Objective Parameters and Limits of Judicial Discretion in Supervision and Community Service Sentences under the National Criminal Code

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Abstract

Law Number 1 of 2023 concerning the Criminal Code, in force since 2 January 2026 and adjusted by Law Number 1 of 2026 concerning Penal Adjustment, lists supervision and community service among the principal penalties, so that a judge may choose a sanction other than imprisonment. The statutes say that the judge "may" impose these sentences, which raises the question of how far that choice is guided and where it stops. This article asks which objective parameters guide a judge in imposing supervision and community service and what limits bind the discretion. It uses normative legal research with statutory, conceptual, and limited case-commentary approaches, drawing on legal materials, doctrinal literature, and judicial commentary published until 10 November 2026. Four layers of parameters are identified: the purposes of punishment, the preference for lighter sanctions, formal thresholds that work as two gates (one on the abstract threat and one on the sanction the judge would otherwise impose), and individual factors. Three kinds of limit bind the discretion: legal exclusions, protection of the convicted person, and the duty to give reasons. The article proposes a five-stage reasoning model and a checklist for the operative part of the judgment, and it concludes that the procedure for breach of conditions needs a clear regulation.

Keywords:Judicial Discretion; Supervision Sentence; Community Service; Sentencing Parameters; National Criminal Code

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Introduction

For more than a century the colonial *Wetboek van Strafrecht* made imprisonment the working centre of Indonesian sentencing. A judge who wished to spare a defendant from a prison cell had little to choose from except the conditional sentence, which is still an imprisonment whose execution is suspended [1]. Sudarto warned that short imprisonment brings prisonization and stigma [2], and Arief criticised a legislative policy that leaned too heavily on the prison [3]. Indonesian doctrine repeats the point: punishment should be a last resort, and the sanction system has to follow the nature of the offence [4, pages 60 and 164–165].

Law Number 1 of 2023 concerning the Criminal Code, called here the National Criminal Code, answers that criticism by widening the principal penalties to five kinds: imprisonment, *tutupan* (a special form of confinement), supervision, fine, and community service (Article 65 paragraph (1)). The Code came into force on 2 January 2026 together with Law Number 20 of 2025 concerning the Criminal Procedure Code, called here the new Criminal Procedure Code, and Law Number 1 of 2026 concerning Penal Adjustment, called here the Penal Adjustment Law [5, Articles 65 and 624], [6], [7]. The Code also states the purposes of punishment, forbids degrading treatment, and lists what a judge must consider (Articles 51 to 54). For the first time, then, a judge can lawfully choose between a prison term and two sanctions served in the community.

Yet the new sanctions are worded with the word “may”. A judge is not obliged to impose them, and the statute does not say in so many words when they must be preferred. Wide discretion opens the way to individual justice, but vague parameters invite disparity, a concern that commentators already voice about the judicial pardon in Article 54 paragraph (2) [8]. Early practice shows the tension. Of twenty-four cassation and review decisions studied in a Supreme Court publication up to the end of June 2026, prosecutors demanded supervision in only two, while seven decisions changed a conditional sentence into supervision and five of them rested on a settlement with the victim [9]. Observers also note that the new Criminal Procedure Code has no separate chapter on carrying out supervision, even though it allows a prosecutor to demand it [10].

Earlier Indonesian studies mostly predate the National Criminal Code and are conceptual. Jamilah and Disemadi, and Fajri, present community service as a means of reducing prison crowding [11], [12], while Hikmawati examines supervision as a successor of the conditional sentence [13]. Studies from 2026 begin to look at implementation [14]. What is still missing is an analysis that starts from the judge: which objective parameters are written into the statute, how they combine, and where discretion is cut off. This article fills that gap through two research questions. First, which objective parameters guide a judge in imposing supervision and community service under the National Criminal Code as adjusted by the Penal Adjustment Law? Second, what are the limits of the judge’s discretion in imposing them?

Literature Review

2.1 Judicial discretion as structured choice

Barak defines judicial discretion as the power to choose among several lawful options, and he stresses that this power is always bounded by procedural and substantive conditions, so it is not the same as arbitrariness [15]. Applied to sentencing, the idea has two practical consequences. The first is that discretion can be narrowed by giving the judge objective parameters, such as thresholds and mandatory considerations. The second is that what remains after the narrowing has to be justified by reasons. Ashworth adds two guiding ideas for that remaining choice: proportionality between sanction and offence, and parsimony, which asks the court to select the least onerous sanction that is adequate for the purpose [16].

