



THE PROBLEM OF THE APPLICATION OF PRISON SENTENCES FOR THE ELDERLY IN CASES OF PETTY THEFT AS AN EVALUATION OF THE THEORY OF THE PURPOSE OF PUNISHMENT IN INDONESIA

Received: March, 2026 Accepted: April 2026 Online Published: April 2026

Indah Ayu Zhafira¹, Aura Faraz Az Zahra², Stvanny Putri Fahlevi³, Fatrisia Yuristi⁴,
Ria Anggraeni Utami⁵

¹ Faculty of Law, University of Bengkulu, ayuuz0419@gmail.com,

² Faculty of Law, University of Bengkulu, aura161205@gmail.com

³ Faculty of Law, University of Bengkulu, edevanevalerie@gmail.com

⁴ Faculty of Law, University of Bengkulu, riryuris25@gmail.com

⁵ Faculty of Law, University of Bengkulu, riaanggraeniutami@unib.ac.id

Abstract: *This study analyzes the application of prison sentences to elderly perpetrators in cases of minor crimes in Indonesia, focusing on the dynamics of law enforcement that often ignore the human aspects and biological age of the perpetrators. The main problem raised is the imbalance between formal legal certainty and substantive justice felt by the community when the elderly have to undergo physical punishment in correctional institutions that have exceeded capacity. Using normative legal research methods, this journal dissects various laws and regulations and penological theories to see the extent to which imprisonment for the elderly is still relevant to the goals of modern punishment. The focus of the study is directed at the urgency of implementing restorative justice and providing a more humane alternative punishment for vulnerable groups. The results of the study show that imprisonment for the elderly in cases of small-scale theft tends to have a negative impact on the physical and mental health of the perpetrator without making a significant contribution to reducing crime rates. On this basis, it is necessary to update the penal policy that provides special restrictions and different treatment for criminal offenders who have entered the old age in order to maintain the dignity of the law.*

Keywords: *Penology, Elderly, Petty Theft, Prison Crime, Restorative Justice.*

INTRODUCTION

The criminal justice system in Indonesia is at a crossroads between maintaining rigid colonial legal values and realizing more modern and humane justice. One of the most sensitive issues in penological discourse is about the effectiveness and morality of prison sentences for the elderly. Cases of petty theft involving senior citizens, such as cases of taking teak wood or

plantation products with very small material value, often end in prison sentences. This phenomenon sparked a long debate about the true purpose of criminal imposition. Is the law merely an instrument to provide suffering in return for wrongdoings, or should the law be a means to improve the social situation and restore human dignity.¹

From a penological perspective, the function of the prison should be a place of guidance that directs inmates to be ready to return to society. However, for elderly inmates, the coaching process in correctional institutions faces severe biological and psychological obstacles. The deteriorating physical condition and the need for special health care make prisons a very torturous place for them. Law enforcement that only fixates on the text of the law without looking at the humanitarian context often results in legally valid but morally flawed decisions. This reality shows that there is a huge gap between legal expectations and practice on the ground, especially in dealing with criminals from vulnerable groups.²

The background to the selection of this topic is also based on the fact that correctional institutions in Indonesia are experiencing an overcapacity crisis. Putting the elderly who commit minor crimes in prison will only increase the burden on the state without providing a meaningful deterrent effect for the public. Modern penology began to introduce the concept of non-prison sanctions that emphasized more on rehabilitation. However, in the Indonesian legal system, the discretion not to detain or imprison the elderly is still very limited and depends entirely on the conscience of the judge. The lack of rules that specifically regulate the minimum age limit to be sentenced to prison is the root of the problem that needs to be dissected in depth through a legal lens.³

People often feel hurt in their sense of justice when they see a grandmother or grandfather having to sit in a chair because of a trivial case. This proves that the legal awareness of the community has developed beyond the formality of the trial. The principle of the usefulness of the law seems to be neglected in order to pursue pseudo-legal certainty. Thus, the evaluation of criminal theories is very relevant to be carried out in order to find alternative solutions that can be applied in the national legal system. This paradigm shift is very important so that the law is no longer seen as a knife that is only sharp downwards and blunt upwards,

¹ Maulana, R. A., Ismiah, N., & Ambarwati, S. T. (2023). The imposition of supervision penalties based on a penological perspective (Study of Law No. 1 of 2023). *Journal of Justiciabelen*, 3(2), 115–126.

