, and society simultaneously (Muladi & Arief, 1992; Rivanie et al., 2022). Retribution therefore remains one of the purposes of sentencing, but deprivation of liberty need not always constitute the form of censure.

Article 51 of Law Number 1 of 2023 provides for prevention, rehabilitation, guidance, conflict resolution, restoration of balance, the creation of a sense of security, and the fostering of remorse. The restorative elements of Article 51 relate to restorative justice, but Article 51 does not codify all elements of restorative justice (Putra et al., 2026; Rahmi et al., 2026). Article 51 must be interpreted together with Article 52, Article 53, and Article 54 of Law Number 1 of 2023. Article 52 prohibits degradation of human dignity from constituting a sentencing purpose. Article 53 requires the enforcement of law and justice. Article 54 specifies sentencing considerations. Philosophical considerations may assist judges in assessing substantive justice, but they cannot replace the principle of legality or the limits of prescribed penalties (Asa et al., 2025). The exercise of sentencing discretion must be based on clear reasons stated in the judgment (Prasetyo et al., 2026).

Differences in the type or severity of a sentence may be justified when based on the degree of culpability, the defendant's role, the victim's loss, personal circumstances, financial capacity, or the effect of the sentence on the defendant's future. Such differences constitute unjustifiable sentencing disparity when unsupported by relevant reasons (Muladi & Arief, 1992). By selecting a sentence, the judge determines the form of restriction imposed on the defendant's legally protected interests. A supervisory sentence primarily restricts conduct and autonomy. A fine primarily restricts property interests. A community service sentence primarily restricts time, labor, and discipline. The interchangeability of sentences is justified only when it complies with proportionality and takes account of the defendant's circumstances and the seriousness of the offense (Morris & Tonry, 1990).

Article 57, Article 70, and Article 71 of Law Number 1 of 2023 establish different grounds for limiting imprisonment. Article 57 prioritizes the less severe principal sentence when penalties are formulated alternatively and the selected sentence supports the purposes of sentencing. This provision reflects penal parsimony in selecting the type and severity of a sentence. Penal parsimony differs from the principle that criminal law constitutes the last resort (*ultimum remedium*). Both concepts nevertheless require that penal measures not exceed what is necessary to address criminal conduct. Article 70 specifies circumstances in which imprisonment should, to the extent possible, not be imposed and also

prescribes exceptions. Article 71 authorizes the judge to impose a fine when an offense is punishable only by imprisonment for less than five years and the judge determines that imprisonment is unnecessary. These Articles are related but do not establish cumulative requirements.

Article 64 and Article 65 of Law Number 1 of 2023 classify sentences into imprisonment, confinement, supervisory sentences, fines, and community service sentences. Supervisory sentences, fines, and community service sentences are analyzed as non-custodial sentences because their primary execution does not involve confinement in a closed institution. Confinement is excluded because it remains a deprivation of liberty. The addition of supervisory sentences and community service sentences broadens the range of principal sentences available to judges (Harefa et al., 2025). Each sentence nevertheless has different functions, requirements, and legal consequences. The imposition of a non-custodial sentence must therefore be based on reviewable reasons rather than solely on the assumption that it is less severe.

Table 1. Principal Requirements for Imposing Non-Custodial Sentences

Type of Sentence	Legal Basis	Principal Requirements
Supervisory sentence	Article 65 section (1) letter c, Article 75, and Article 76 section (1) of Law Number 1 of 2023 as amended by Law Number 1 of 2026	The offense is punishable by imprisonment for a maximum of five years; the sentence is imposed on a person who commits a criminal offense for the first time; the judge considers sentencing purposes, sentencing considerations, and the circumstances specified in Article 70; the supervision period may not exceed three years or the prescribed term of imprisonment.
Fine	Article 65 section (1) letter d, Article 71, Article 78, Article 79, and Article 80 of Law Number 1 of 2023	The fine is imposed according to the prescribed penalty and the defendant's financial capacity. Application of Article 71 requires an offense punishable by imprisonment for less than five years, a judicial determination that imprisonment is unnecessary, and fulfillment of one circumstance under Article 71 section (2), subject to Article 71 section (4).
Community service sentence	Article 65 section (1) letter e and Article 85 of Law Number 1 of 2023	The offense is punishable by imprisonment for less than five years; the specific sentence is imprisonment for a maximum of six months or a fine not exceeding Category II; the judge considers admission, capacity to work, the defendant's consent, social history, safety, religion or belief, political conviction, and ability to pay.

Source: Processed from Law Number 1 of 2023 as amended by Law Number 1 of 2026.

