



Uncertain Transition: Judicial Disparity and the Limits of Supreme Court Circular Letters in the Era of Criminal Law Codification

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ABSTRACT

The simultaneous implementation of the National Penal Code (Law Number 1 of 2023) and the New Code of Criminal Procedure (Law Number 20 of 2025) on January 2, 2026 marks a fundamental transformation in Indonesia's criminal justice system, while also creating significant challenges in ensuring consistency of legal application during the transitional period. This study aims to identify the forms of judicial disparity, evaluate the effectiveness of Supreme Court Circular Letter Number 1 of 2026, and formulate an ideal model for ensuring legal certainty. The research employs a normative legal method using statute and conceptual approaches, supported by limited case and comparative approaches. The findings reveal three main forms of disparity, namely regime disparity, sentencing disparity, and procedural disparity, which stem from the ambiguity of transitional norms and the absence of detailed operational guidelines. Supreme Court Circular Letter Number 1 of 2026 is found to be insufficiently effective as a disparity-prevention instrument due to its limited normative authority, substantive scope, and implementation. Therefore, this study proposes a three-pillar model for ensuring legal certainty, consisting of strengthening normative instruments through a Supreme Court Regulation, establishing an inter-institutional coordination forum, and enhancing judicial interpretive capacity through continuing legal education. This model is expected to reduce disparity and promote fair legal certainty during the transitional period.

Keyword: Judicial Disparity, Transitional Period, Legal Certainty.

ABSTRAK

Pemberlakuan simultan Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana dan Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana sejak 2 Januari 2026 menandai transformasi mendasar dalam sistem peradilan pidana Indonesia, namun sekaligus menimbulkan tantangan serius dalam menjamin konsistensi penerapan hukum pada masa transisi. Penelitian ini bertujuan untuk mengidentifikasi bentuk-bentuk disparitas putusan hakim, mengevaluasi efektivitas Surat Edaran Mahkamah Agung (SEMA) Nomor 1 Tahun 2026, serta merumuskan model penjamin kepastian hukum yang ideal. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, falsafah serta didukung pendekatan kasus dan komparatif secara terbatas. Hasil penelitian menunjukkan bahwa terdapat tiga bentuk utama disparitas, yaitu disparitas rezim, disparitas pemidanaan, dan disparitas prosedural, yang bersumber dari ketidakjelasan norma transisi dan ketiadaan pedoman operasional yang memadai. SEMA Nomor 1 Tahun 2026 belum efektif sebagai instrumen pencegah disparitas karena keterbatasan daya ikat normatif, cakupan substansi, dan implementasi. Oleh karena itu, penelitian ini mengusulkan model penjamin kepastian hukum berbasis tiga pilar, yaitu penguatan



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instrumen normatif melalui PERMA, pembentukan forum koordinasi lintas lembaga, dan peningkatan kapasitas interpretatif hakim melalui pendidikan hukum berkelanjutan. Model ini diharapkan mampu meminimalisir disparitas dan menjamin kepastian hukum yang adil dalam masa transisi.

Kata Kunci: Disparitas Putusan, Masa Transisi, Kepastian Hukum.

1. Introduction

Indonesia's criminal law system is currently undergoing a fundamental transformation after more than a century of reliance on the colonial *Wetboek van Strafrecht*, enacted through Staatsblad 1915 No. 732. This transformation takes juridical form through the enactment of Law Number 1 of 2023 on the National Penal Code (KUHP), which becomes effective on January 2, 2026, followed by Law Number 20 of 2025 on the New Code of Criminal Procedure (KUHAP) on the same date. The simultaneous enforcement of these two codifications does not merely signify a regulatory replacement, but also reflects a structural and paradigmatic shift in Indonesia's criminal justice system, both in substantive criminal law and procedural law. From an academic perspective, such changes should not be understood solely as a legislative achievement, but rather as a systemic legal transition that potentially generates challenges in its practical implementation.¹

One of the most crucial issues arising in this context concerns how to ensure consistency in the application of law to cases situated within the transitional period, namely cases whose processes span the enactment of the new codifications. Since January 2, 2026, courts are confronted with a situation in which some cases remain rooted in the old KUHP and KUHAP regime, while others are governed by the provisions of the National Penal Code and the New Code of Criminal Procedure. This condition is further complicated by the application of the *lex favor reo* principle as stipulated in Article 3 paragraph (7) of the National Penal Code, which allows for the application of provisions more favorable to the defendant, even to ongoing cases. In practice, this situation has the potential to produce significant variations in legal application, considering that the National Penal Code introduces alternative sanctions such as supervisory penalties and community service, while the prevailing sentencing culture in Indonesia has long been heavily oriented toward imprisonment.² Consequently, the risk of inconsistency in legal application is not merely theoretical, but also carries practical implications for legal certainty and equality before the law.