Indonesian doctrine reaches a similar place from another direction. The principle of individualization of punishment asks the judge to fit the sanction to the characteristics and

condition of the offender, even if a fixed guideline on parameters was long missing [17, page 17]. Ismaidar and Sumarno also note that officials in the criminal justice system often use discretion in practice when they settle cases outside the court [18, pages 40–41]. Criminal law that looks at both the act and the actor, called *daad-dader strafrecht*, seeks a balance between protecting society and guiding the offender [17, page 11], [19]. The combined theory of punishment, which joins prevention, guidance, and restoration, gives the same orientation [20, pages 58–62].

2.2 Alternatives to imprisonment in Indonesian scholarship

Muladi's work on the conditional sentence is the classic Indonesian treatment of non-custodial sanctions [1]. Gea and Ismaidar connect the choice of sanction with the system of sanctions and with restorative ideas [4, pages 164–165], and the collection edited by Hasibuan places the move away from imprisonment inside the wider development of restorative justice [21, pages 96–97]. The older studies of community service and supervision belong to the same line. Jamilah and Disemadi, and Fajri, wrote before the Code was enacted and treat community service as a policy answer to prison crowding [11], [12]. Hikmawati argues that supervision should replace the conditional sentence in order to move toward restorative justice [13]. Puspitaningtyas and Kusumawati read the replacement of imprisonment by community service from the perspective of human rights [22]. Khomaini studies the implementation of community service under the new Code and proposes cooperation among judges, the correctional centre, and local government [14].

2.3 Early commentary on practice

Judges of the Supreme Court have started to write on how the sanctions work. Pudjoharsoyo describes the supervision sentence as a bridge between the old conditional sentence and the new principal penalty, and he points to the tension between the model wording in Supreme Court Circular Letter Number 1 of 2026 and the independent character of supervision [23], [24]. Syarifudin reports that more than twenty district courts had imposed supervision by March 2026 [25]. Yudhistira offers the data summarised above [9]. These pieces describe practice and doubts; none of them sets out the parameters of discretion as a system. The present article therefore combines the statutory text, the doctrine, and this commentary into one analytical frame.

Research Methodology

This is normative legal research, which examines norms, principles, and doctrine in order to produce a prescriptive argument about a legal issue [26], [27]. The statutory approach is applied to the National Criminal Code, the Penal Adjustment Law, the new Criminal Procedure Code, Law Number 48 of 2009 concerning Judicial Power, Law Number 22 of 2022 concerning Corrections, and Supreme Court Circular Letter Number 1 of 2026 [5], [7], [6], [28], [29], [24]. The conceptual approach clarifies judicial discretion, proportionality, and the purposes of punishment. A limited case approach uses published commentary and reports on 2026 decisions, because the decisions themselves are not all available in public databases.

Primary legal materials are the statutes and court regulations; secondary materials are books, journal articles, and publications of the judiciary. They are analysed qualitatively through systematic interpretation and deduction from the norms to the issues. Two limits should be stated. The data on practice are illustrations and not a statistical sample, so conclusions on practice are indicative. In addition, the amendments of Articles 76 and 77 by the Penal Adjustment Law were read through a consolidated text published by a legal information portal [30], and the points taken from it should be confirmed against the official text.

Results and Discussion

4.1 The place of supervision and community service in the sanction system

Article 65 paragraph (2) of the National Criminal Code orders the principal penalties by their severity, and supervision and community service stand below imprisonment, with community service as the lightest [5, Article 65]. A judge who chooses either therefore does not leave the system. The judge applies a purpose the Code itself states: to prevent offending, to guide the convicted person toward a useful life in society, to settle the conflict and restore balance, and to foster remorse (Article 51), while respecting human dignity (Article 52) [5, Articles 51 and 52]. These purposes fit the combined theory of punishment [20, pages 58–62].

The Code adds two textual supports for non-custodial choices. Article 57 says that, when an offence is threatened with alternative principal penalties, priority goes to the lighter one. Article 70 paragraph (1) lists circumstances in which imprisonment should be avoided as far as possible, among them a defendant who is a child, a defendant older than seventy-five years, a first offender, or a person for whom guidance outside an institution is expected to succeed [5, Articles 57 and 70]. These provisions turn the ideal of imprisonment as a last resort into a rule of reasoning: the judge who passes them over to impose imprisonment has to show why a lighter sanction would not do.