B. Distinct Requirements and Characteristics of the Three Non-Custodial Sentences

Supervisory sentences, fines, and community service sentences are not initially executed in a Penitentiary. This common characteristic does not mean that they have the same capacity to avoid imprisonment. The analysis must distinguish the imposition of a sentence that does not initially place the defendant in prison from the continued execution of that sentence outside prison. This distinction

prevents the interchangeability of punishments from being applied without regard to the requirements and legal consequences of each sentence (Morris & Tonry, 1990).

A supervisory sentence is a principal sentence executed in the community subject to compliance with general and special conditions. Its execution includes the execution of the judgment, supervision, and Community Guidance. The Elucidation of Article 75 of Law Number 1 of 2023 continues to relate a supervisory sentence to the mode of executing imprisonment (*strafmodus*). This relationship demonstrates that a supervisory sentence is formally non-custodial but remains legally connected to imprisonment. Several studies categorize supervisory sentences as alternatives to deprivation of liberty and as mechanisms for guidance and social reintegration (Btr et al., 2024; Rohmat et al., 2025; Sutanti et al., 2026).

Article 75 and Article 76 section (1) of Law Number 1 of 2023 as amended by Law Number 1 of 2026 limit supervisory sentences to offenses punishable by imprisonment for a maximum of five years. The supervision period may not exceed three years, and the sentence may be imposed on a person who commits a criminal offense for the first time. Textually, the phrase “commits a criminal offense for the first time” is not identical to “has never been convicted.” Its application requires proof consistent with the presumption of innocence and legal certainty. The general condition prohibits the convicted person from committing a new criminal offense. Special conditions may require restitution or the performance or omission of specified conduct. Restitution may benefit the victim, but it does not by itself constitute a restorative justice process (Rahmi et al., 2026; Sutanti et al., 2026).

Fines have a different legal structure because not every fine replaces potential imprisonment. A fine may be prescribed as a sole, alternative, or cumulative sentence for an offense. Article 71 of Law Number 1 of 2023 authorizes the judge to impose a fine when imprisonment is considered unnecessary. The Article distinguishes victimless offenses, circumstances in which the victim does not object to the offense, and the absence of repeat offending. A victim’s decision not to object is not equivalent to forgiveness or settlement. Article 71 section (4) further provides that a prior sentence of imprisonment for an offense committed before the person reached 18 years of age does not disqualify that person under the requirement concerning the absence of repeat offending.

A fine primarily restricts property interests. The judge must assess the defendant’s income, expenditures, and financial capacity so that economic differences do not produce inequality in the imposition of fines. A day-fine may be used as a measure for assessing the equality of a fine according to ability to pay. This concept, however, does not replace the statutory fine categories (Morris & Tonry, 1990). At the sentencing stage, a fine does not place the defendant in

prison. Its continued execution outside prison depends on payment, installment arrangements, seizure, and the auction of property or income.

Article 85 of Law Number 1 of 2023 provides two applications of a community service sentence. It may replace imprisonment for a maximum of six months or a fine not exceeding Category II. The offense must be punishable by imprisonment for less than five years. The underlying sentence and the community service sentence are specified in the same judgment. The underlying sentence determines the obligation and the legal consequences if the community service sentence is not performed. The literature categorizes community service sentences as alternatives to short-term imprisonment and low-level fines, although their execution must remain consistent with Indonesian positive law (Ulfah, 2021; Laia, 2024).

In imposing a community service sentence, the judge must consider admission, capacity to work, the defendant's consent after receiving an explanation, social history, safety, religion or belief, political conviction, and ability to pay. The defendant's consent does not eliminate the punitive character of community service. The legality of the judgment, the suitability of the work, occupational safety, time limits, the prohibition of commercial use, and supervision are necessary to prevent exploitation. Article 85 of Law Number 1 of 2023 prescribes a minimum of eight hours and a maximum of 240 hours of community service. The sentence may be executed for no more than eight hours per day and may be performed in installments over a maximum period of six months.

Table 2. The Position of the Underlying Sentence in Community Service

Element	Imprisonment as the Underlying Sentence	Fine as the Underlying Sentence
Sentence replaced	Imprisonment for a maximum of six months	A fine not exceeding Category II
Sentence executed	Community service sentence	Community service sentence
Principal obligation	Performance of the community service hours and schedule stated in the judgment	Performance of the community service hours and schedule stated in the judgment
Consequence of noncompliance	Repetition of all or part of community service or execution of the substituted imprisonment as stated in the judgment	Repetition of all or part of community service, payment of the fine, or execution of substitute imprisonment as stated in the judgment
Limit on executing authority	The executing official may not determine a consequence not stated in the judgment	The executing official may not determine a consequence not stated in the judgment

Source: Processed from Article 85 of Law Number 1 of 2023.

