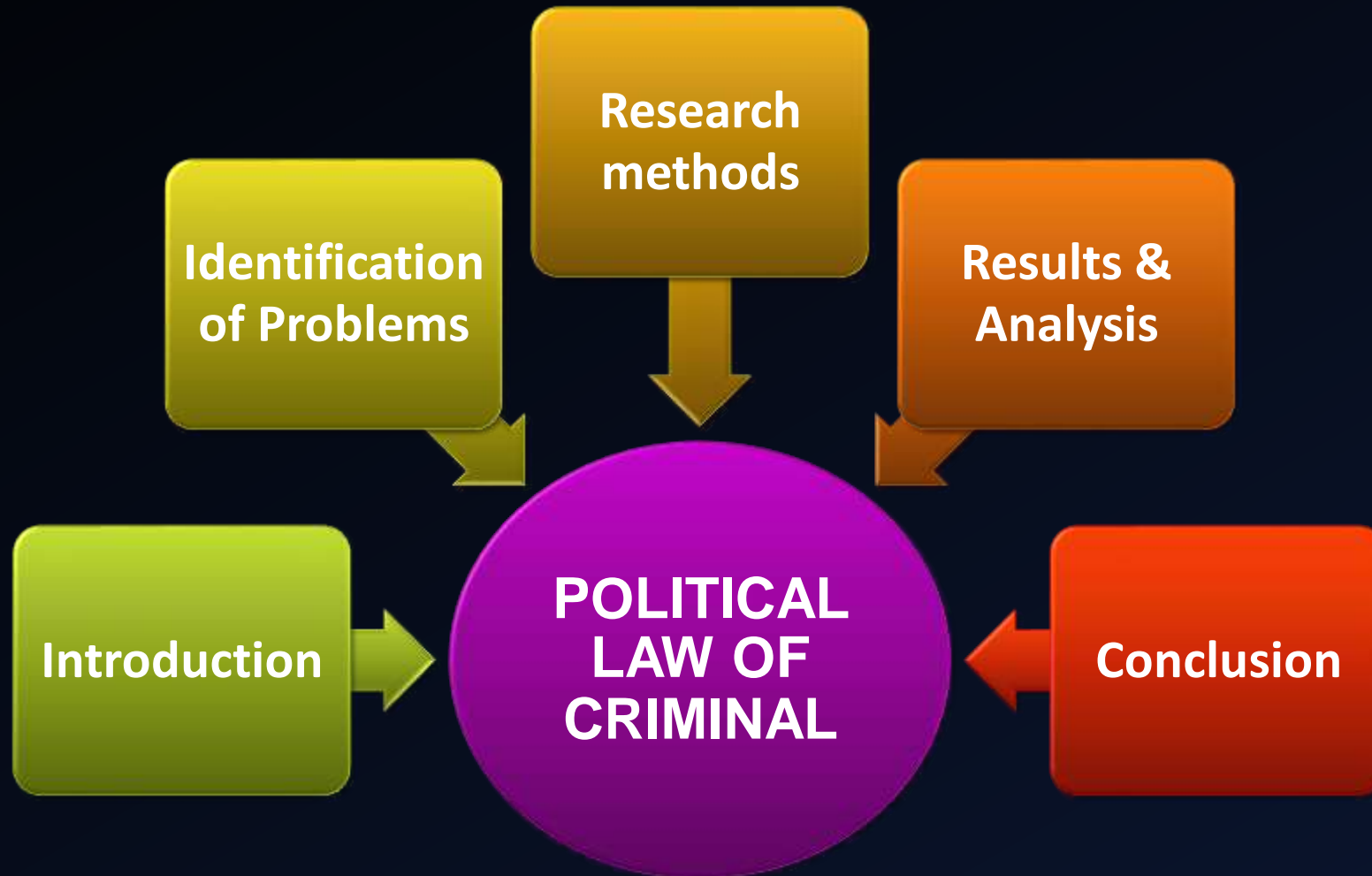


POLITICAL LAW OF CRIMINAL IMPOSITION IN INDONESIAN CRIMINAL LAW

Presented By
Ahmad Baihaki, S.H.I, M.H.