² Pramusti, N. B., Wijaya, A. U., & Taufiqurrahman. (2023). Legal regulation in terms of carrying out criminal sanctions by elderly perpetrators. *Journal of Law Wijaya Putra*, 1(2), 45–56.

³ Jagadhita, I. K. S., & Winatha, I. G. M. Y. (2024). Life imprisonment as an alternative to the death penalty from a penological perspective. *Culture: Journal of Law, Social, and Humanities*, 2(10), 286–290

especially towards those who have lost their productive period.⁴

Based on the above explanation, the formulation of the problem that will be discussed in this study is:

- A. What is the juridical review of the application of prison sentences for elderly offenders in cases of petty theft according to laws and regulations in Indonesia?
- B. How is the effectiveness of prison sentences for the elderly seen from the perspective of the purpose of punishment in modern penological theory?

RESEARCH METHODS

This research was carried out using a normative legal research method that focuses on the study of documents and applicable laws and regulations. The approach used is a legislative approach to review formal rules on punishment, as well as a conceptual approach to analyze penological theories relevant to the treatment of elderly inmates. Through this method, the researcher conducted an inventory of the legal principles that govern criminal sanctions and vulnerable groups. Secondary data consisting of primary legal materials such as laws and secondary legal materials such as textbooks and scientific journals are the main sources in the preparation of systematic legal analysis.

Data analysis is carried out qualitatively with deduction techniques to answer the legal problems that have been formulated. The research process begins with the collection of legal materials related to cases of petty theft involving the elderly, then interpretation of the rules to find weaknesses or gaps in existing laws. The next step is to relate the juridical facts with the principles of justice and the theory of the purpose of the penalty. In this way, the research is able to produce logical conclusions about the problem of elderly imprisonment and provide an argumentation basis for the need for criminal law policy reform in the future.

RESULTS AND DISCUSSION

A. Juridical Review of the Application of Prison Sentences for Elderly Perpetrators in Petty Theft Cases

In the criminal law system in Indonesia, everyone's position before the law is considered the same, which is often referred to as the principle of equality before the law. Although this principle is a pillar of democracy, in its application to vulnerable groups such as the elderly, there is a need for differentiation of treatment. Juridically, the Criminal Code does not provide an explicit exception regarding the maximum age limit for a person to be sentenced

⁴ Scott, L. (2024). Analysis of the regulation and implementation of life imprisonment based on the Criminal Code and Law No. 1 of 2023. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 2(3), 101–112.

to prison. This means, as long as a person is considered mentally capable and proven to have committed a criminal act, then prison sanctions can still be imposed even though the perpetrator is of old age. The rules regarding misdemeanor offenses themselves have been regulated in the Supreme Court regulation that provides a limit on the value of material losses, but the rules focus more on the trial procedure than the type of sanctions received by the perpetrator.⁵

The handling of petty theft cases involving the elderly often clashes with the rigidity of procedural legal procedures. The police and prosecutors as the gateway to justice often feel that they do not have a strong legal basis to stop cases at the investigation or prosecution level if there is no peace between the perpetrator and the victim. This condition causes many trivial cases that should be resolved outside the court to continue to roll to the green table. Although there are guidelines on restorative justice through police regulations and prosecutor's regulations, its implementation for the elderly still often encounters obstacles in the field, especially if the victim still demands that the legal process be continued for the reason of the deterrent effect.⁶

Analysis of court rulings shows that judges are often in a difficult position. On the one hand, judges must enforce positive laws that require sanctions for every violation. On the other hand, the judge's conscience sees that imprisonment for the elderly is an excessive act. Although judges have the freedom to impose conditional sentences or warning sentences, in practice, short-term prison sentences are still often handed down. The unclear limits on the protection of the elderly in the national criminal law creates legal uncertainty that is detrimental to elderly defendants. This is exacerbated by the condition of correctional institutions that do not have special facilities for elderly inmates who need routine medical care.⁷

The synchronization of the rule of law between the protection of the elderly and the criminal law still seems to be running separately. The Law on Welfare of the Elderly emphasizes the protection and fulfillment of the basic rights of the elderly, but these values are often neglected when the elderly enter the criminal jurisdiction. The imprisonment carried out against them is often a form of violation of human rights because it is not in accordance with their physical capabilities. In addition, the burden of proof in cases of petty theft is often very simple, so the legal process runs quickly regardless of the sociological background of why the

⁵ Cintya, S., & Firmansyah, H. (2023). The application of restorative justice as a form of forgiveness by judges in the crime of theft by the elderly. *USM Law Review Journal*, 6(2), 543–553

⁶ Firdaus, A., & Koswara, I. Y. (2024). Criminal law reform in Indonesia: Criminal analysis of supervision and the principle of balance. *Lex Renaissance*, 9(1), 1–15.