4.2 Four layers of objective parameters

Reading the statutes together, the objective parameters can be arranged in four layers. The first layer consists of the purposes of punishment in Article 51. The second is the preference for lighter sanctions found in Articles 57 and 70 paragraph (1). The third layer consists of formal thresholds. The fourth layer is made of individual factors, namely the eleven matters that Article 54 paragraph (1) obliges the judge to consider, such as the form of fault, motive, life history, the effect of the sanction on the offender's future, and the effect on the victim, together with the additional matters that Article 85 paragraph (2) lists for community service [5, Articles 54 and 85]. Table 1 compares the thresholds and obligations of the two sanctions.

Table 1. Comparison of the parameters for supervision and community service

Aspect	Supervision	Community service
Gate on the abstract threat	The offence is threatened with imprisonment of at most five years (Article 75)	The offence is threatened with imprisonment of less than five years (Article 85 paragraph (1))
Gate on the sanction the judge would otherwise impose	Not required in the same form; the duration is tied to the threat	The judge would otherwise impose imprisonment of at most six months or a fine of at most category II, which is ten million rupiah (Articles 79 and 85 paragraph (1))
Duration or amount	At most equal to the threatened imprisonment and not more than three years (Article 76 paragraph (1))	Between eight and 240 hours, at most eight hours per day, and possibly paid in instalments over a period of up to six months (Article 85 paragraphs (4) and (5))
Conditions and duties	General condition of not committing a new offence; special conditions set by the judge, such as compensation or a duty to do or not to do something (Article 76 paragraphs (2) and (3))	Work that is not commercial; the defendant's consent and ability to work are weighed (Article 85 paragraphs (2) and (3))
Carrying out	The prosecutor supervises and the community guidance officer guides, as the Code and Law Number 22 of 2022 provide	The prosecutor supervises and the community guidance officer guides (Article 85 paragraph (8))
If the conditions fail	Imprisonment is served or supervision is extended, depending on the kind of condition broken (Articles 76 and 77 as adjusted)	Consequences follow if the work is not done without a valid reason (Article 85 paragraph (7))

Source: compiled by the authors from [5], [7], [29].

Two features of Table 1 deserve comment. First, community service passes through two gates. The offence must carry a threat below five years, and the sanction that the judge would otherwise impose must be short: at most six months of imprisonment or a fine up to category II [5, Article 85]. This is a rule of substitution. Community service replaces a short prison term or a small fine; it is not a free-standing penalty for any offence below the threshold. Supervision looks different. Its length is tied to the abstract threat rather than to the sentence the judge has in mind, so a judge cannot order supervision longer than the threat or longer than three years [5, Article 76]. Second, the two thresholds overlap but do not coincide. An offence threatened with exactly five years is inside the supervision gate but outside the community service gate, while an offence threatened with less than five years may pass both. Commentary is not uniform on whether the five-year threat itself belongs to supervision, and some writers pose the broader question whether graver offences can ever receive these sanctions [31]. A judge who works on a borderline offence should say which reading is adopted and why.

The Penal Adjustment Law adds a layer that the first version of the Code did not have. In the consolidated text read for this study, Article 76 paragraph (1) says that supervision is imposed on a person who commits an offence for the first time [7, Article VII], [30]. If that reading is confirmed by the official text, first offending becomes a formal condition of supervision and no longer only a circumstance in Article 70. The consequence would be that a repeat offender who otherwise fits the thresholds could still receive community service or a short prison term, but not supervision. The same law also deletes special minimum penalties in statutes outside the Code, except for gross human rights offences, terrorism, corruption, and money laundering, so offences that lost their minimum no longer fall under the exclusion for special minimum threats in Article 70 paragraph (2) [7, Article I], [5, Article 70].

4.3 Three kinds of limit on the discretion

The first kind of limit is legal exclusion. Article 70 paragraph (2) says that the preference for avoiding imprisonment does not apply to offences threatened with imprisonment of five years or more, to offences with a special minimum threat, to certain offences that gravely endanger or harm society, and to offences that harm state finances or the economy [5, Article 70]. The phrase about gravely endangering society is open-textured and has to be read within the principle of legality, which requires a statutory basis before the act and forbids analogy in deciding what is an offence (Article 1) [5, Article 1], [32]. A judge may not enlarge the thresholds by interpretation, because the thresholds are the very edge of the statutory authority to choose these sanctions.