This issue of inconsistency is closely related to the potential emergence of judicial sentencing disparity during the transitional period. In this study, disparity is understood as differences in the application of law that cannot be fully explained by variations in case facts, but rather arise from differences in the interpretation of the same legal norms or from the ambiguity of the applicable norms. In the context of the KUHP and KUHAP transition, disparity may manifest in several forms, including differences in determining the applicable legal regime, variations in the type and severity of punishment, and inconsistencies in procedural application. Therefore, the central issue to be examined is not merely the existence of disparity itself, but the extent to which the available normative framework is capable of controlling such disparities and ensuring fair legal certainty for all justice seekers.

This problem is not merely technical-judicial in nature, but also possesses a constitutional dimension, as it directly relates to the right to fair legal certainty as guaranteed under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. As an initial institutional response to the transitional situation, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 1 of 2026 on January 2, 2026, to provide technical guidance for judges. The SEMA aims to offer direction regarding the determination of the applicable legal regime, the application of the *lex favor reo* principle, and the use of newly introduced sentencing instruments. However, as an internal administrative instrument, SEMA has inherent limitations in

¹ Dibi Vation Manik. (2025). Reform of Indonesian Criminal Law Reviewed From Law Number 1 of 2023 About the Criminal Code". *International Journal of Sociology and Law*. Vol. 2 No. 1. <https://doi.org/10.62951/ijsl.v2i1.330>

² Diah Ratu Sari. (2022). Pengaturan Pidana Pengawasan dan Pidana Kerja Sosial dalam Rancangan KUHP sebagai Upaya Menerapkan Daad-Dader Strafrecht. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 9(1), 133–140. <https://doi.org/https://doi.org/10.15408/sjsbs.v9i1.24338>.

terms of its normative binding force, substantive scope, and its reliance on individual judicial interpretation, thereby raising questions regarding its effectiveness in ensuring consistency of judicial decisions.

Previous studies have extensively examined the issue of judicial disparity in Indonesia's criminal justice system, particularly in relation to the absence of sentencing guidelines and the broad scope of judicial discretion. Adi Kusyandi and Saefullah Yamin argue that sentencing disparity is closely linked to the lack of adequate sentencing guidelines, resulting in judicial independence not being sufficiently balanced by mechanisms of control.³ Similarly, Melieke Jilliani Darmaputra finds that disparity in narcotics cases is influenced by judicial freedom, the absence of general guidelines, and external pressures such as social and political influences.⁴ Rizka Fakhry Alfiananda further highlights that sentencing disparity undermines legal certainty and weakens the legitimacy of judicial decisions in the eyes of the public.⁵ In addition, Alfret and Mardian Putra Frans emphasize that the application of the *lex favor reo* principle in the National Penal Code requires clear qualifications and mechanisms to avoid legal uncertainty.⁶ These findings demonstrate that disparity is not a new phenomenon, but rather a structural issue that has long been embedded in Indonesia's criminal justice system.

On the other hand, studies on criminal law and criminal procedure reform have also developed, particularly those focusing on paradigm shifts and implementation challenges. Faisal and Muhammad Rustamaji examine the reform of criminal law pillars in the draft of the new Penal Code from a normative perspective prior to its enactment.⁷ Meanwhile, Muhamad Romdoni and Suryani Fathurrahman primarily address sentencing disparity in the context of special criminal offenses under the previous legal regime.⁸ Furthermore, research by Siti Sahara, Nurasyiah, and Liza Agnesta Krisna indicates that challenges in criminal justice implementation are closely related to institutional readiness, human resource capacity, and coordination among law enforcement agencies.⁹ However, these studies have not specifically examined judicial disparity within the context of the transitional period following the simultaneous enactment of two major codifications, particularly in relation to the effectiveness of transitional instruments such as SEMA.