⁷ Padang, M. A., Siregar, B. J., & Rosmalinda. (2024). Criminalization in Law Number 1 of 2023. *Locus: Journal of Legal Concepts*, 4(2), 210–223.

perpetrator committed the act, such as economic urgency motives or ignorance of the law.⁸

Legal reform through the new national criminal law has actually begun to provide a bright spot by introducing the concept of justice for the elderly. However, before the rule takes full effect, the practice of criminalization still relies on old repressive patterns. Law enforcement that is oriented towards formal justice alone will never be able to solve the root of the problem of crime among the elderly. Therefore, this juridical review confirms that there is an urgent need to legitimize the limitations of the criminal justice system for the elderly through higher and binding regulations, so that law enforcement officials have a strong legal umbrella not to imprison them in cases that do not endanger state security.⁹

B. Criminal Effectiveness of Prison for the Elderly in the Perspective of Criminal Objectives

The effectiveness of criminalization is the main indicator of the success of a penological system. The retaliation-oriented classical goal of punishment has long since been abandoned and replaced by a combined goal theory that prioritizes community protection and offender development. In the context of elderly inmates, the theory of revenge is no longer relevant because the suffering received by the elderly in prison far exceeds the suffering caused by their actions. For example, in the case of the theft of fruit or wood of little value, the physical suffering of living in a cramped, stuffy cell for an elderly person is a disproportionate form of punishment. Thus, from the point of view of justice, this imprisonment actually creates new injustices.¹⁰

Prevention theories, both in general and in particular, are also difficult to achieve through the imprisonment of the elderly. The community will not feel safer with the imprisonment of a grandmother who stole because of hunger. On the contrary, public trust in legal institutions can decline because they consider the law to be only sharp against the weak small people. Special prevention or efforts to prevent the perpetrator from repeating his actions are also ineffective because the criminal behavior of the elderly in mild cases is usually not based on a bad mentality, but by situational and economic factors. Providing guidance in prison to someone who is at the end of his life will also not make a productive contribution to the

⁸ Gani, A., Iryani, D., & Tio, G. N. (2024). A life sentence in Indonesia's positive legal system. *Journal of Legal Ideas*, 6(2), 87–98.

⁹ Fikri, A., Usman, & Arfa, N. (2025). Social work crimes are the main crime in the 2023 Criminal Code (Comparative Study of Indonesia and the Netherlands). *PAMPAS: Journal of Criminal Law*, 6(3), 150–165

¹⁰ Muladi, & Barda Nawawi Arief. (2010). *Criminal theories and policies*. Bandung: Alumni. p. 81

development of society.¹¹

Turning to the aspects of rehabilitation and social reintegration, prison is actually the main obstacle for the elderly to be accepted by their social environment again. The stigma of being a former inmate for an elderly person will weigh heavily on them for the rest of their lives and destroy their self-esteem in front of children and grandchildren. Modern penology suggests that offenders from vulnerable groups be kept as far away from the ill effects of the prison environment as possible through community-based programs. Restorative justice that emphasizes dialogue between perpetrators, victims, and society is a much more effective solution. Through this dialogue, the elderly can realize their mistakes and apologize, while the victim can provide forgiveness without having to involve destructive physical sanctions.¹²

In terms of bureaucratic efficiency, managing elderly inmates in correctional institutions requires greater resources. Prison officers must pay extra attention to their health conditions, which often cost them considerable time and medical costs. The state budget that should be allocated for the development program for prisoners of productive age is actually absorbed to take care of elderly inmates who actually do not have a high security risk. This shows that economically and managerially, the imprisonment of the elderly in mild cases is an inefficient policy and detrimental to the state in the long run. The effectiveness of law enforcement must be viewed holistically from the benefits it generates for social order.¹³

Penological theories that emphasize human dignity state that punishment should not degrade a person's humanity. Imprisoning the elderly is an act that is close to cruel and inhumane treatment. The law should be present as a protector, not as a punishing machine that is blind to the realities of life. By looking at the ineffectiveness of prisons from various sides, it is time for the Indonesian legal system to implement criminal alternatives such as social work crimes in nursing homes or fines that are adjusted to ability, or even pardons through diversion. This will be better able to realize the true goal of law, which is order that comes from a real sense of justice in society.