**FACULTY OF LAW
ISLAMIC UNIVERSITY OF BANDUNG
INDONESIA**

RESEARCH SYSTEMATICS



Indonesian Criminal Law Before Law No.1 of 2023 Concerning the Criminal Code

- ❖ Since independence on August 17 1945, the government of the Republic of Indonesia has decided to adopt the criminal law that was in effect during the colonial period.
- ❖ Ratified Law Number 1 of 1946 concerning criminal law regulations which established (WvS) as the Criminal Code which is the basis of criminal law with several adjustments
- ❖ The concept of crime and punishment in the Criminal Code which is currently still in effect does not have a criminal purpose
- ❖ Providing criminal sanctions is more interpreted as retaliation against perpetrators of criminal law as a deterrence effect.

Discrepancies Between Old Criminal Code dan New Criminal Code

Old Criminal Code

- KUHP (WvS) memfokuskan pada perbuatan atau tindak pidana (Daad-Strafrecht).
- More emphasis on retaliation against the perpetrator
- Does not consider the victim aspect



New Criminal Code

- Prevent the commission of criminal acts by enforcing legal norms for the protection and protection of society;
- socializing convicts by providing training and guidance so that they become good and useful people;
- resolve conflicts arising from criminal acts, restore balance, and bring a sense of security and peace in society; And
- foster a sense of remorse and relieve the convict of guilt.

Paradigm Change in Criminal Law in Indonesia



Retributive

Restorative

3 main factors as causing paradigm changes in Indonesia



Development of Human Rights



Changes in society's view of crime



Changes in society's view of the perpetrator

DEVELOPMENT OF THE PENALTY SYSTEM

THE JUDGE'S VERDICT

Criminal Law
Reform

Goal Orientation
Punishment "humanizes"
offenders in the form of
guidance (treatment) &
the interests of victims

Retaliation Theory
(*retributivism*)

Utility Theory
(*utilitarianism*)