Based on the foregoing, there exists a clear research gap concerning the absence of comprehensive analysis linking judicial disparity, the transitional phase of the National Penal Code and the New Code of Criminal Procedure, and the effectiveness of normative instruments designed to control such disparity. Therefore, this study aims to identify and analyze the forms of judicial disparity arising during the transitional period, evaluate the effectiveness of Supreme Court Circular Letter Number 1 of 2026 in preventing disparity and ensuring legal certainty, and formulate an ideal, constitutional, and operational model for guaranteeing legal certainty. Accordingly, this study is expected to contribute both theoretically to the development of criminal law scholarship and practically to the formulation of legal policies that are more responsive to the dynamics of Indonesia's criminal justice transition.

2. Research Method

This study employs a normative legal research method, which conceptualizes law as a system of norms analyzed through statutory regulations, legal doctrines, and judicial decisions. This approach is appropriate as the study focuses on judicial disparity during the transitional implementation of the National Penal Code (Law Number 1 of 2023), the New Code of Criminal Procedure (Law Number 20 of 2025), and Supreme Court Circular Letter Number 1 of 2026. Accordingly, the study applies two primary approaches. Additionally, a

³ Adi Kusyandi, S. Y. (2023). Disparitas Putusan Hakim Pidana Berkualitas yang Mencerminkan Rasa Keadilan dalam Sistem Hukum Indonesia. *Yustitia*, 9(1), 122–132. <https://doi.org/https://doi.org/10.31943/yustitia.v9i1.173>.

⁴ Melieke Jilliani Darmaputra. (2023). Disparitas Terhadap Perkara Tindak Pidana Narkotika Pada Putusan Nomor 28/Pid.Sus/2022/PN.Smg dan Putusan Nomor 742/Pid.Sus/2020/PN.Smg. *Jurnal Hukum Politik Dan Kekuasaan*, 3(2), 116–128. <https://doi.org/https://doi.org/10.24167/jhpk.v3i2.6476>.

⁵ Rizka Fakhry Alfiananda. (2023). Meletakkan Realisme Hukum Sebagai Pendekatan Dalam Judicial Reasoning Melalui Pedoman Pemidanaan. *Tumou Tou Law Review*, 2(2), 64–75. <https://doi.org/https://doi.org/10.35801/tourev.v2i2.57565>.

⁶ Alfret, M. P. F. (2023). Ketentuan Asas Lex Favor Reo dalam KUHP Nasional terhadap Putusan yang Telah Berkekuatan Hukum Tetap. *Refleksi Hukum: Jurnal Ilmu Hukum*, 8(1), 75–92. <https://doi.org/https://doi.org/10.24246/jrh.2023.v8.i1.p75-92>.

⁷ Faisal, M. R. (2021). Pembaruan Pilar Hukum Pidana Dalam RUU KUHP. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 10(2), 291–308. <https://doi.org/10.24843/JMHU.2021.v10.i02.p08>.

⁸ Muhamad Romdoni, S. F. (2022). Disparitas Pemidanaan dalam Kasus Tindak Pidana Khusus Narkotika di Pengadilan Negeri Tangerang. *Masalah-Masalah Hukum*, 51(3), 287–298. <https://doi.org/https://doi.org/10.14710/mmh.51.3.2022.287-298>.

⁹ Siti Sahara, Nurasyiah Nurasyiah, L. A. K. (2022). Problematika Persidangan Perkara Pidana di Masa Kahar. *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 5(1), 97–109. <https://doi.org/https://doi.org/10.24090/VOLKSGEIST>.

philosophical approach is employed to delve into the underlying values of justice, order, and utility that these transitional norms aim to achieve. The statute approach is used to examine the structure and interrelation of relevant legal norms, while the conceptual approach is employed to construct an analytical framework based on key concepts such as judicial disparity, legal certainty, and the principle of *lex favor reo*.

As a supporting element, this study also utilizes a limited case approach to understand patterns of judicial reasoning in relevant decisions during the transitional period, as well as a comparative approach to provide additional perspective from other jurisdictions in managing legal transitions. The legal materials consist of primary, secondary, and tertiary sources obtained through library research. The analysis is conducted using a prescriptive-analytical method with deductive reasoning, through systematic and teleological interpretation of legal norms and examination of judicial reasoning, in order to formulate a coherent and operational model for ensuring legal certainty during the transitional period.

