

Comparative Analysis of Prisoners Transfer Regulations In Japan and the Netherlands

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Abstract

This study addresses the growing challenges of transnational crime and the increasing number of foreign national prisoners, highlighting Indonesia's lack of a comprehensive legal framework governing intercountry prisoner transfers. It conducts a comparative legal analysis of prisoner transfer regimes in Japan, regulated under the Act on the Transnational Transfer of Sentenced Persons (Act No. 66 of 2002), and the Netherlands, governed by the Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties (WETS). Employing a normative juridical method with statutory, conceptual, and comparative approaches, this research examines key aspects of both systems, including transfer requirements for inbound and outbound cases, procedural mechanisms, post-transfer supervision, human rights protection, and administrative efficiency. The findings reveal that Japan prioritizes voluntary prisoner consent and robust human rights safeguards, while the Netherlands emphasizes administrative efficiency through standardized certification and integrated cross-border supervision within the European Union framework. Despite their respective strengths, both systems are constrained by territorial limitations. The principal contribution of this study lies in proposing an Adaptive Hybrid Model that integrates Japan's consent-based, human-rights-oriented approach with the Netherlands' efficiency-driven administrative framework. This model is offered as a normative blueprint for Indonesia's forthcoming Intercountry Prisoner Transfer Law, aimed at enhancing legal certainty, protecting prisoners' rights, and promoting effective social reintegration in accordance with modern penal objectives.

Keywords: *Human Rights; Justice; Law; Prisoner Transfer; Social Reintegration*

1. INTRODUCTION

The prisoners transfer is an international legal mechanism that allows a prisoner to be transferred from the country that imposed the criminal sentence to their home country, or another country that agrees, to continue serving the remaining sentence.¹ The fundamental principle is to respect the human rights and dignity of prisoners, as punishment is more effective when implemented in a country with linguistic and cultural proximity, and family support.² In practice, the intercountry transfer of prisoners is conducted with the consent of three parties: the sentencing state, the

¹ Nadila Magfira Laode, "Pentingnya Pembentukan Aturan Pemindahan Narapidana Asing Antar Negara Sebagai Upaya Perlindungan Terhadap HAM," *Muhammadiyah Law Review* 9, no. 1 (2025): 11, <https://doi.org/http://dx.doi.org/10.24127/mlr.v9i1.4001>.

² Dani Anggoro, "Transfer of Prisoners Between Correctional Institutions Based on Pancasila Justice Values," *Ratio Legis Journal* 4, no. 1 (2025): 492–519, <https://doi.org/http://dx.doi.org/10.30659/rlj.4.1.492-519>.

administering state, and the prisoner.³ This transfer does not abolish the punishment but only relocates the place of sentence execution.⁴

Based on the 2023 Data on Indonesian Citizen Cases Abroad from the Directorate of Indonesian Citizen Protection (Ditjen PWNI, Ministry of Foreign Affairs), the total number of reported cases involving Indonesian Citizens (WNI) abroad reached 21,620. This figure underscores the formidable challenges faced in protecting Indonesian nationals, particularly migrant workers, across various regions. Significantly, the Asia Pacific and Africa regions recorded the highest incidence, accounting for over 19,000 cases, far exceeding other geographical areas. Malaysia led all nations with 9,073 cases, which included 1,825 criminal cases, 1,483 immigration violations, 3,561 labour disputes, and 1,404 recorded deaths of Indonesian nationals. This concentration establishes Malaysia as the most vulnerable point for WNI, given the high number of migrant workers employed in the domestic and manufacturing sectors there. Other ASEAN countries reported lower figures: Cambodia recorded 323 cases, Thailand 104, and Brunei Darussalam 61. In East Asia, Hong Kong registered a high number with 656 cases, while Taiwan reported 1,024 cases, predominantly consisting of labour disputes and fatalities. Japan recorded 95 cases, mostly related to immigration and employment issues. The Middle East also contributed significantly to the total, with Saudi Arabia registering the highest figure in the region at 3,279 cases, followed by the United Arab Emirates (1,202 cases) and Qatar (421 cases). The majority of these incidents were related to breaches of employment contracts, employers' retention of passports, and minor criminal offences against migrant workers. Meanwhile, Europe and the Americas together accounted for approximately 1,050 cases. The Netherlands and Italy reported 87 and 96 cases, respectively, while the United States recorded 119 cases. The types of cases in these regions were relatively diverse, ranging from minor legal violations and accidents to deaths resulting from illness. Regarding specific serious crimes, 273 cases of Trafficking in Persons were recorded globally in 2023. Critically, the number of WNI facing the death penalty threat stood at 100, with most located in Saudi Arabia and Malaysia. Overall, the 2023 data confirms that the majority of protection issues for WNI abroad continue to be dominated by labour problems, accounting for over 7,000 cases, followed by general criminal cases (around 5,000 cases) and immigration violations (around 4,000 cases). This situation underscores the critical need for enhanced protection diplomacy, responsive consular services, and pre-departure empowerment initiatives for migrant workers. The protection of WNI abroad is consequently

³ Anne Wiczorek, Irene; Weyembergh, "Transfer of Prisoners and Extradition Cases between Europe and Japan: Legal and Practical Challenges," *Durham Research Online* 1, no. 1 (2022): 1–24, <https://doi.org/10.4324/9781003284710-1>.

⁴ Ninon Melatyugra Meirie Liza Kristanto, "Pemenuhan Hak Rehabilitasi Dalam Transfer of Sentenced Person : Perspektif the Nelson Mandela Rules Info Artikel," *Kertha Patrika* 47, no. 2 (2025): 148–67, <https://doi.org/10.24843/KP.2025.v47.i02.p02>.

not merely a matter of law and diplomacy but is intrinsically tied to national dignity and the preservation of human rights.⁵

In Indonesia, the regulation on intercountry prisoner transfer is explicitly stipulated in Article 45 of Law No. 22 of 2022 concerning Corrections. Article 45, paragraph (1) states, “*Under certain circumstances, prisoners may be transferred to another country based on an agreement*”.⁶ The transfer of prisoners between countries cannot be implemented unilaterally.⁷ Generally, both countries must have a bilateral agreement that explicitly regulates the transfer of prisoners and the requirements to be fulfilled, including legal, diplomatic, and national interest aspects of each country.⁸ However, the Coordinating Minister for Law, Human Rights, Immigration, and Corrections, Yusril Ihza Mahendra, stated that Indonesia has not yet established a legal framework governing the transfer of prisoners between countries.⁹

In fact, the principle of legality is one of the fundamental principles in criminal law, as reflected in the classical maxim *nullum delictum, nulla poena sine praevia lege poenali*, which means that no act can be punished without a law that has previously defined it as a crime.¹⁰ In the context of national law, the principle of legality is explicitly stated in Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP), which states that “*an act cannot be punished except by virtue of a criminal law provision that already exists*”.¹¹ This is consistent with Article 1 paragraph (1) of the National Criminal Code (to be implemented in 2026), which emphasizes that “*no act shall be subject to criminal punishment and/or measures except by virtue of a criminal provision in legislation that existed before the commission of the act*”.¹² The urgency of the principle of legality lies not only in its function of providing legal certainty but also in guaranteeing the protection of human rights from the arbitrariness of authorities.¹³ Without the

⁵ Direktorat Pelindungan Warga Negara Indonesia, “Data Kasus WNI Di Luar Negeri Tahun 2023” (Satu Data Indonesia, 2023), <https://data.go.id/dataset/dataset/pwni-kasus-2023>.