The second kind of limit protects the convicted person. Community service cannot be commercial, must stay within the hours and daily limits of the Code, and takes account of the defendant's consent and ability to work (Article 85). These rules are consistent with the prohibition of forced labour in human rights law [33, page 22], [22]. For supervision, the special conditions that a judge may add must be limited to the kinds the Code lists, such as compensation in a shorter time than the supervision and a duty to do or not to do something, and these duties cannot restrict freedom of religion or political freedom [5, Article 76]. A judge who adds conditions the Code does not foresee would step beyond the statutory authority.

The third kind of limit is the duty to give reasons. Law Number 48 of 2009 guarantees the freedom of judges and, at the same time, obliges them to explore and understand the legal values and the sense of justice that live in society [28, Articles 3 and 5 and 10]. Article 53 of the Code asks the judge to uphold law and justice and, when the two conflict, to give priority to justice, and Article 54 paragraph (1) requires the considerations to be weighed. The new Criminal Procedure Code anticipates a standard form of sentencing considerations, and Supreme Court Circular Letter Number 1 of 2026 places those considerations after the finding that guilt is proven [5, Articles 53 and 54], [6, Article 251], [24]. Systematic interpretation

matters because it supports legal certainty [32], but the effect of legal discovery on justice is not automatic. It depends on the ability and integrity of the judge [34]. The Code gives no express consequence for a judgment that neglects these duties, so the duty is guarded by appeal and by professional accountability rather than by a rule of nullity.

4.4 A five-stage reasoning model

To apply the layers consistently, this article proposes a five-stage model that follows the order of the statutory gates. It is a reading aid built by the authors from the provisions, not a rule found in the statute. Table 2 sets out the stages.

Table 2. Five-stage reasoning model for non-custodial sentencing

Stage	Key question	Normative basis
1. Formal eligibility	Are the threat, the sanction the judge would impose, and the first-offender point (if confirmed) within the gates of supervision or community service?	Articles 75, 76 paragraph (1), 79, and 85 paragraph (1)
2. Exclusions	Does any exclusion in Article 70 paragraph (2) apply, and which reading of an open phrase is adopted?	Article 70 paragraph (2); Article I of the Penal Adjustment Law
3. Individual factors	What do the form of fault, motive, life history, conduct after the offence, and the effect on the victim show, and is a social research report available?	Articles 54 paragraph (1) and 70 paragraph (1); Law Number 22 of 2022
4. Proportionality and parsimony	Is a lighter sanction adequate for the purposes of punishment, or must imprisonment be justified?	Articles 51, 53, and 57
5. Feasibility	Does the defendant consent and have the ability, are a place of work and a guide available, and can the special conditions be monitored?	Article 85 paragraphs (2) to (9); Circular Letter Number 1 of 2026

Source: constructed by the authors from [5], [7], [29], [24].

The model adds an argumentative burden rather than a formula. If a case passes stages one and two and the judge still chooses imprisonment, the reasons should explain why a lighter sanction is judged inadequate. In this way, the non-custodial preference becomes a standard of reasoning that can be tested on appeal, instead of a personal inclination. Stage five is often forgotten but decisive: a sanction that cannot be carried out loses credibility and can discredit the whole reform.

4.5 Formulating the operative part and dividing roles

A sanction is meaningful only when it can be carried out, so the judge is also responsible for a clear operative part of the judgment. For community service, Article 85 paragraphs (6) and (9) require the judgment to describe how the sanction is carried out and to state the imprisonment or fine that is actually imposed, the number of hours, the period for completion, and the consequence if the work is not performed [5, Article 85]. The Chair of the Criminal Chamber of the Supreme Court has said that judges must state how many hours a day, how many days a week, and where the work is done [35]. In Banda Aceh in July 2026 a convicted person was ordered to work one hundred hours at a mosque, five hours a day for ten days each month, which shows how instalments allow the person to keep earning a living (Article 85 paragraph (5)) [36].

Clarity needs controlled flexibility. A location fixed too rigidly may become unavailable, so the operative part should name the kind of work and the main location and add a clause that a change to an equivalent place can be set by the prosecutor on the recommendation of the community guidance officer and reported to the court. This clause is the authors' proposal and should be confirmed in a Supreme Court regulation. For supervision, Circular Letter Number 1

of 2026 contains a model wording that resembles a suspended imprisonment with a general condition and optional special conditions [24]. Pudjoharsoyo regards this as a transitional bridge and also records its tension with supervision as an independent principal penalty [23]. The authors suggest that the operative part of a supervision sentence should include an express order of guidance, since without it the active guidance that distinguishes supervision from the old conditional sentence becomes blurred.