The three sentences therefore have distinct characteristics. A supervisory sentence avoids initial imprisonment but remains legally connected to imprisonment. A fine also avoids initial imprisonment, but its continued execution outside prison depends on fulfillment of the payment obligation. A community

service sentence may replace either of two underlying sentences. These differences do not establish a hierarchy of severity. The continued execution of each sentence outside prison depends on the convicted person's obligations, the execution of the judgment, the allocation of institutional functions, and the legal consequences of noncompliance.

C. Execution of Non-Custodial Sentences and the Legal Consequences of Noncompliance

The continued execution of a sentence outside prison depends on the nature and scope of the convicted person's obligations, the execution of the judgment, supervision, Community Guidance, and the legal consequences of noncompliance. Within intermediate punishments, back-up sanctions are necessary to ensure enforceability. These consequences do not always consist of imprisonment. Noncompliance may result in repetition of all or part of a community service sentence, extension of the supervision period, payment of a fine, or execution of the underlying sentence according to the legal structure of each sentence. Excessive conditions and supervision may produce net-widening without reducing the use of imprisonment ([Morris & Tonry, 1990](#)).

The relationship between Article 76 and Article 77 of Law Number 1 of 2023 as amended by Law Number 1 of 2026 presents interpretive ambiguity and incomplete procedural regulation. It is not immediately classified as a conflict of norms. Article 76 section (4) requires the convicted person to serve imprisonment upon violation of the general condition. Article 76 section (5) excludes that consequence when the new offense is punishable by imprisonment for a maximum of six months. Article 77 generally provides that a violation of the general condition results in revocation of the supervisory sentence and execution of imprisonment without restating the exception.

Under systematic interpretation, Article 76 section (5) may be understood as a special provision limiting the consequences under Article 76 section (4) and Article 77. This conclusion constitutes the author's interpretation rather than an expressly stated procedural rule. The applicable provisions do not identify the authority competent to determine the term of imprisonment, the legal status of the imprisonment connected with the supervisory sentence, the calculation of the supervision period, or the consequence when the convicted person is not sentenced to imprisonment for the new offense. A violation of a special condition follows a different procedure because the public attorney submits a request to the judge based on the Community Guidance Officer's consideration.

Article 81 of Law Number 1 of 2023 provides the legal basis for payment, installment arrangements, seizure, and auction in the execution of a fine. It requires the payment period to be specified in the judgment and permits payment

by installments. Article 81 also regulates seizure and auction of property or income when the fine remains unpaid. This provision relates to Article 345 of Law Number 20 of 2025, which provides one month for payment and a maximum extension of one month for a valid reason. Article 346 section (1) of Law Number 20 of 2025 allows the convicted person to apply for installment payment within a maximum period of six months after the judgment becomes final and binding.

The applicable provisions do not fully specify the sequence of payment, extension, installment application, seizure, auction, and application for a substitute sentence. Property necessary for a decent standard of living and employment may not be seized. This limitation demonstrates that fine enforcement concerns both collection and the protection of the convicted person's basic needs.

Article 82 of Law Number 1 of 2023 as amended by Law Number 1 of 2026 provides that the unpaid balance of a fine is replaced by substitute imprisonment when seizure and auction are insufficient or cannot be conducted. Substitute imprisonment ranges from one day to two years. Its duration is calculated progressively under Appendix III to Law Number 1 of 2026. Any period of detention already served reduces the term of substitute imprisonment. Article 83 continues to allow the convicted person to pay the fine while serving substitute imprisonment. Such payment proportionally reduces the remaining term.

The applicable law does not expressly distinguish nonpayment caused by inability to pay from refusal to pay despite sufficient means. This distinction is recommended based on proportionality, individualized sentencing, and substantive equality. The recommendation does not authorize the official executing the judgment to disregard a mandatory legal consequence. Any such distinction requires a clear statutory basis or an implementing provision adopted within the scope of delegated authority.

The legal consequences of noncompliance with a community service sentence must be stated in the judgment. Article 85 section (7) and Article 85 section (9) of Law Number 1 of 2023 require the judgment to specify the underlying sentence, the number and schedule of community service hours, and the consequence of failure to perform the obligation without a lawful reason. When community service replaces imprisonment, noncompliance may result in execution of the substituted imprisonment. When community service replaces a fine, noncompliance may result in payment of the fine or execution of substitute imprisonment. The judge must determine the legal consequence in accordance with the underlying sentence.