⁶ Dewan Perwakilan Rakyat Republik Indonesia (DPR RI), “Undang-Undang Republik Indonesia Nomor 22 Tahun 2022 Tentang Pemasyarakatan,” no. 143384 (2022).

⁷ Waluyo Maria Novita Apriyani, Miko Aditiya Suharto, “Pembaruan Peraturan Ekstradisi Dan Mutual Legal Assistance Indonesia Dalam Pengembalian Aset Hasil Korupsi,” *Jurnal Crepido: Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat Dan Ilmu Hukum* 05, no. 1 (2023): 27–41, <https://doi.org/https://doi.org/10.14710/crepido.5.1.27-41>.

⁸ Sonny Saptoajie Wicaksono Ayu, Diadjeng Maurien Rachma Queentania, “Implementasi Transfer of Sentenced Person Dalam Prespektif Hukum Nasional Dan Internasional (Studi Kasus Marry Jane) Implementation of Transfer of Sentenced Person in the Perspective of National and International Law,” *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 5, no. 1 (2025): 187–204, <https://doi.org/https://doi.org/10.15294/ipmhi.v5i1.26547>.

⁹ Yustina Sari and Puteri Hikmawati, “Urgensi Penyusunan Rancangan Undang-Undang Tentang Pemandangan Narapidana Antarnegara,” *Pusat Analisis Keparlemenan Badan Keahlian DPR RI XVII*, no. 1 (2025): 1–5.

¹⁰ Vincentius Patria Setyawan, “Asas Legalitas Dalam Perspektif Filsafat Hukum,” *Justitia et Pax* 37, no. 1 (2021): 127–46, <https://doi.org/10.24002/jep.v37i1.3276>.

¹¹ Dewan Perwakilan Rakyat Republik Indonesia (DPR RI), “Undang-Undang (UU) Nomor 1 Tahun 1946 Tentang Peraturan Tentang Hukum Pidana,” no. 1 (1946): 1–5.

¹² Dewan Perwakilan Rakyat Republik Indonesia (DPR RI), “Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana,” *Kitab Undang-Undang Hukum Pidana*, no. 16100 (2023): 1–345.

¹³ Christian Immanuel Situmorang et al., “Pentingnya Hukum Yang Tegas Dalam Mempertahankan Hak Asasi Manusia : Perspektif Konstitusi,” *Customary Law Journal* 1, no. 2 (2024): 1–13, <https://doi.org/https://doi.org/10.47134.jcl.v1i2.2427>.

principle of legality, individuals could easily be criminalized based on subjective interpretation or temporary moral values that lack normative legitimacy.¹⁴ However, in practice, the rapid development of society often gives rise to a phenomenon of legal vacuum, a condition in which certain actions evidently harm society but are not yet clearly regulated by law.¹⁵ This condition creates a serious problem in law enforcement, because, on the one hand, the principle of legality must be upheld. Still, on the other hand, the need to protect public interests urges legal action against such harmful behavior.¹⁶ The existence of legal certainty provides the public with clarity regarding their rights and obligations under the law. Without legal certainty, individuals would face difficulty in determining the proper course of action, unable to distinguish between lawful and unlawful conduct, or ascertain whether an act is prohibited or permitted by law. This certainty is realized through well-defined and explicit norms within a statute, which consequently ensures a sound and clear application thereof.¹⁷

The transfer of prisoners between countries is regulated not only in Indonesia but also in other countries that follow the civil law system, including Japan and the Netherlands. In Japan, the regulation concerning the transfer of prisoners between countries is based on the Council of Europe Convention on the Transfer of Sentenced Persons (1983), which was later adopted into the Act on the Transnational Transfer of Sentenced Persons (Act No. 66 of 2002). Meanwhile, in the Netherlands, the regulation on the transfer of prisoners between countries is based on the Council Framework Decision 2008/909/JHA, which was subsequently adopted into the Dutch *Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties* (WETS), effective since October 1, 2024. Both regulations include provisions regarding the requirements, procedures, supervision, and rights of prisoners during the transfer process. Japanese law emphasizes the importance of the prisoner's voluntary consent, the protection of human rights, and humanitarian principles in the transfer process. This system ensures that every transferred prisoner retains the right to social reintegration and adequate supervision.¹⁸ Meanwhile, the Netherlands establishes strict time limits for decision-making and a communication mechanism between authorities through standardized official certificates across the European Union. This system enables the cross-border execution of sentences to be carried out swiftly, transparently, and accountably.¹⁹

¹⁴ Ateng Sudibyo and Aji Halim Rahman, "Deonstruksi Asas Legalitas Dalam Hukum Pidana," *Journal Presumption of Law* 3, no. April (2021): 55–79, <https://doi.org/https://doi.org/10.31949/jpl.v3i1.985>.

¹⁵ Yonathan Ariel et al., "Implikasi Kekosongan Hukum Terhadap Kecerdasan Buatan Sebagai Pelanggar Kekayaan Intelektual Terhadap Karya Digital," *Jurnal Kertha Wicara* 15, no. 04 (2025): 191–204, <https://doi.org/KW.2025.v15.i04.p1>.

¹⁶ Fikriya Aniq Fitri et al., "Tinjauan Teoritis Tentang Asas Legalitas Dalam Hukum Pidana Indonesia," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 2 (2024): 202–9, <https://doi.org/10.71153/jimmi.v1i2.134>.

¹⁷ Dino Rizka Afdhali et al., "Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal* 6, no. 2 (2023): 555–61, <https://doi.org/https://doi.org/10.56301/csj.v6i2.1078>.

¹⁸ The Government of Japan, "Act on the Transnational Transfer of Sentenced Persons," 2002, 1–14.

¹⁹ Onze Minister van Veiligheid en Justitie, "Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties," 2025, 1–15.

Several recent studies have highlighted the urgency of regulating the transfer of prisoners between countries. Markus Marselinus and Budi Priyatmono (2024) examined the extradition process in Indonesia and emphasized the importance of legal protection for Indonesian citizens imprisoned abroad due to criminal acts.²⁰ The strength of this study lies in its focus on the national urgency and the humanitarian aspect of protecting Indonesian nationals. However, its limitation is that it primarily discusses the process of extradition (transfer of suspects/defendants) rather than the transfer of sentenced persons (TSP), and it does not propose a detailed comparative legal model to address the existing legal vacuum in Indonesia.

This aligns with the findings of Nursela Baqi (2025), who revealed that the legal vacuum in Indonesia has caused various obstacles in the implementation of the transfer of prisoners between countries, noting that foreign prisoners often face challenges such as language barriers and social adaptation difficulties, which hinder their rehabilitation. The advantage of this work is its explicit identification of the legal vacuum and the social challenges faced by prisoners. Nevertheless, the comparative models it references (e.g., Hong Kong and the Philippines) may be insufficient in providing a comprehensive legal framework, as they do not offer a deep comparison with legal systems that operate under fundamentally different philosophies.²¹

Robin Hofmann and Hans Nelen (2020), in their empirical research comparing the transfer of prisoners between the Netherlands, Germany, and Belgium, emphasized that considerations regarding residence, human rights issues, social rehabilitation, and the consent of the convicted person significantly influence the transfer procedure.²² This research offers valuable empirical insights into the administrative efficiency and human rights concerns within a similar regional legal system (European Union). The primary weakness, however, is that its comparative analysis is limited to a group of countries with homogenous legal traditions (Continental Europe), making its findings less readily adaptable for a country like Indonesia, which requires a model balancing different legal approaches.