3. Result and Discussion

3.1. Forms of Judicial Disparity in the Transitional Period of the National Penal Code and the New Code of Criminal Procedure

The simultaneous implementation of the National Penal Code and the New Code of Criminal Procedure on January 2, 2026 has placed Indonesia's criminal justice system in a transitional phase that has no clear precedent in its legal history. This transformation is not limited to the replacement of legal provisions, but also involves a shift in the underlying paradigm of punishment from a retributive approach toward a more restorative, rehabilitative, and preventive orientation. However, such a paradigmatic shift does not automatically ensure consistency in legal application, particularly when the transitional legal framework has not been formulated in a detailed and operational manner. Under these conditions, the emergence of judicial disparity should be understood as a potential consequence of normative ambiguity and differences in interpretation that may arise in judicial practice.

From a theoretical perspective, judicial disparity can be classified into justified disparity and unjustified disparity. Justified disparity arises from differences in case facts, mitigating and aggravating circumstances, as well as other legally relevant factors that may legitimately be considered by judges. In contrast, unjustified disparity occurs when differences in judicial decisions are not grounded in legally relevant considerations, but instead stem from variations in interpretive approaches, preferences, or understandings of the same legal norms.¹⁰ In the context of the transitional period, it is important to emphasize that not all differences in judicial outcomes should be regarded as problematic. Only those disparities that lack a sufficient legal basis have the potential to undermine legal certainty and the principle of equality before the law.

The first form of disparity that becomes particularly relevant in the transitional period concerns differences in determining the applicable legal regime. This issue arises mainly in cases whose legal processes extend across the enactment of the new codifications, thereby opening the possibility of applying different legal frameworks within a single case. Article 3 paragraph (7) of the National Penal Code introduces the principle of *lex favor reo*, which requires judges to apply the provision that is more favorable to the defendant when a change in the law occurs before a final judgment is rendered. Nevertheless, this provision does not provide clear operational criteria for determining what constitutes a more favorable law. It remains unclear whether the assessment should be based on the maximum penalty, the type of punishment available, or the overall legal consequences.¹¹ This lack of clarity creates room for interpretive variation among judges, which may lead to inconsistent determinations of the applicable legal regime in similar cases.

The complexity of regime disparity becomes more apparent in situations where a case has already progressed to the prosecution or trial stage under the old legal framework, but the judgment is rendered after the new laws have come into force. In such circumstances, judges must decide whether to adhere to the original charges based on the old code or to adjust them to align with the new provisions that may be more beneficial to the defendant. The absence of detailed transitional guidelines regarding this issue increases the likelihood of divergent judicial approaches across courts. As a result, cases with similar characteristics may be decided under

¹⁰ Thomas J. Miceli. (2008). Criminal Sentencing Guidelines and Judicial Discretion. *Contemporary Economic Policy*, 26(2), 207–215. <https://doi.org/DOI: 10.1111/j.1465-7287.2007.00065.x>.

¹¹ Alfret, M. P. F. (2023). Ketentuan Asas Lex Favor Reo dalam KUHP Nasional terhadap Putusan yang Telah Berkekuatan Hukum Tetap. *Refleksi Hukum: Jurnal Ilmu Hukum*, 8(1), 75–92. <https://doi.org/https://doi.org/10.24246/jrh.2023.v8.i1.p75-92>.

different legal regimes, which reflects the need for clearer and more structured transitional norms.

The second form of disparity relates to sentencing differences within the same legal regime. This type of disparity refers to variations in the type and severity of punishment imposed on cases with similar characteristics. The National Penal Code introduces alternative sanctions such as community service and supervisory penalties, which theoretically provide judges with greater flexibility to impose proportionate sentences. However, in the absence of structured sentencing guidelines, this flexibility may instead expand judicial discretion and contribute to inconsistent outcomes.¹² In practice, defendants in comparable cases may receive different types of punishment, not solely because of differences in factual circumstances, but also due to variations in judicial interpretation and sentencing preferences.

This phenomenon can also be explained through the concept of anchoring bias in judicial decision-making. Judges may rely on established sentencing practices as reference points when determining appropriate sanctions. In Indonesia, imprisonment has long been the dominant form of punishment, and it may continue to serve as the primary reference point despite the availability of alternative sanctions.¹³ Consequently, sentencing disparity during the transitional period is influenced not only by the applicable legal norms but also by institutional habits and cognitive tendencies that shape judicial reasoning.