The Law does not require repetition of community service to precede imprisonment in every case. A graduated response before imprisonment therefore constitutes a legal recommendation rather than a generally applicable procedure

(Ulfah, 2021; Laia, 2024). Such a recommendation may only be implemented after obtaining a clear legal basis.

The allocation of institutional functions must follow the statutory verbs and powers assigned under each Law. Article 349 of Law Number 20 of 2025 assigns the public attorney responsibility for executing judgments imposing supervisory sentences and community service sentences. Article 85 section (8) of Law Number 1 of 2023 assigns supervision of community service execution to the public attorney and guidance to the Community Guidance Officer. Article 55, Article 56, and Article 57 of Law Number 22 of 2022 treat supervision as an element of Community Guidance conducted by the Correctional Center for Clients serving supervisory sentences and community service sentences.

Table 3. Allocation of Institutional Functions in the Execution of Non-Custodial Sentences

Official or Institution	Legal Basis	Principal Function	Object of Action	Limit of Authority
Judge	Law Number 1 of 2023	Imposes the sentence, specifies obligations, and determines the legal consequences of noncompliance	Defendant and content of the judgment	Does not administratively execute the judgment
Public attorney	Article 349 of Law Number 20 of 2025; Article 85 section (8) of Law Number 1 of 2023	Executes the judgment and supervises execution of community service as prescribed	Judgment and performance of the convicted person's obligations	May not add sanctions or alter the judgment
Community Guidance Officer	Law Number 22 of 2022; Article 85 section (8) of Law Number 1 of 2023	Conducts Community Guidance and provides considerations within the assigned authority	Correctional Clie	May not assume sentencing or judgment-execution powers
Correctional Center	Article 55, Article 56, and Article 57 of Law Number 22 of 2022	Conducts Community Guidance, including supervision of Clients	Clients serving supervisory or community service sentences	May not determine legal consequences outside the judgment
Penitentiary	Law Number 22 of 2022	Conducts prisoner development within the institution	Prisoners	Does not conduct Community Guidance for Clients outside the institution

Source: Processed from Law Number 1 of 2023, Law Number 20 of 2025, and Law Number 22 of 2022.

Execution of the judgment by the public attorney must be distinguished from Community Guidance conducted by the Community Guidance Officer and the Correctional Center. Prisoner development within a Penitentiary also differs from Community Guidance for Clients (Putra et al., 2025). Findings concerning conditional-release guidance at the Class II Bekasi Correctional Center describe

only a particular institution and legal context. They do not establish national conditions concerning the execution of non-custodial sentences (Lubis et al., 2023).

The Laws regulate obligations, legal consequences of noncompliance, and institutional functions, but they do not govern all operational procedures. Presidential Decision Number 37 of 2025 includes draft regulations on sentence execution and correctional functions in the 2026 Government Regulation Drafting Program. The Presidential Decree does not itself constitute an implementing norm. Implementing regulations may govern coordination, recordkeeping, reporting, occupational safety, and the examination of noncompliance. They may not add sanctions, alter judgments, or transfer judicial authority to another institution. An assessment of institutional readiness, resources, and legal culture requires empirical data. Siagian (2023) and Yusuf et al. (2025) demonstrate that an evaluation of effectiveness requires empirical evidence and therefore cannot be equated with normative analysis.

D. Selective Decarceration within Indonesia's Sentencing System

Selective decarceration does not abolish imprisonment. It limits the imposition of imprisonment when sentencing purposes can be achieved through another adequate sentence. The judge determines the suitability of a non-custodial sentence according to the prescribed penalty, the seriousness of the offense, the defendant's circumstances, the victim's interests, financial capacity, capacity to work, and the need to protect society. These requirements are consistent with the selective use of imprisonment and penal parsimony (Morris & Tonry, 1990; Muladi & Arief, 1992). They do not create a general right for every defendant to receive a non-custodial sentence.

At the sentencing stage, supervisory sentences and fines do not place defendants in prison. Community service sentences may replace short-term imprisonment or low-level fines. The non-custodial character of these sentences must nevertheless be reassessed at the execution stage. Violations of supervisory conditions, nonpayment of fines, and failure to perform community service may result in imprisonment. The decarcerative capacity of a sentence therefore depends on the relationship among sentencing, execution, and legal consequences of noncompliance.

Positive law establishes sentencing requirements and legal consequences of noncompliance. However, it does not regulate a uniform examination of the reasons for noncompliance, the seriousness of the violation, financial capacity, and proportionality before imprisonment is executed. Such an examination constitutes a legal recommendation. It may not be implemented in a manner that contradicts mandatory consequences prescribed by statute.