Based on a critical analysis of previous studies, it is evident that the existing literature either focuses narrowly on national urgency (Soge, Baqi) or is restricted to comparisons within the same legal family (Hofmann and Nelen). This research offers a comparative model between Japan and the Netherlands, a model not previously employed in prior studies, to serve as a conceptual basis for formulating the Draft Law on Intercountry Prisoner Transfer in Indonesia.

²⁰ Budi Priyatmono Markus Marselinus Soge, "Paving The Way For International Cooperation : Policy Urgency The Law Of Intercountry Transfer Of Prisoners In Indonesia," *Jurnal Hukum Dan Keadilan* 1, no. 4 (2024): 33–38, <https://doi.org/https://doi.org/10.61942/jhk.v1i4.194>.

²¹ Nursela Baqi, "Urgensi Pembentukan Peraturan Tentang Pemindahan Narapidana Antar Negara Di Indonesia," *Judge: Jurnal Hukum* 06, no. 1 (2025): 46–52, <https://doi.org/doi.org/10.54209/judge.v6i01.1041>.

²² Robin Hofmann and Hans Nelen, "Cross-Border Cooperation in the Execution of Sentences between the Netherlands, Germany and Belgium: An Empirical and Comparative Legal Study on the Implementation of EU Framework Decisions 2008/909/JHA and 2008/947/JHA," *Crime, Law and Social Change* 74, no. 4 (2020): 381–404, <https://doi.org/10.1007/s10611-020-09900-7>.

This analysis highlights a research gap in comparing two key countries: an East Asian nation, Japan, and a European Union nation, the Netherlands. Both countries emphasize the principles of social reintegration and the human rights of prisoners, yet their systems are accompanied by strict supervision. Like Indonesia, both Japan and the Netherlands adhere to the Civil Law system. Furthermore, Japan is located on the Asian continent, and Indonesia's legal system adopts the Dutch Civil Law system, as evidenced by the legal inheritance reflected in several laws, including the Criminal Code (*Wetboek van Strafrecht voor Nederlandsch-Indië*).²³ Additionally, Japan's intercountry prisoner transfer law applies to all countries with which Japan has signed a bilateral agreement. Meanwhile, this article uses the WETS as a point of comparison with Japan's Act No. 66 of 2002. The WETS operates within the scope of the European Union. This difference is highly relevant to Indonesia, which is currently seeking the most suitable model to balance national sovereignty and international cooperation within ASEAN. If previous studies compared prisoner transfers between the Netherlands, Belgium, and Germany, this article compares transfers between Japan and the Netherlands. It also analyzes the strengths and weaknesses of the transfer systems in both countries. Considering the increasing number of Indonesian citizens who are prisoners abroad and the growing number of foreign nationals serving sentences in Indonesia, the establishment of a specific law concerning the transfer of prisoners has become an urgent necessity. The draft law currently being prepared by the government is expected not only to fill the legal vacuum but also to strengthen Indonesia's legal diplomacy in the international arena. By learning from Japan and the Netherlands, Indonesia can design a prisoner transfer system that prioritizes legal certainty, humanitarian principles, and diplomatic relations. Thus, the enactment of the Law on the Transfer of Prisoners Between Countries is not only a juridical necessity but also a part of the national strategy to achieve justice. Arising from this urgency, this study aims to compare the intercountry prisoner transfer systems in Japan and the Netherlands to identify a legal model that can be adapted by Indonesia.

2. METHOD

Normative legal research is conceptually defined as a study that focuses on legal issues or questions within a specific jurisdiction. The execution of this research method involves collecting relevant legal data and rigorously analyzing prevailing laws and legal norms.²⁴ This study uses a normative legal research method with a comparative approach, examining applicable positive legal norms and relating them to legal theories and general principles of criminal law. The legal materials used consist of primary legal materials (Law No. 22 of 2022

²³ Nafi Mubarak, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan," *Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 27, no. 1 (2024), <https://doi.org/https://doi.org/10.15642/alqanun.2024.27.1.15-31>.

²⁴ Yati Nurhayati; Ifrani; M.Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20, <https://doi.org/https://doi.org/10.51749/jphi.v2i1.14>.

concerning Corrections, Act No. 66 of 2002, and WETS), secondary legal materials (books and scientific journals), and tertiary legal materials (legal websites). This research also uses statutory, conceptual, and comparative approaches. The statutory approach is used to examine laws and regulations relevant to this study; the conceptual approach uses the theory of sentencing objectives as an analytical tool for analyzing the transfer of prisoners between Japan and the Netherlands; and the comparative approach is utilized to emulate or adopt regulations from other countries that already have more comprehensive frameworks. This study will compare the following aspects within the Act No. 66 of 2002 and the WETS regulations: the criteria for transfer (inward and outward), formal and administrative procedures, post-transfer supervision mechanisms, applied human rights principles, and system efficiency and effectiveness. This analysis highlights a research gap in comparing two key countries: an East Asian nation, Japan, and a European Union member, the Netherlands. Both countries emphasize the principles of social reintegration and the human rights of prisoners, yet their systems are accompanied by strict supervision. Like Indonesia, both Japan and the Netherlands adhere to the Civil Law system. Furthermore, Japan is located on the Asian continent, and Indonesia's legal system adopts the Dutch Civil Law system, as evidenced by the legal inheritance reflected in several laws, including the Criminal Code (*Wetboek van Strafrecht voor Nederlandsch-Indië*).²⁵ Additionally, Japan's intercountry prisoner transfer law applies to all countries with which Japan has signed a bilateral agreement. Meanwhile, this article uses the WETS as a point of comparison with Japan's Act No. 66 of 2002. The WETS operates within the scope of the European Union member states. This difference is highly relevant to Indonesia, which is currently seeking the most suitable model to balance national sovereignty and international cooperation within ASEAN. By learning from Japan and the Netherlands, Indonesia can design a prisoner transfer system that prioritizes legal certainty, humanitarian principles, and diplomatic relations. The analysis method involves reviewing library materials or secondary data, including primary, secondary, and tertiary legal materials, as well as relevant legal documents and prevailing statutory regulations. This material forms the basis for normative juridical analysis concerning the synchronization of Law No. 22 of 2022 concerning Corrections with Act No. 66 of 2002 and the WETS. To analyze the collected legal materials, this research employs a qualitative method, specifically a normative juridical approach, presented descriptively by illustrating a policy related to the synchronization of the three legal frameworks, with the aim of proposing an adaptive model for regulatory development in Indonesia, where a specific framework is currently lacking.

²⁵ Mubarak, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan."

3. RESULTS AND DISCUSSION

3.1 Comparing Intercountry Transfer of prisoners Between Japan and the Netherlands

Transnational organized crime is a highly dangerous form of crime that is difficult to eradicate because it involves multiple countries; therefore, international cooperation is required.²⁶ The Council of Europe Convention on the Transfer of Sentenced Persons (1983) was adopted by the Council of Europe on March 21, 1983, in Strasbourg, and came into force on July 1, 1985. The purpose of its establishment arose from the awareness that an increasing number of citizens from one country were serving sentences in other countries due to growing international mobility and cross-border crimes. Foreign prisoners often experience psychological, linguistic, and cultural difficulties that hinder their rehabilitation and social reintegration processes, and there is no uniform international legal mechanism to transfer prisoners between countries for humanitarian reasons. The 1983 Convention then became the first multilateral legal framework providing standardized procedures for the transfer of prisoners.