¹¹ Bairuroh, I. H., Sarman, & Manalu, H. (2024). Restorative justice in criminal cases based on Supreme Court Regulation No. 1 of 2024 from the perspective of development law theory. *Journal of Pelita Law*, 6(2), 75–90.

¹² Waluyo, B. (2016). *Criminal and penalty*. Jakarta: Sinar Grafika. p. 47

¹³ Lumban Gaol, R. S. M., & Darmadi, A. A. N. O. Y. (2024). Analysis of Article 51 of the 2023 Criminal Code regarding the purpose of punishment and its impact on the legal certainty of restorative justice. *Journal of Academic Media (JMA)*, 2(1), 1–12

CONCLUSION

The application of imprisonment for the elderly in cases of petty theft in Indonesia is still juridically possible because there is no strict maximum age limit in the criminal law. Although there are legal instruments regarding restorative justice, in practice there are still many procedural obstacles that cause the elderly to still have to undergo the judicial process up to the penitentiary stage. This rigidity of formal law causes the neglect of humanitarian aspects and protection of vulnerable groups, so that the law seems to lose its empathy in dealing with cases that have a small social impact but involve perpetrators who are physically helpless.

From a penological perspective, imprisonment for the elderly does not meet the standards of modern criminal effectiveness. This sanction fails to achieve the goal of rehabilitation because prison actually worsens the health and psychological condition of the elderly without having a positive impact on society. The social and economic costs incurred by the state to imprison the elderly are not proportional to the benefits obtained. Therefore, imprisonment for the elderly in minor cases must be evaluated immediately because it is contrary to the principle of proportional justice and ignores the human dignity which is the main foundation of national law.

BIBLIOGRAPHY

- Bairuroh, I. H., Sarman, & Manalu, H. (2024). Restorative justice in criminal cases based on Supreme Court Regulation No. 1 of 2024 from the perspective of development law theory. *Journal of Pelita Law*, 6(2), 75–90.
- Cintya, S., & Firmansyah, H. (2023). The application of restorative justice as a form of forgiveness by judges in the crime of theft by the elderly. *USM Law Review*, 6(2), 543–553.
- Fikri, A., Usman, & Arfa, N. (2025). Social work crimes are the main crime in the 2023 Criminal Code (Comparative Study of Indonesia and the Netherlands). *PAMPAS: Journal of Criminal Law*, 6(3), 150–165.
- Firdaus, A., & Koswara, I. Y. (2024). Criminal law reform in Indonesia: Criminal analysis of supervision and the principle of balance. *Lex Renaissance*, 9(1), 1–15.
- Gani, A., Iryani, D., & Tio, G. N. (2024). A life sentence in Indonesia's positive legal system. *Journal of Legal Ideas*, 6(2), 87–98.
- Scott, L. (2024). Analysis of the regulation and implementation of life imprisonment based on the Criminal Code and Law No. 1 of 2023. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 2(3), 101–112.

- Jagadhita, I. K. S., & Winatha, I. G. M. Y. (2024). Life imprisonment as an alternative to the death penalty from a penological perspective. *Culture: Journal of Law, Social, and Humanities*, 2(10), 286–290.
- Lumban Gaol, R. S. M., & Darmadi, A. A. N. O. Y. (2024). Analysis of Article 51 of the 2023 Criminal Code regarding the purpose of punishment and its impact on the legal certainty of restorative justice. *Journal of Academic Media (JMA)*, 2(1), 1–12.
- Maulana, R. A., Ismiah, N., & Ambarwati, S. T. (2023). The imposition of supervision penalties based on a penological perspective (Study of Law No. 1 of 2023). *Journal of Justiciabelen*, 3(2), 115–126.
- Muladi, & Barda Nawawi Arief. (2010). *Criminal theories and policies*. Bandung: Alumni. p. 81.
- Padang, M. A., Siregar, B. J., & Rosmalinda. (2024). Criminalization in Law Number 1 of 2023. *Locus: Journal of Legal Concepts*, 4(2), 210–223.
- Pramusti, N. B., Wijaya, A. U., & Taufiqurrahman. (2023). Legal regulation in terms of carrying out criminal sanctions by elderly perpetrators. *Journal of Law Wijaya Putra*, 1(2), 45–56.
- Waluyo, B. (2016). *Criminal and penalty*. Jakarta: Sinar Grafika.