Selective decarceration is relevant to overcrowding because non-custodial sentences do not initially place convicted persons in Penitentiaries. This normative relationship does not necessarily reduce the correctional population. The number of occupants is also affected by criminalization, detention, prosecution patterns, sentencing patterns, sentence length, and the execution of judgments (Saputra & Isnawati, 2022). Alternative sentences may reduce the number of convicted persons initially placed in Penitentiaries, but their effect on the total population has not been empirically established (Harefa et al., 2025). The effect of overcrowding on services and the rights of persons in correctional custody provides a policy reason for rationally limiting imprisonment (Gusron & Hariansah, 2025).

Selective decarceration forms part of a broader criminal policy that includes penal and non-penal measures. Overcriminalization may increase the number of cases, detentions, sentences, and the institutional burden on the Correctional System. This normative study cannot determine the extent of that effect (Yofarrel, 2025). The use of criminal law to address social problems may increase the risk of harm and injustice to economically disadvantaged groups. Penal policy should therefore be accompanied by social and non-penal interventions (Atika et al., 2025; Azis & Ridwan, 2025). Community-based sentences must also be limited so that they are not imposed on defendants who should receive a less restrictive response.

Selective decarceration has three dimensions. The descriptive dimension explains sentencing requirements, sentence execution, and the legal consequences of noncompliance. The evaluative dimension assesses each sentence's capacity to avoid initial imprisonment and to continue outside prison. The prescriptive dimension considers the reasons for noncompliance, the seriousness of the violation, financial capacity, and proportionality before imprisonment is imposed, provided that such reform has an adequate legal basis.

The contribution of this study lies in demonstrating that non-custodial sentences cannot be evaluated solely by their form at the time of judgment. The analysis must include the relationship among the sentence imposed, the convicted person's obligations, the allocation of institutional functions, and the legal consequences of noncompliance. Selective decarceration therefore constitutes legal control over imprisonment at both the sentencing and execution stages within Indonesia's sentencing system.

CONCLUSIONS AND SUGGESTIONS

Law Number 1 of 2023 limits imprisonment through sentencing purposes, sentencing considerations, individualized sentencing, preference for less severe sentences, and the regulation of supervisory sentences, fines, and community service sentences. A supervisory sentence avoids initial imprisonment but remains legally

connected to imprisonment. A fine also avoids initial imprisonment, but its continued execution outside prison depends on payment and property enforcement. A community service sentence may replace short-term imprisonment or a low-level fine, while the legal consequences of noncompliance depend on the underlying sentence.

The relationship between Article 76 and Article 77 of Law Number 1 of 2023 is more accurately classified as interpretive ambiguity and incomplete procedural regulation. Under systematic interpretation, Article 76 section (5) may be understood as a special provision. This interpretation does not resolve the questions concerning the competent authority, determination of the term of imprisonment, legal status of the imprisonment, and calculation of the supervision period.

Selective decarceration constitutes legal control over the imposition of imprisonment and its execution as a consequence of noncompliance. It has descriptive, evaluative, and prescriptive dimensions. Its relationship with overcrowding is normative and does not establish actual effectiveness. The study does not measure sentencing patterns, convicted persons' compliance, institutional readiness, or changes in the correctional population after the relevant provisions entered into force.

The legislature should clarify the relationship between Article 76 section (5) and Article 77 of Law Number 1 of 2023. The relationship between Article 81 of Law Number 1 of 2023, Article 345 of Law Number 20 of 2025, and Article 346 of Law Number 20 of 2025 also requires clarification, particularly regarding the sequence of payment, installment arrangements, seizure, auction, and application for a substitute sentence. Nonpayment caused by inability to pay should be distinguished from refusal to pay despite sufficient means. This distinction requires a clear legal basis and cannot be left entirely to the official executing the judgment.

The Supreme Court, the Attorney General's Office, and the Ministry of Immigration and Corrections should issue guidelines within their respective authority. These guidelines should distinguish sentencing, execution of judgments, supervision of community service, and Community Guidance. Execution of the three sentences requires competent officials, a sufficient number of Community Guidance Officers in relation to workload, adequate funding, and community service locations that satisfy occupational-safety requirements and are not operated for commercial purposes. Further research should examine judicial reasoning, convicted persons' compliance, reasons for noncompliance, financial capacity, the use of substitute sentences, the risk of net-widening, and the effect of non-custodial sentences on the Penitentiary population.

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