The main objective of the Council of Europe Convention on the Transfer of Sentenced Persons (1983) is to facilitate a more humane and effective execution of sentences by providing prisoners with the opportunity to serve their sentences in their home countries, allowing them to obtain social and moral rehabilitation within a familiar cultural environment, and to maintain social and family relationships, which are essential factors in recovery and the prevention of recidivism.²⁷ Until this era, this convention has been ratified by more than 70 countries, including non-European states such as Japan, the United States, Canada, South Korea, and Thailand, making it a universally applicable international legal instrument in practice.²⁸ Japan later adopted the convention into the Act on the Transnational Transfer of Sentenced Persons (hereinafter referred to as Act No. 66 of 2002), which regulates the transfer of prisoners between countries.

In addition to the Council of Europe Convention on the Transfer of Sentenced Persons (1983), Europe also has the Council Framework Decision 2008/909/JHA as a guideline that is binding only on the Member States of the European Union. The Council of Europe adopted the Convention on November 27, 2008, and it came into force on December 5, 2008. Similar to the Council of Europe Convention on the Transfer of Sentenced Persons (1983), the Council Framework Decision 2008/909/JHA upholds the principles of equality, fairness, and reasonableness to be respected.²⁹ One of the European Union Member States that adopted this

²⁶ Shidqi Noer Salsa, "Mutual Legal Assistance Dalam Penyidikan Tindak Pidana Perdagangan Manusia Melalui Media Sosial Sebagai Kejahatan Terorganisasi Transnasional," *Jurnal Yuridis* 8, no. 1 (2021): 1–22, <https://doi.org/10.35586/jyur.v8i1.2510>.

²⁷ The Council of Europe, "Convention on the Transfer of Sentenced Persons," *International Legal Materials* 22, no. 3 (1983): 542–49, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=112>.

²⁸ Council of Europe Treaty Office, "Chart of Signatures and Ratifications of Treaty 112" 33, no. 0 (2025): 20–23, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=164>.

²⁹ The Council of The European Union, "Council Framework Decision 2008/909/JHA," 2008, https://eur-lex.europa.eu/eli/dec_framw/2008/909/oj/eng.

convention is the Netherlands, as stipulated in the *Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties* (hereinafter referred to as WETS), which regulates the transfer of prisoners among European Union members.³⁰ WETS and Act No. 66 of 2002 regulate the requirements for incoming and outgoing transfers, the procedures for these transfers, and post-transfer supervision. By adopting different conventions, the two laws have both differences and similarities, which will be explained in the first subsection.

In the context of intercountry prisoner transfers, Japan, through its Act No. 66 of 2002, implements a consent-based, voluntary system. The Oxford English Dictionary defines "consent" as "voluntary agreement to, or acquiescence in, what another proposes or desires; compliance, concurrence, permission." In the field of medicine, expanding on this, "informed consent" refers to the free and voluntary agreement given by an individual to a specific procedure, subsequent to receiving comprehensive information regarding the nature and consequences of that action. The principle of informed consent is both the right and obligation of every competent individual to pursue their well-being by either freely consenting to or refusing specific actions, based on adequate knowledge of the associated benefits, harms, and risks. For incompetent individuals, this right must be interpreted by their legal guardian according to the individual's rational wishes or known intent.³¹ Conversely, the Netherlands implements administrative efficiency. Administrative efficiency is defined as the process of achieving effective and efficient outcomes in the execution of daily tasks. Within the context of public administration, efficiency is represented by various aspects, including planning, implementation, supervision, management, and operational activities. An efficient administration offers several benefits: it ensures the effective and productive attainment of organizational objectives, facilitates decision-making and task execution, reduces bureaucracy, minimizes resource wastage, and enhances governmental accountability and transparency. Specifically in intercountry legal cooperation, administrative efficiency aids in managing information, making timely decisions, and minimizing errors in procedural execution, thereby streamlining the process and improving state performance.³² The comparison concerning the criteria for transfer (inward and outward), formal and administrative procedures, post-transfer supervision mechanisms, applied human rights principles, and system efficiency and effectiveness found in the Act No. 66 of 2002 and the WETS will be elaborated in the Table 1 below:

³⁰ Onze Minister van Veiligheid en Justitie, "Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties."

³¹ Meysita Arum Nugroho Jatri Handijani, "Tinjauan Terhadap Praktik Kedokteran Dan Kesehatan Berdasarkan Prinsip Etika Confidentiality Yang Berpedoman Terhadap Hukum Kesehatan," *Sekolah Tinggi Ilmu Hukum IBLAM* 8, no. 11 (2023), <https://doi.org/https://doi.org/10.36418/syntax-literate.v8i11.13890>.

³² Immanuel Nainggolan and Yehezkiel Hasiholan Simamora, "Optimisasi Efisiensi Administratif: Studi Beban Administrasi Pada Dinas Pekerjaan Umum(Tata Ruang) Kabupaten Semarang," *Jurnal Ilmiah Wahana Pendidikan* 10, no. June (2024): 107–16, <https://doi.org/https://doi.org/10.5281/zenodo.12511594>.

Table 1 Comparative Japan - Netherland

Comparative	Japan	The Netherlands
The criteria for transfer inward	<p>Article 5 of Act No. 66 of 2002 explicitly sets several conditions that must be met to allow an incoming transfer, namely the transfer of prisoners from another country to Japan to serve the remainder of their sentence. This law is restrictive, emphasizing that the transfer can only occur if it does not fall under any of the specified rejection conditions, one of which is when the convicted person to be transferred does not give consent. Japan upholds the principle of informed consent, which refers to the agreement given by an individual after they have been fully informed and understand all relevant information addressed to them. This makes it a fundamental aspect of the transfer process. Without the prisoner's consent, the transfer is prohibited. This reflects Japan's commitment to protecting the rights of prisoners in determining their own legal fate. Transfers are not permitted for individuals under the age</p>	<p>Articles 2:3 to 2:6 of WETS regulate the conditions under which the implementation of an incoming transfer is permitted. The initial requirement is that the convicted person must be located in the Member State that issued the judgment (i.e., the European Union country that imposed the sentence) or already be present in the Netherlands. In addition, the Dutch Minister of Security and Justice must approve the enforcement of the court's decision, although the Minister's approval may be exempted in certain cases. The following conditions, if met, automatically eliminate the need for approval from the Minister of Security and Justice and the prisoner regarding the transmission of the judgment, namely: the convicted person is a Dutch citizen who has a permanent residence or domicile in the Netherlands, or the convicted person is a Dutch citizen who does not have a permanent residence or</p>

of 14. This provision is consistent with Article 41 of the Penal Code of Japan, which states that children below that age cannot be held criminally responsible and, therefore, cannot legally serve the remainder of their sentence in Japan. A transfer can only be carried out if the act underlying the foreign criminal judgment also constitutes a criminal offense under Japanese law. This requirement ensures that foreign judgments do not conflict with the validity of Japan's national legal system (dual criminality). Specifically, the minimum penalty for such an offense in Japan must be imprisonment. The final prohibition is that a transfer shall be rejected if there is a related criminal case still under judicial process or already decided in Japan against the same offender. This restriction aims to prevent violations of the *ne bis in idem* principle, which prohibits punishing an individual twice for the same criminal act.³³

domicile in the Netherlands but there is an official decision in the sentencing country stating that they may be deported to the Netherlands after release. Another condition applies if the convicted person is a Dutch citizen with a permanent residence or domicile in the Netherlands and can be deported after release. Additionally, the person must have fled or returned to the Netherlands in connection with the criminal proceedings initiated or the sentence imposed in the Member State that issued the judgment. The Minister of Security and Justice may request or approve the transmission of a court decision made in another European Union Member State, either at the request of the convicted person or on the Minister's own initiative, for the purpose of its recognition and enforcement in the Netherlands, provided that there is a demonstrable and sufficient connection between the convicted person and the Netherlands.

