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# Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions

Widyawati, Anis<sup>a</sup> ; Pujiyono, Pujiyono<sup>b</sup>; Rochaeti, Nur<sup>b</sup>; Ompoy, Genjie<sup>c</sup>; Zaki, Nurul Natasha Binti Muhammad<sup>d</sup> [Save all to author list](#)<sup>a</sup> Faculty of Law, Universitas Negeri Semarang, Indonesia<sup>b</sup> Faculty of Law, Universitas Diponegoro, Indonesia<sup>c</sup> Western Mindanao State University, Philippines<sup>d</sup> Universiti Teknologi MARA, Malaysia[Full text options](#) [Export](#) **Abstract**[Author keywords](#)[SciVal Topics](#)[Metrics](#)**Abstract**

The judicial power in criminal law enforcement within the Criminal Justice System, including the execution of criminal sanctions sub-system, should be independent and self-supporting. In Indonesia, the execution of criminal sanctions sub-system is currently under the executive power that enables the practice of execution of sanctions being obstructed by many factors. In relation to that, this study explains the urgency of revision for legal structure of criminal sanctions execution and legal structure reformation for criminal enforcement in Indonesia. It employs a qualitative approach using doctrinal research within the post-positivism paradigm. This study found that it is considered urgent or essential to reform the criminal legal structure of the national law based on philosophical, sociological, and juridical aspects abiding to Pancasila. The criminal law system covers the criminal law enforcement system which includes material criminal law sub-system, formal criminal law sub-system, and execution of criminal sanctions sub-system. Essentially, the execution of criminal sanctions sub-system acts as a sub-system of punishment. The structural reform of the systemic law in execution of criminal sanctions sub-system should be under the auspices of judicial authority, which is the Supreme Court. Therefore, this study concludes that the system should become linear, independent, synergized, and integrated with the investigative agents, prosecutors, and courts in a single criminal law system. In this way, there will be supervision and coordination in the context of the integrality of punishment, which falls under the protection of an integrated criminal law enforcement system. © 2022, Universitas Negeri Semarang. All rights reserved.

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## Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions

Anis Widyawati<sup>1</sup>✉<sup>ib</sup>, Pujiyono Pujiyono<sup>2</sup><sup>id</sup>, Nur Rochaeti<sup>3</sup><sup>ib</sup>, Genjie Ompoy<sup>4</sup><sup>id</sup>,  
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**Abstract** *The judicial power in criminal law enforcement within the Criminal Justice System, including the execution of criminal sanctions sub-system, should be independent and self-supporting. In Indonesia, the execution of criminal sanctions sub-system is currently under the executive power that enables the practice of execution of sanctions being obstructed by many factors. In relation to that, this study explains the urgency of revision for legal structure of criminal sanctions execution and legal structure reformation for criminal enforcement in Indonesia. It employs a qualitative approach using doctrinal research within the post-positivism paradigm. This study found that it is considered urgent or essential to reform the criminal legal structure of the national law based on philosophical, sociological, and juridical aspects abiding to Pancasila. The criminal law system covers the criminal law enforcement system which includes material criminal law*

*sub-system, formal criminal law sub-system, and execution of criminal sanctions sub-system. Essentially, the execution of criminal sanctions sub-system acts as a sub-system of punishment. The structural reform of the systemic law in execution of criminal sanctions sub-system should be under the auspices of judicial authority, which is the Supreme Court. Therefore, this study concludes that the system should become linear, independent, synergized, and integrated with the investigative agents, prosecutors, and courts in a single criminal law system. In this way, there will be supervision and coordination in the context of the integrality of punishment, which falls under the protection of an integrated criminal law enforcement system.*

**Keywords** Reform, Stucture, Law in Execution, Criminal Sanction

## 1. Introduction

In correctional institutions, everything is tradable; not only leave permit but also remission, which should be prisoners' rights, become a commodity. One of the problems in correctional institutions in this country is the weak check and balance mechanism for officials and staff in the Technical Implementation Unit of Detention/Correctional Institution for prisoners' remission. Remission, thus far, is regarded as a reward for prisoners' behavior giving them more privileges, even though the Correctional Law clearly defines that remission is the right of every detainee. As the procedure takes too long, it tends to become exclusive.<sup>1</sup>

The operation of the Criminal Justice System related to coordination and interconnection between law enforcement agencies in carrying out the stages of criminal proceedings indicates the different functions of each institution that potentially results in the emergence of sectoral egos of each institution. Practically,

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<sup>1</sup> Corruption Eradication Commission (KPK), "Remisi Bukan Hadiah," *Integrito*, (2019): 20-21.

Type: **Research Article**

## Separation of Powers in the Palestinian Law: Does it Reflect the Democratic System? (A Comparative Approach with Indonesia)

Ahmed M. A. Hamad<sup>1</sup>, Rachma Indriyani<sup>2</sup>, Ammar M. Mahmoud Al  
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**Abstract** *The principle of separation of powers among the three organs of government i.e., the Legislative, Executive, and Judiciary are one of the main pillars of the democratic system. This principle guarantees a balance of powers between these three organs. However, in Palestine, the issue arises as a result of a lack of commitment from these organs to practically apply this principle in accordance with the Palestinian Basic Law of 2003. Nevertheless, in Indonesian Constitution of 1945 has stated that is a democratic country with the foundation of a separation of powers. In addition, the practice in Indonesia shows that there is various constitutional mechanism to split the power. The objectives of this article are to examine the practice of separation of powers in Palestine and Indonesia and to harmonize the theoretical and practical aspects. In order to achieve these objectives, doctrinal legal research using the qualitative approach was engaged. Findings show that the principle of separation of powers was not fully practiced in Palestine between the three*



*organs, especially the Executive and there is an absence of constitutional oversight. This article recommends that the role of the Palestinian Supreme Constitutional Court be activated to monitor all three governmental organs to ensure that this principle is fully implemented.*

**Keywords** Separation of Powers, Palestinian Basic Law of 2003, Organs of Government, Indonesian Constitution of 1945, Supreme Constitutional Court

## 1. Introduction

One of the basic constitutional principles of a liberal democracy is the separation of powers. The concept of separation of powers refers to the distribution of powers among the three organs of a state that are independent of each other. Each of the state's Legislative, Executive and Judicial branches exercise its own functions without interference and with only appropriate checks and balances in order to protect the people from an authoritarian or arbitrary rule.<sup>1</sup>

Since the writings of Montesquieu and Locke, separation of powers among the Legislative, Executive and Judiciary is deemed essential to avoid usurpation and tyranny by the holder of these powers. As the quote from Madison illustrates, they were convinced that separation of powers is a necessary precaution, even in a democracy that periodically elects its own rulers.<sup>2</sup>

Separation of powers means that the powers of the state are not concentrated in a single organ. "Power tends to corrupt and absolute power corrupts

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<sup>1</sup> Ibrahim Abdel-Aziz Shiha, *Political System and Constitutional Law: An Analysis of the Egyptian Constitutional System* (Alexandria: Al Maaref Foundation for Publishing and Distribution, 2000).

<sup>2</sup> T. Persson, G. Roland, and G. Tabellini, "Separation of Powers and Political Accountability," *The Quarterly Journal of Economics* 112, No. 4 (November 1, 1997): 1163–1202, <https://doi.org/10.1162/003355300555457>.