Table 3. Roles of the actors in carrying out supervision and community service

Actor	Role	Point to settle in the operative part or regulation
Judge	Chooses the sanction, sets duration, hours, and conditions, and states the consequence of non-performance	Kind of work, main location, hours per day, completion period, and an express order of guidance
Prosecutor	Supervises, and proposes consequences if conditions are broken or reductions for good conduct	The form of the proposal, the court forum, and the right of the convicted person to be heard
Community guidance officer	Provides the social research report and guides the convicted person [29]	Timing of the report before judgment and capacity of the correctional centre
Place of work	Receives the convicted person for community service	Availability of equivalent places and the way a change is reported
Convicted person	Consents, performs the work or follows the conditions	What counts as a valid reason for not performing

Source: compiled by the authors from [5], [7], [29], [35].

Table 3 shows that the work of the judge depends on others. The prosecutor supervises and the community guidance officer, who works in the correctional centre, performs social research, guidance, accompaniment, and supervision under Law Number 22 of 2022 [29]. The social research report should exist before judgment as material for stage three of the model, while the availability of places and guides decides stage five. The Government has reported 968 locations for carrying out community service, 94 Griya Abhipraya, and 1,880 partners, so a judge can confirm availability before naming a place in the judgment [35]. The Supreme Court has also reported that, by late May 2026, 218 decisions imposing community service had been issued by 35 district courts [37].

The weakest point is the treatment of breach. The Code distinguishes breach of the general condition from breach of a special condition: according to the consolidated text, breach of the general condition leads to the revocation of supervision and imprisonment, while breach of a special condition without a valid reason allows the prosecutor, after hearing the community guidance officer, to propose either imprisonment or an extension of the supervision period [7, Article VII], [30]. For community service, Article 85 paragraph (7) names a consequence for failing to perform without a valid reason [5, Article 85]. Neither the form of the proposal, nor the forum of examination, nor the convicted person's right to be heard, nor the legal remedy against the resulting decision is regulated in detail in the new Criminal Procedure Code [10]. The phrase "without a valid reason" has no parameter either, so that a technical obstacle, such as sudden illness, could lead straight to imprisonment. A Supreme Court regulation on the procedure for examining such proposals is therefore urgent. This matches the finding that the lack of implementing regulations is a main challenge [14].

4.6 Conditions for effective discretion

The discretion of the judge is effective only when three risks are managed. The first is reduction of meaning, where supervision is practised as the old conditional sentence without active guidance [23]. The second is net-widening, which occurs when alternative sanctions do not replace imprisonment but reach lighter offenders who would have received no custodial sanction at all. Spaans found this risk in the Dutch experience with community service, although the effect on reconviction was favourable [38]. It is a reason why the substitution gate and the

assessment of ability to pay a fine in Article 85 paragraph (2) must be taken seriously. The third risk is institutional failure. A 2026 study notes the limited human resources of the correctional centres and the stigma that community service lacks deterrent effect [14].

Prosecutorial culture is also a condition. A prosecutor who rarely demands supervision leaves the judge to take the initiative, and a prosecution that appeals every non-custodial judgment would discourage judges [9]. A judgment that looks progressive on paper but cannot be carried out reduces public trust in the new paradigm, so clear norms and oversight of official powers remain necessary.

Conclusion

The National Criminal Code, together with the Penal Adjustment Law, places supervision and community service among the principal penalties below imprisonment. The discretion to choose them is structured by four layers of objective parameters: the purposes of punishment, the preference for lighter sanctions, formal thresholds that work as gates on the abstract threat and on the sanction the judge would otherwise impose, and individual factors. The discretion stops at three kinds of limit: legal exclusions, protection of the convicted person through consent, non-commercial work, and fixed hours and conditions, and the duty to give reasons. The five-stage reasoning model and the checklist for the operative part offer a way to apply these parameters consistently.

Effectiveness remains conditional. The procedure for examining breach of conditions is not regulated in detail, the prosecution culture is still punitive, and the capacity of the executing institutions is limited. Four steps follow. The Supreme Court should issue a regulation on the procedure for examining proposals on breach of conditions and improve its model wording to include an express order of guidance and a controlled flexibility of location. The Government should issue the implementing regulation for both sanctions and strengthen the correctional centres, including the social research report before judgment. The Attorney General's Office should prepare guidance for demands for alternative sanctions in line with Articles 57 and 70. Judges are encouraged to use the staged model and to explain clearly why imprisonment is chosen for a case that qualifies for a non-custodial sanction. Future research should test the model against a systematic sample of decisions rendered after 2 January 2026.

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