³³ The Government of Japan, "Act on the Transnational Transfer of Sentenced Persons."

Formal and administrative procedures

Articles 3 to 27 of Act No. 66 of 2002 regulate the procedure for incoming transfers, which applies to Japanese citizens or residents who have been convicted abroad and wish to serve the remainder of their sentence in Japan. The process begins with an administrative stage and an initial assessment conducted by the Minister of Foreign Affairs. The Minister of Foreign Affairs receives, reviews, and forwards all transfer requests and supporting documents to the Minister of Justice, along with the Minister of Foreign Affairs' opinion. If the Minister of Foreign Affairs agrees, the Minister of Justice then conducts an assessment to determine whether the requirements for the incoming transfer have been met and ensures that

This provision grants the Minister flexibility to process cases that do not strictly fall within the above categories, provided there is a strong link with Dutch jurisdiction.³⁴

Articles 2:7 to 2:23 of WETS regulate the procedure for incoming transfers, which applies to Dutch citizens or residents who have been convicted in a Member State and wish to serve the remainder of their sentence in the Netherlands. The process begins after the Dutch Minister of Security and Justice approves the transmission of the conviction decision. The authorities of the European Union Member State that issued the judgment are then responsible for sending the court decision, along with a fully completed certificate in accordance with the European Union standard model, to the Minister of Security and Justice. The Minister of Security and Justice is required to confirm the receipt of the valid documents, which may

³⁴ Onze Minister van Veiligheid en Justitie, "Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties."

the authorized official has verified the prisoner's consent. The next stage is the legality review conducted by the Tokyo District Court. The Minister of Justice requests the Tokyo Prosecutor General to submit an application for a legality examination to the court. The court reviews all transfer requirements and issues a ruling that may be rejected (procedural), unenforceable (substantive), or enforceable (fulfilling all requirements). Finally, during the transfer order and sentence execution stage, if the ruling determines that the transfer is enforceable, the Minister of Justice issues a transfer order containing the details of the sentence and the prisoner's placement. However, written reconfirmation of the prisoner's consent must first be obtained. After the prisoner is handed over to Japan, the Public Prosecutor issues a commitment order to commence the execution of the sentence. The remaining duration of the sentence is calculated according to the judgment of the sentencing country, and be transmitted electronically, provided that their authenticity can be ensured. The Minister of Security and Justice is responsible for initial verification. If the certificate is found to be missing, incomplete, or inconsistent with the judgment, the Minister shall immediately request the issuing authority to complete or correct it. Under certain conditions, the Minister also has the right to request a translation of the court judgment into Dutch or another official language of the European Union and is obliged to provide information regarding the Dutch parole regulations. Prisoners who are already in the Netherlands must also be informed about the transmission of these documents. The Minister of Security and Justice is required to make a decision regarding the recognition of the judgment within a strict time limit of ninety days from the receipt of the certificate. Unless there are compelling reasons for refusal, the Minister must immediately forward the documents to the Special

the type of punishment is adjusted to the Japanese system (imprisonment with or without labor). From the issuance of the commitment order, all provisions of Japanese criminal law apply to the prisoner, including the rules on parole.³⁵

Chamber of the Court of Appeal for a compliance review. The Special Chamber is responsible for assessing any grounds for refusal and conducting a double criminality test to ensure that the act also constitutes a criminal offense under Dutch law. The Chamber is also responsible for adjusting the sanction. If the duration of imprisonment imposed exceeds the maximum limit allowed in the Netherlands, the duration must be reduced. If the nature of the sentence is inconsistent with Dutch law, the sentence will be converted into a sanction (fine or measure) that is most equivalent under Dutch law. The Chamber's decision, which must be delivered in writing within six weeks, serves as a consideration for the Minister when making the final decision. The Special Chamber is obliged to refuse recognition if there are fundamental violations, such as the absence of double criminality, infringement of the convicted person's right to be present at the trial, or if

³⁵ The Government of Japan, "Act on the Transnational Transfer of Sentenced Persons."

the transfer requirements are not met. Once the recognition decision has been made, the sentence is immediately executed in accordance with Dutch law, and the period of detention already served in the issuing country will be deducted from the total remaining sentence. Coordination of the transfer of prisoners from the issuing country to the Netherlands must be carried out no later than thirty days after the recognition decision is issued. As part of supervision, the Minister of Security and Justice is obliged to immediately notify the authorities of the issuing country regarding the status of enforcement, including the start or end date of parole, the completion of the total sentence, any decision of pardon or amnesty, and even cases in which enforcement fails because the prisoner cannot be found or has escaped.³⁶

Post-transfer supervision mechanisms	In terms of supervision after the transfer, Japan, which	In terms of supervision, WETS allows the authorities
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³⁶ Onze Minister van Veiligheid en Justitie, “Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties.”

maintains full authority over the execution of sanctions, requires the Head of the Correctional Institution to immediately report the prisoner's status to the regional parole board. In the context of intercountry supervision, the Minister of Justice is obliged to inform the sentencing country of the status of the sentence execution, including cases where the prisoner has completed the sentence, passed away, or escaped. Suppose the sentencing country annuls the sentence that serves as the basis for the transfer. In that case, the Minister of Justice must immediately revoke the transfer order and instruct the release of the prisoner.

in the Netherlands to arrest and temporarily detain a person within Dutch territory if it is necessary to facilitate recognizing and enforcing a criminal judgment from a European Union Member State. This detention is temporary and may only be carried out for the period required to reach a final decision regarding the recognition and enforcement of the foreign judgment. During this period of detention, the rights of the detained person are guaranteed to be equivalent to those of Dutch detainees, including the right to legal assistance and notification to diplomatic representatives. This detention must be immediately terminated under certain conditions. If the Dutch court decides not to recognize the judgment or refuses its enforcement, the convicted person must be released at once. However, continued detention may be ordered to ensure the presence of the convicted person if no final and binding decision has yet been made. Once the judgment from the issuing

Member State has obtained permanent legal force, the execution of the sentence is carried out entirely in accordance with Dutch national law. The main principle emphasized is that the enforcement of the sentence must not exceed or aggravate the sanction imposed in the originating country.³⁷

Applied human rights principles

Legally, Japan ensures compliance with the *ne bis in idem* principle (not to be punished twice for the same act). Suppose a Japanese citizen who has been transferred is later convicted by a Japanese court for the same criminal act that served as the basis for the transfer. In that case, the prisoner is exempted from serving the criminal sentence underlying the transfer. This provision effectively eliminates double prosecution, although the Penal Code of Japan generally allows double prosecution for Japanese citizens who commit crimes abroad if the foreign sentence has not yet been served. Incoming

In addition to principal sanctions, the Netherlands also provides conditional alternative sanctions for prisoners, both Dutch nationals and nationals of other Member States, as stipulated in Articles 3.1 to 3.3 of WETS, which are described as follows: these conditional sanctions apply to court judgments in which the execution of the imposed prison sentence has been conditionally suspended. This provision also covers judgments imposing imprisonment accompanied by conditional release, or judgments that impose an obligation on the convicted person to comply with certain conditions under the threat of imprisonment if

³⁷ Onze Minister van Veiligheid en Justitie.