The third form of disparity concerns procedural differences in the application of criminal procedure law during the transitional period. The New Code of Criminal Procedure introduces significant changes, including stronger protection of defendants' rights, revised evidentiary standards, and new procedural mechanisms in criminal proceedings. In transitional practice, it is possible for a case to be investigated under the old procedural framework while being adjudicated under the new one. This situation raises important questions regarding the validity of evidence, the applicability of newly introduced procedural rights, and the consistency of judicial standards.¹⁴

Such procedural inconsistencies may lead to unequal treatment of defendants in similar cases, thereby conflicting with the principle of equality before the law. In this regard, procedural disparity affects not only the outcomes of judicial decisions but also the legitimacy of the judicial process itself, as differences in procedural standards may result in varying levels of legal protection for individuals involved in the criminal justice system.

Overall, these three forms of disparity, namely regime disparity, sentencing disparity, and procedural disparity, are interconnected within a transitional legal framework that remains insufficiently structured. The core issue lies in the ambiguity of transitional norms and the absence of detailed operational guidelines, which allow for broad interpretive variation in judicial practice. Therefore, addressing disparity during the transitional period cannot rely solely on individual judicial interpretation, but requires a more systematic and coordinated strengthening of the normative framework.

3.2. Effectiveness of Supreme Court Circular Letter Number 1 of 2026 in Preventing Disparity

The issuance of Supreme Court Circular Letter Number 1 of 2026 on January 2, 2026 reflects an immediate institutional response by the Supreme Court to the transitional implementation of the National Penal Code and the New Code of Criminal Procedure. Substantively, the circular letter provides guidance for judges in determining the applicable legal regime, applying the principle of *lex favor reo*, and implementing newly introduced sentencing mechanisms under the National Penal Code. In this respect, the circular letter can be understood as an initial effort to maintain consistency in judicial decision-making during the transitional period. However, its effectiveness as an instrument to prevent disparity cannot be presumed and must be evaluated through its normative position, substantive scope, and practical implementation.

From a normative perspective, the primary limitation of the circular letter lies in its position within the

¹² Rizka Fakhry Alfiananda. (2023). Meletakkan Realisme Hukum Sebagai Pendekatan Dalam Judicial Reasoning Melalui Pedoman Pemidanaan. *Tumou Tou Law Review*, 2(2), 64–75. <https://doi.org/https://doi.org/10.35801/tourev.v2i2.57565>.

¹³ Birte English, Thomas Mussweiler, F. S. (2005). The Last Word in Court—A Hidden Disadvantage for the Defense. *Law and Human Behavior*, 29(6), 705–722. <https://doi.org/705–722>. DOI: 10.1007/s10979-005-8380-7.

¹⁴ Vega Christian Pratama, L. S. E. T. (2020). Urgensi Hakim Pemeriksaan Pendahuluan dalam Peradilan Pidana di Indonesia. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 3(2), 703–711.

hierarchy of laws and regulations. Based on Law Number 12 of 2011 concerning the Formation of Laws and Regulations, a Supreme Court Circular Letter does not constitute a formal source of law with general binding force, but rather functions as an internal administrative instrument directed to courts under the Supreme Court.¹⁵ As a consequence, compliance with the circular letter is administrative rather than strictly legal in nature. A judge who deviates from the guidance provided in the circular letter does not automatically violate a binding legal norm, but may instead be exercising judicial interpretation. This structural limitation significantly reduces the capacity of the circular letter to enforce uniformity in judicial decisions.¹⁶

In terms of substance, the effectiveness of the circular letter is constrained by its inability to fully address the normative gaps left by the National Penal Code and the New Code of Criminal Procedure. As an interpretative instrument, it is limited to clarifying existing norms and providing technical guidance, without the authority to create new binding legal rules. When the underlying norms themselves lack sufficient detail, such as the absence of clear criteria for applying community service or supervisory sanctions, the circular letter can only reiterate the same ambiguity in a more operational form without resolving the core issue. Consequently, its substantive limitations are closely linked to its restricted normative authority.

The implementation dimension also plays a crucial role in determining the effectiveness of the circular letter. A technical guideline can only function optimally when accompanied by adequate dissemination and capacity-building processes among its target user.¹⁷ In this case, the issuance of the circular letter simultaneously with the enforcement of two major legal codifications creates additional challenges, particularly given the varying levels of institutional readiness and access to information among judges across regions. Without structured and continuous training programs, disparities in understanding the circular letter are likely to occur, leading to inconsistent application in judicial practice.