Prison doesn't
reduce crime



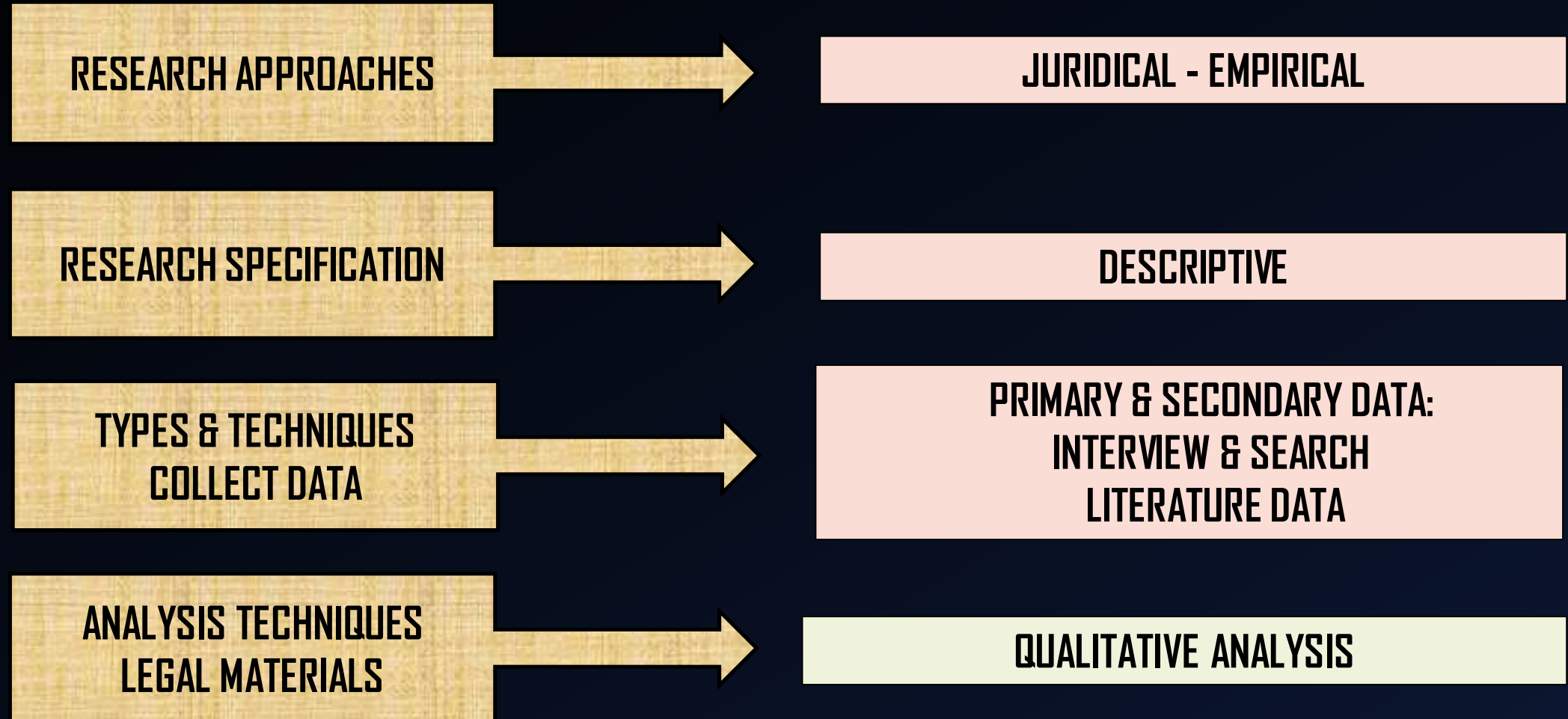
**PANCASILA
UUD 1945 :**

1. Social Defence
2. Social Welfare

CONVICTION

1. Justice
2. Legal Certainty


Research Methods



FINDINGS AND DISCUSSION

The philosophy of punishment as a philosophical basis formulates the measure or basis of justice if a violation of criminal law occurs. In this context, punishment is closely related to the criminal law enforcement process. As a system, the study of punishment can be viewed from 2 (two) angles, namely the functional angle and the substantive norm angle. Functionally, the criminal system is identical to the criminal law enforcement system which consists of the material criminal law sub-system, the formal criminal law sub-system and the criminal enforcement law sub-system.

From a normative-substantive perspective, the criminal system can be interpreted as the entire system of material criminal law norms for punishment/imposition and execution of crimes.



To reform the criminal system, Muladi has introduced a new theory of criminal objectives called "integrative criminal objectives". Nowadays the problem of punishment has become very complex because of efforts to pay more attention to factors relating to human rights (HAM), as well as making punishment operational and functional.

For this reason, a multidimensional approach is needed that is fundamental to the impact of punishment, both regarding individual impacts and social impacts. This kind of approach results in the necessity to choose an integrative theory regarding the purpose of punishment which can influence its function to overcome the damage caused by criminal acts (individual and social damages).

Three theories of the purpose of punishment have developed

Absolute theory or retributive theory

Relative Theory or Goal theory

Combined theory

Reasons for the need to reform criminal law in Indonesia

Changes in society's view of the perpetrator

The current Criminal Code is a translation from Dutch and there is no official translation yet, giving rise to differences in meaning in interpretation

As an independent country, it should have a Criminal Code created by its own nation that is in accordance with the nation's values and ideology

Purpose of Punishment

**KUHP
LAMA**

- Imposing criminal sanctions as retaliation

**KUHP
BARU**

- Community protection (Social Defense)
- Guidance for perpetrators (rehabilitation)

The purpose of punishment in Law No. 1 of 2023 (Criminal Code)

Prevent the commission of criminal acts by enforcing legal norms for the protection and guidance of society

Socialize convicts by providing training and guidance so that they become good and useful people

Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of security and peace in society

Create a feeling of regret and relieve the convict of guilt

DIFFERENCES IN TYPES OF CRIMINAL SANCTIONS

No.	Old Code (P.10)		NEW Criminal Code (P.64)		
	Principal Crime	Additional Penalty	Principal Crime	Additional Penalty	Special Crimes
1	Dead	Confiscation of certain items	Prison	Confiscation of certain items	The death penalty is alternatively punishable
2	Prison	Revocation of certain rights	cover-up crime	Revocation of certain rights	
3	Confinement	Announcement of the judge's decision	Supervision	Announcement of the judge's decision	
4	Fine		Confinement	Payment of compensation	
5	Alternative sanctions		Social Work	Revocation of certain permits or Implementing Local Customary Obligations	

Cases In Court Decisions

1. Verdict against grandmother Aminah, thief of 3 cocoa pods in Banyumas conditional criminal sentence 1 month 15 days

2. Granny Asyani's decision, wood thief sentenced to 1 year 3 months conditional sentence & fine Rp. 500.000.000,-

3. Similar cases of theft of flip-flops, watermelons, etc

4. Tangerang District Court's decision to release Tajudin (mortar seller) from prosecutors' charges related to TIP with the threat of 15 years in prison

CONCLUSION

Criminal law is a special sanction law because of its suffering nature. The aim of the crime is solely revenge. This repressive nature is not in accordance with Indonesian values and ideology. In line with Indonesian legal politics, crime and punishment have shifted not only to correct law violators, but also to create conditions for a prosperous society. Sentencing regulations are based on developments in human rights, changes in society's view of crime and changes in society's view of criminals themselves.