transferred prisoners are those obligations are required to bear the costs of violated, or judgments that escort and transportation to conditionally suspend the Japan. However, the law imposition of sanctions. To considers the human rights meet the requirements of of prisoners by granting the conditional sanctions, Minister of Justice the prisoners are obliged to discretion to waive all or comply with various part of these costs if the obligations imposed by the convicted person is court during the probation classified as indigent, in period. These obligations are accordance with the extensive and encompass applicable Cabinet order.³⁸ both personal and social aspects of life. Prisoners are required to notify the authorities of any changes in residence or workplace and to report periodically. Other possible obligations include prohibitions from entering specific locations or areas, restrictions on the right to leave the administering Member State, prohibitions from contacting certain individuals or institutions, and avoiding contact with items that could be used to commit criminal acts. In addition, the convicted person may be obligated to compensate for damages resulting from the criminal act, cooperate with probation or social services, undergo therapy or detoxification, perform

³⁸ The Government of Japan, “Act on the Transnational Transfer of Sentenced Persons.”

community service, and comply with restrictions or conditions related to behavior, residence, education, leisure activities, or professional practice. In terms of implementation, the Public Prosecution Service is the authority vested with full power to recognize conditional sanction judgments received from the issuing Member State for enforcement in the Netherlands. It is also authorized to transmit Dutch court judgments to the administering Member State for recognition and enforcement there.³⁹

System efficiency and effectiveness	Consent based dan voluntary consent	Administrative efficiency
The criteria for transfer outward	Article 28 of Act No. 66 of 2002 establishes a series of prohibitions and conditions that must be observed before the transfer of prisoners from Japan to their home countries can be carried out. These prohibitions aim to preserve the sovereignty of Japan's judicial jurisdiction and to protect the rights of prisoners. A transfer may only be approved if it does	Articles 2:24 to 2:26 of WETS regulate the conditions for conducting an outgoing transfer, namely the transfer of prisoners from the Netherlands to their Member State of origin. In this case, the transfer may only be carried out if the following conditions are met: the convicted person must be in the Netherlands or already in the

³⁹ Onze Minister van Veiligheid en Justitie, "Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties."

not violate the following prohibitions; in line with the principle outlined in Article 5 regarding incoming transfers, the prisoner's consent is an absolute requirement. This requirement ensures that prisoners are not forcibly transferred to their home countries. A transfer cannot be carried out if the criminal act underlying the sentence in Japan is not recognized as a crime in the receiving country (dual criminality). If the prisoner is still exercising their legal rights to appeal, file a cassation, or submit an extraordinary legal remedy such as a judicial review in Japan, the transfer must be postponed. This measure is taken to ensure that the transfer process does not interfere with the ongoing judicial proceedings in Japan. The transfer is prohibited if the prisoner is submitting or awaiting the result of an application for pardon, commutation (change of the type of punishment), or remission (reduction of sentence). The transfer cannot be carried out if the prisoner still has additional administering Member State (the European Union country to which the transfer is directed). The competent authorities of the administering Member State must have approved the transmission of the judgment, although this approval may be exempted in certain cases. The convicted person must request or consent to the transmission of the judgment, although such consent may also be exempted under the provisions of WETS. The Dutch Minister of Security and Justice must determine whether, after consulting or without consulting the authorities of the administering country, the enforcement of the sentence in the administering Member State can contribute to the social reintegration of the convicted person in that country. In addition to this basic requirement, the transfer must show the existence of a strong connection between the convicted person and the administering Member State (the country of transfer destination). This

penalties that have not yet been fully executed, such as fines, asset confiscation, or restitution obligations. Japan must ensure that all imposed criminal commitments have been fulfilled. The final prohibition applies if the prisoner is involved in another criminal case that is still under investigation, prosecution, or has not yet been concluded in Japan. The transfer is permitted only after all legal proceedings involving the foreign prisoner within Japan's jurisdiction have been completely resolved.⁴⁰

requirement focuses on nationality, domicile, and deportation status, namely: the convicted person is a national of the Member State that will enforce the sentence and has a permanent residence or domicile in that Member State; the convicted person is a national of the Member State that enforces the sentence, does not have residence in that State, but can be deported there after release as a result of an obligation to leave the Netherlands imposed upon them; and this condition is also met if the convicted person is a national and resident of the administering Member State, can be deported to the administering Member State after release, and has fled or returned to that Member State in connection with the criminal proceedings or sentence imposed in the Netherlands.⁴¹

Formal and administrative procedures Articles 28 to 38 of Act No. 66 of 2002 regulate the procedure for outgoing transfers, which applies to Articles 2:27 to 2:37 of WETS regulate the procedure for outgoing transfers, specifically for

⁴⁰ The Government of Japan, "Act on the Transnational Transfer of Sentenced Persons."

⁴¹ Onze Minister van Veiligheid en Justitie, "Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties."

foreign prisoners convicted in Japan who wish to serve the remainder of their sentence in their home countries. First, submit the application and consent. After the criminal judgment has obtained permanent legal force, the Head of the Correctional Institution is obliged to notify the foreign prisoner of the provisions regarding outgoing transfers. If the prisoner expresses interest in being transferred and Japan has notified the administering country, the Minister of Justice must inform the prisoner of this in writing. The prisoner may then officially submit a written application for an outgoing transfer. This consent must be stated in an official document signed by the prisoner in the presence of a designated official from the correctional institution. The Head of the Correctional Institution is required to forward this written application to the Minister of Justice immediately. In addition, the administering country has the right to send consular officers to interview the prisoner to verify that the prisoners who are nationals of European Union Member States, have been convicted in the Netherlands, and wish to serve the remainder of their sentence in another European Union Member State. The Minister of Security and Justice is obliged to provide the convicted person with the opportunity to express their opinion regarding the Minister's intention to transmit the court judgment to the administering Member State. Unless the convicted person's opinion provides strong grounds to cancel the plan, the Minister shall notify the convicted person of this intention in writing. The convicted person has the right to file an objection to the Minister's intention within fourteen days to the Special Chamber of the Arnhem-Leeuwarden Court of Appeal. The Special Chamber of the Court of Appeal then immediately examines the objection submitted within the prescribed time. Their assessment focuses on whether the Minister's proposed decision has been

consent was given reasonably reached after voluntarily and without considering all relevant coercion. After the interests. The convicted application and consent have person must be heard in been submitted, if the court or at least be Minister of Justice has summoned. If they do not ensured that none of the have legal counsel, the circumstances fall under the presiding judge will appoint exceptions (prohibitions) a legal advisor from the established as conditions for legal aid board. The outgoing transfers and Chamber is required to considers the transfer notify its decision in writing appropriate, the Minister to the Minister and the may proceed with the convicted person. After the process. After consulting objection process is with the Minister of Foreign completed, the Minister of Affairs, the Minister of Security and Justice shall Justice may submit an send the court judgment, official request to the accompanied by a fully prisoner's home country to completed certificate, accept its citizen or, directly to the competent conversely, approve a authority of the transfer request submitted administering Member by the home country. If State. This certificate must approved, the Minister of conform to the general Justice issues an order to administrative standard transfer the prisoner out of model of the European Japan. This order must Union, and the transmission include essential details, may be carried out by such as the prisoner's name, regular mail, fax, or the administering country, electronic mail, provided the criminal act underlying that the administering the transfer, the imposed authority can ensure the sentence duration, as well as authenticity of the the date and place of documents. Suppose the handover. The Minister of convicted person is still in Justice is also required to the Netherlands. In that case, provide written notification the Minister must notify

to the prisoner regarding the transfer decision. The final stage involves the handover and the termination of jurisdiction. The transfer process concludes with the handover of the prisoner by the Head of the Correctional Institution to the authorities of the receiving country. Once the prisoner has been handed over, the execution of the sentence in Japan is legally considered complete at the moment of transfer. Therefore, Japan no longer holds jurisdiction over the enforcement of the prisoner's remaining sentence.⁴²

them in writing, in a language understood by the convicted person, regarding the decision to transmit the documents. If the convicted person is already in the administering Member State, the notification form shall be sent to the authorities of that country. The Minister of Security and Justice has the authority to request the authorities of the administering Member State to arrest the convicted person or take other preventive measures to prevent their escape. Finally, if the convicted person is in the Netherlands, the Minister shall coordinate with the authorities of the administering Member State regarding the transfer date. The handover must take place no later than thirty days after the authorities of the administering Member State decide to recognize the judgment.⁴³

Post-transfer supervision mechanisms	In terms of supervision, Japan is obliged to maintain continuous communication	In terms of supervision during the process of transferring prisoners from
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⁴² The Government of Japan, "Act on the Transnational Transfer of Sentenced Persons."