Another critical limitation concerns the absence of a structured evaluation and feedback mechanism. Transitional legal periods are inherently dynamic, with new interpretive challenges emerging as courts begin to apply the new legal framework. In the absence of formal channels for reporting implementation issues and obtaining authoritative clarification, judges are likely to resolve these challenges individually. This condition may lead to divergent interpretations and, paradoxically, contribute to the very disparities that the circular letter seeks to prevent.

Furthermore, the effectiveness of the circular letter is also influenced by the level of coordination among law enforcement institutions. The criminal justice process involves multiple actors, including investigators, prosecutors, and judges. The Attorney General's Office, for instance, has issued its own internal guidelines to address the transitional period. However, there is no formal harmonization mechanism between the circular letter and guidelines issued by other institutions. Differences in interpretation across institutions may lead to procedural inconsistencies, prolong judicial processes, and ultimately increase legal uncertainty for both defendants and victims.

Comparative experience demonstrates that the effectiveness of transitional legal instruments depends not only on their normative quality but also on the preparedness of implementation mechanisms. The experience of sentencing guidelines in Minnesota, for example, shows that structured guidance must be supported by institutional readiness and systematic training to achieve consistency in judicial outcomes.¹⁸ Without such supporting mechanisms, technical guidelines tend to have limited impact in reducing disparity.

Based on the foregoing analysis, the limitations of Supreme Court Circular Letter Number 1 of 2026 should not be attributed solely to deficiencies in its formulation, but also to its structural position within the legal system and the broader context of its implementation. The circular letter represents an appropriate instrument within the institutional authority of the Supreme Court, yet it is not designed to carry the full normative burden

¹⁵ Orin Gusta Andini, N. (2021). Menakar Relevansi Pedoman Pemidanaan Koruptor terhadap Upaya Pemberantasan Korupsi. *Tanjungpura Law Journal*, 5(2), 133. <https://doi.org/https://doi.org/10.26418/tlj.v5i2.46109>.

¹⁶ *Ibid.*

¹⁷ Thomas Behrens, Ulrich Keil, J. H. (2011). Barriers to Guideline Implementation. *Deutsches Ärzteblatt International*, 108(28–29), 491. <https://doi.org/10.3238/arztebl.2011.0491a>.

¹⁸ Richard S. Frase. (2005). Sentencing Guidelines in Minnesota, 1978–2003. *Crime and Justice*, 32, 31–219. <https://doi.org/10.1086/655354>.

of regulating a systemic legal transition. Therefore, it should be understood as a complementary mechanism rather than a comprehensive solution for preventing judicial disparity during the transitional period.

3.3. *An Ideal Model for Ensuring Legal Certainty in the Transitional Period of the National Penal Code and the New Code of Criminal Procedure*

The issue of legal certainty during the transitional period of criminal law codification is not unique to Indonesia. Comparative experiences demonstrate that the success of major legal reforms is significantly influenced by the clarity of transitional regulatory frameworks.¹⁹ Legal systems that incorporate well-structured transitional arrangements from the outset tend to minimize inconsistency and uncertainty in legal application. In the Indonesian context, the absence of a comprehensive transitional framework creates a normative gap that cannot be effectively addressed by a single instrument. Therefore, ensuring legal certainty during this period requires a systematic and multi-layered approach.

This study proposes a model of legal certainty based on the premise that legal certainty in transitional periods is inherently multidimensional. It cannot be secured through a single regulatory instrument or institutional mechanism, but instead requires an integrated system consisting of interrelated components. The proposed model is structured around three primary pillars, namely the normative instrument pillar, the institutional coordination pillar, and the judicial interpretive capacity pillar. These pillars operate in a complementary manner, where the weakness of one component may undermine the effectiveness of the others. As such, the model emphasizes the need for simultaneous and coordinated development across all three dimensions.

The first pillar concerns the strengthening of normative instruments through the establishment of a Supreme Court Regulation (*Peraturan Mahkamah Agung* or PERMA) specifically designed to govern sentencing and case handling during the transitional period. Unlike the Supreme Court Circular Letter, which functions as an internal administrative guideline, PERMA holds a recognized position within the hierarchy of laws and regulations, thereby providing stronger normative authority. The proposed PERMA should contain several key components. First, it should include a structured framework for determining the applicable legal regime, offering step-by-step guidance for judges in deciding whether a case falls under the old code, the new code, or a combination of both based on the principle of *lex favor reo*. Second, it should establish sentencing guidelines that define minimum objective criteria for the application of alternative sanctions such as community service and supervisory penalties.