⁴³ Onze Minister van Veiligheid en Justitie, "Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties."

with the receiving country. Suppose there are significant changes in the legal status of the prisoner after the transfer, such as the granting of a pardon, amnesty, or alteration of the sentence duration. In that case, the Japanese Minister of Justice must immediately issue an official notification to the administering country. This obligation ensures legal certainty between the two jurisdictions, even after the execution of the sentence has been transferred.

the Netherlands, the responsibility for oversight is entrusted to Dutch officials. These officials have full authority to take the necessary measures to protect the convicted person while preventing the possibility of escape. The aspect of jurisdiction is crucial: the Netherlands' right to enforce the judgment, once transmitted to the administering (receiving) Member State, is automatically suspended while the judgment is being executed in the destination country. The Netherlands' right to enforcement may resume only when the authorities of the administering Member State notify that the judgment has not been executed, either in whole or in part. Conversely, the Netherlands' right to enforcement permanently ceases once the administering authority notifies that the execution of the judgment has been fully completed. The Minister of Security and Justice is obliged to immediately inform the authorities of the administering Member State

of any decision or action taken in the Netherlands that affects the judgment, making it unenforceable. Furthermore, at the request of the administering country's authorities, the Minister of Security and Justice may authorize the prosecution, punishment, or other restrictions on the personal liberty of the convicted person in the administering country concerning acts committed before the time of transfer. In addition, WETS also regulates the transit of European Union prisoners through Dutch territory. A convicted person being transferred from one Member State to another for the purpose of enforcing a judgment may be transported across the Netherlands with permission from the Minister of Security and Justice. This request for permission must be submitted by the authorities of the sending Member State and must be accompanied by a fully completed copy of the certificate. During transit, the supervision of the prisoner is entrusted to

Dutch officials, who bear full responsibility for security and preventing escape. The sending Member State shall bear the costs arising from transportation and temporary detention during transit. An exception is granted for air transport that does not involve landing in Dutch territory, which does not require the Minister's authorization.⁴⁴

Applied human rights principles	Regarding the rights of prisoners, the Japanese legal system explicitly respects the period of imprisonment already served by the prisoner in the administering country. If the prisoner concerned falls again under Japanese jurisdiction to serve their sentence (for instance, due to being re-detained or deciding to serve the remaining sentence), the period of detention already served in the administering country will be recognized and counted as part of the execution of imprisonment (with or without labor) in Japan. The recognition of the sentence period applies to two main categories of	In addition to principal sanctions, the Netherlands also provides conditional alternative sanctions for prisoners, both Dutch nationals and nationals of other Member States, as stipulated in Articles 3.1 to 3.3 of WETS, which are described as follows: these conditional sanctions apply to court judgments in which the execution of the imposed prison sentence has been conditionally suspended. This provision also covers judgments imposing imprisonment accompanied by conditional release, or judgments that impose an obligation on the convicted person to comply with
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⁴⁴ Onze Minister van Veiligheid en Justitie.

prisoners returning to Japan, namely prisoners who return to undergo a retrial of the criminal judgment that served as the basis for the transfer, or prisoners who are no longer detained or no longer under probation in the administering country, either due to escape or other circumstances that have resulted in the termination of sentence execution in that country.⁴⁵

certain conditions under the threat of imprisonment if those obligations are violated, or judgments that conditionally suspend the imposition of sanctions. To meet the requirements of conditional sanctions, prisoners are obliged to comply with various obligations imposed by the court during the probation period. These obligations are extensive and encompass both personal and social aspects of life. Prisoners are required to notify the authorities of any changes in residence or workplace and to report periodically. Other possible obligations include prohibitions from entering specific locations or areas, restrictions on the right to leave the administering Member State, prohibitions from contacting certain individuals or institutions, and avoiding contact with items that could be used to commit criminal acts. In addition, the convicted person may be obliged to compensate for damages resulting from the criminal act, cooperate with probation or social services,

⁴⁵ The Government of Japan, “Act on the Transnational Transfer of Sentenced Persons.”

undergo therapy or detoxification, perform community service, and comply with restrictions or conditions related to behavior, residence, education, leisure activities, or professional practice. In terms of implementation, the Public Prosecution Service is the authority vested with full power to recognize conditional sanction judgments received from the issuing Member State for enforcement in the Netherlands. It is also authorized to transmit Dutch court judgments to the administering Member State for recognition and enforcement there.⁴⁶

System efficiency and effectiveness Consent based dan voluntary consent Administrative efficiency

This analysis highlights a research gap in comparing two key countries: an East Asian nation, Japan, and a European Union member, the Netherlands. Both countries emphasize the principles of social reintegration and the human rights of prisoners, yet their systems are accompanied by strict supervision. Like Indonesia, both Japan and the Netherlands adhere to the Civil Law system. Furthermore, Japan originates from the Asian continent, and Indonesia's legal system adopts the Dutch Civil Law system, evidenced by the legal inheritance visible in several laws, one of which is the Criminal Code (*Wetboek van Strafrecht voor Nederlandsch-Indië*).⁴⁷ Additionally, Japan's intercountry prisoner transfer law allows for application with all countries

⁴⁶ Onze Minister van Veiligheid en Justitie, "Wet Wederzijdse Erkenning En Tenuitvoerlegging Vrijheidsbenemende En Voorwaardelijke Sancties."

⁴⁷ Mubarok, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan."

with which Japan has signed a bilateral agreement. Meanwhile, this article uses the WETS as a comparison to Japan's Act No. 66 of 2002. The WETS operates within the scope of the European Union member states. This difference is highly relevant for Indonesia, which is currently seeking the most suitable model to balance national sovereignty and international cooperation within the ASEAN region. By learning from Japan and the Netherlands, Indonesia can design a prisoner transfer system that prioritizes legal certainty, humanitarian principles, and diplomatic relations between countries.