Third, the PERMA should provide an operational interpretation of the *lex favor reo* principle, particularly by introducing a clear method for comparing legal regimes. This may involve adopting a holistic approach that evaluates the overall legal consequences of each regime rather than relying solely on isolated provisions. Such an approach is more consistent with the humanistic orientation of the National Penal Code, but it requires detailed technical guidance to prevent excessive judicial discretion. Fourth, the PERMA should regulate mechanisms for adjusting final and binding judgments in light of more favorable legal provisions, given that Article 3 paragraph (7) of the National Penal Code allows the application of more favorable laws even after a judgment has become final, without clearly specifying the procedural pathway for such adjustments.²⁰

The second pillar involves the establishment of a judicial transition coordination forum that operates across institutions. This forum should include representatives from the Supreme Court, the Judicial Commission, the Attorney General's Office, the National Police, the Ministry of Law, as well as academic and professional legal communities. Its primary function is to serve as a structured feedback mechanism, enabling the identification and collective resolution of practical challenges arising during the implementation of transitional norms. Such a forum also facilitates harmonization of legal interpretations among different law enforcement institutions, thereby reducing the risk of conflicting practices that may disrupt the judicial process. Comparative experience in South Korea indicates that similar coordination mechanisms can significantly reduce procedural inconsistencies and improve the overall effectiveness of legal reform implementation.

The third pillar focuses on strengthening judicial interpretive capacity through structured and continuous legal education programs. Legal certainty ultimately depends on the quality of judicial reasoning, particularly in

¹⁹ *Ibid.*

²⁰ Alfret, M. P. F. (2023).

situations where normative guidance is incomplete or ambiguous. The transition from a retributive to a restorative and rehabilitative paradigm requires not only formal regulatory changes but also a transformation in judicial mindset. Therefore, continuing legal education should be designed at multiple levels. The first level involves doctrinal understanding of the philosophical and normative foundations of the new legal framework. The second level emphasizes technical training based on real case studies, allowing judges to develop practical competence in applying transitional rules. The third level focuses on enhancing the ability to construct principled legal reasoning, enabling judges to base their decisions on fundamental principles such as proportionality, subsidiarity of imprisonment, and individualized sentencing.

These three pillars ultimately converge toward a single constitutional objective, which is to ensure that all individuals are treated equally before the law and are provided with fair legal certainty during the transitional period. Legal certainty in this context should not be viewed as being in tension with substantive justice. On the contrary, it serves as a necessary condition for achieving substantive justice, as consistent application of legal norms is essential for maintaining fairness and legitimacy within the criminal justice system. The proposed multi-layered model therefore represents not only a technical solution, but also a reflection of the state's constitutional obligation to protect individuals from uncertainty arising from systemic legal transformation.

4. Conclusion

The transitional implementation of the National Penal Code and the New Code of Criminal Procedure has created significant challenges in ensuring consistency of judicial decisions within Indonesia's criminal justice system. This study identifies three main forms of judicial disparity arising during the transitional period, namely regime disparity, sentencing disparity, and procedural disparity. These disparities primarily stem from the ambiguity of transitional norms and the absence of detailed operational guidelines, which allow for varying interpretations among judges in applying the law.

In this context, Supreme Court Circular Letter Number 1 of 2026 has not been fully effective as an instrument to prevent disparity. Its limitations are not only related to its normative position, which lacks general binding force, but also to its restricted substantive scope and implementation challenges in practice. As a result, the circular letter functions more as a complementary guideline rather than a comprehensive solution for ensuring consistency in judicial decisions.

To address these issues, this study proposes a multi-layered model for ensuring legal certainty during the transitional period. This model is built upon three interconnected pillars, namely the strengthening of normative instruments through a Supreme Court Regulation, the establishment of an inter-institutional coordination mechanism, and the enhancement of judicial interpretive capacity through continuous legal education. These elements are designed to work synergistically in reducing disparity and promoting consistency in legal application.

Ultimately, legal certainty during a period of systemic legal transition cannot rely on a single instrument or institution. It requires a coordinated and structured framework that integrates normative clarity, institutional alignment, and judicial capacity. By adopting such an approach, the criminal justice system is better positioned to uphold the principles of equality before the law and fair legal certainty in the midst of legal transformation.

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