3.2 Advantages and Disadvantages of Intercountry Transfer of Prisoners in Japan and the Netherlands

Punishment, as the culmination of the criminal justice process, is not solely aimed at retaliating against the crimes committed.⁴⁸ The philosophy of punishment has evolved over time, and it is now recognized that punishment serves multiple complementary purposes. In general, theories of punishment are classified into three main categories, namely the retributive theory, the utilitarian theory, and the mixed theory.⁴⁹ The retributive theory emphasizes that punishment is imposed solely as a fair retribution for the offense committed by an individual. Karl O. Andenaes stated that the essence of this theory lies in the view that punishment represents a moral condemnation of the wrongdoing committed by the offender. In this approach, there is no element of correction, rehabilitation, or other preventive purposes.⁵⁰

In contrast to the retributive approach, the utilitarian theory emphasizes that punishment should be directed toward achieving specific benefits, particularly in the context of protecting society and preventing crime. This theory views punishment as a means to achieve broader social objectives, such as public welfare. Punishment is not merely an instrument of retribution. Still, it is more oriented toward preventive efforts aimed at creating a deterrent effect within society to discourage similar acts and prevent the repetition of the same criminal offenses.⁵¹

In addition to the two theories, the mixed theory seeks to integrate elements of both the retributive and utilitarian theories within a more balanced conceptual framework. This theory asserts that punishment is imposed because an individual has committed an unlawful act; however, the punishment should not exceed reasonable limits and must be aligned with

⁴⁸ Dimas Bimantara, "Analisis Pertimbangan Hakim Dalam Menjatuhkansanksi Kebiri Kimia Kepada Terdakwa Tindak Pidana persetubuhan Terhadap Anak Ditinjau Dari Persepektif teori Tujuan Pemidanaan (Studi Putusan No: 695/Pid.Sus/2019/Pt Sby Dan Putusan No:42/Pid/2021/Pt.Tjk)," *Fakultas Hukum Universitas Islam Indonesia* (Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/47546>.

⁴⁹ Lagasakti Parwati Margaretha Yudhistira Buana Cipta Ismara, "Konstitusionalitas Pidana Mati Bersyarat Dari Perspektif Tujuan Pemidanaan" 7, no. 2 (2024): 133–48, <https://doi.org/10.24246/alethea.vol7.no2>.

⁵⁰ Muhammad Ramadhan and Dwi Oktafia Ariyanti, "Tujuan Pemidanaan Dalam Kebijakan Pada Pembaharuan Hukum Pidana Indonesia," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 5, no. 1 (2023): 1–6, <https://doi.org/https://doi.org/10.52005/rechten.v5i1.114>.

⁵¹ Syarif Saddam et al., "Perkembangan Teori-Teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (2022): 176–88, <https://doi.org/https://doi.org/10.33561/holrev.v6i2.4>.

utilitarian values, such as legal protection and social restoration. In this context, punishment should be able to reflect two aspects simultaneously: a sense of justice for the violation committed and a contribution to public order and societal well-being.⁵²

Punishment in modern criminal law is not merely understood as a form of retribution against the perpetrator of a crime but also encompasses broader preventive and instrumental objectives. The justification for the existence of punishment lies in the social benefits intended to be achieved through its implementation.⁵³ Therefore, punishment is imposed not only because an individual has committed an unlawful act but also to prevent future violations of the law, both by the offender and society in general. This approach emphasizes the preventive function of punishment as an instrument to maintain order and protect legal interests within society. Although punishment is essentially a form of suffering, it is not intended to cause misery or degrade human dignity, as a person can only be punished for the criminal act they have committed. Justice can only be defined when it is recognized that everyone must receive what they rightfully deserve, rather than being based on assumptions that could create legal ambiguity.⁵⁴

In 2026, the Criminal Code transitioned into the National Criminal Code, which adopts social reintegration as a replacement for the concept of retribution and imprisonment.⁵⁵ The objectives of punishment are stipulated in Article 51 of the National Criminal Code, which states: “*The purposes of punishment are: (a) to prevent the commission of criminal acts by upholding legal norms for the protection and welfare of society; (b) to rehabilitate the convicted person through guidance and supervision so that they may become a good and useful individual; (c) to resolve conflicts arising from criminal acts, restore balance, and bring a sense of security and peace within society; and (d) to foster remorse and relieve the convicted person from a sense of guilt*”.⁵⁶ This aligns with Article 7 of Law Number 22 of 2022 on Corrections, which states: “*Detainees have the right to: (a) practice their religion or beliefs; (b) receive physical and mental care; (c) obtain education, instruction, and recreational activities, as well as opportunities to develop their potential; (d) receive proper health services and adequate food according to nutritional needs; (e) access information services; (f) receive legal counseling and legal assistance; (g) submit complaints and/or grievances; (h) obtain reading materials and access media broadcasts that are not prohibited; (i) be treated humanely and be protected from*

⁵² Abdul Azis Muhammad, “Ancaman Pidana Mati Dalam Prespektif Tujuan Pemidanaan,” *Al-Qisth Law Review* 7, no. 1 (2023): 1, <https://doi.org/10.24853/al-qisth.7.1.1-19>.

⁵³ Rosmalinda Padang, Michael Adyhaksa, Billi J. Siregar, “Keberpihakan Pemidanaan Dalam Undang-Undang Nomor 1 Tahun 2023” 4, no. 2 (2024): 65–71, <https://doi.org/https://doi.org/10.56128/jkih.v4i2.348>.

⁵⁴ Sahat Maruli Tua Situmeang and Krusitha Meilan, “Evolusi Kejahatan Dan Pemidanaan: Tantangan Dalam Penegakan Hukum Dan Penologi Modern,” *Res Nullius Law Journal* 7, no. 2 (2025): 87–97, <https://doi.org/10.34010/rnlj.v7i2.15913>.

⁵⁵ Prihartadi, “Analisis Implikasi Sistem Pemidanaan Indonesia Dengan Problematika Kondisi Lembaga Masyarakatan (Studi Penelitian Di Lapas Kelas Iib Pati),” *Universitas Islam Sultan Agung Semarang* (Universitas Islam Sultan Agung Semarang, 2025), <https://repository.unissula.ac.id/41545/>.

⁵⁶ Dewan Perwakilan Rakyat Republik Indonesia (DPR RI), “Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.”

*acts of torture, exploitation, neglect, violence, and any action that endangers physical and mental health; (j) receive social services; and (k) accept or refuse visits from family, lawyers, companions, and the public”.*⁵⁷

The new Indonesian Criminal Code strictly prohibits a focus solely on the offender, maintaining a delicate balance between the public interest expected by the state and the individual interests of the offender and the victim, while also pursuing communal protection and order. The purpose of punishment is thus viewed comprehensively across various aspects and must be forward-looking. The severity of the criminal offense committed only serves as a factor in determining the necessary duration and intensity of intervention required for the offender's rehabilitation. Within this offender-centric rehabilitation concept, the weight and length of the sentence are based on the measures needed to alter the offender's personality. Unlike the principle of incapacitation, which assesses the level of danger posed by the offender, rehabilitation prioritizes the fulfillment of conditions necessary for the treatment and restoration of the perpetrator. In the context of prisoner transfer, serving a sentence in one's home country can be considered an alternative way to execute the punishment.⁵⁸ A convicted person who serves their sentence in their own country can be rehabilitated, resocialized, and reintegrated more effectively than in any other place. This provides a strong rationale for transferring prisoners to the country where they have social ties to serve their sentence.⁵⁹ Imprisonment in a foreign country, far from family and friends, may be counterproductive to the very objectives of punishment, as family members can, in fact, provide important social support to the prisoner. Thus, it can increase the likelihood of successful reintegration and prevent the recurrence of criminal acts. Nevertheless, such a transfer of prisoners must also be accompanied by accountable, strict, and transparent requirements, procedures, and post-transfer supervision that align with the objectives of punishment, namely social reintegration and the protection of prisoners' rights.⁶⁰

From the explanation above, it is evident that the Netherlands has an advantage in providing legal protection and social reintegration without eliminating the deterrent effect for both Dutch prisoners and those from other European Union Member States. This is achieved by granting the opportunity to serve conditional sanctions, such as imprisonment and parole, while maintaining full supervision to ensure compliance with the requirements for obtaining these sanctions, including fulfilling obligations previously determined by the court. After the court determines

⁵⁷ Dewan Perwakilan Rakyat Republik Indonesia (DPR RI), “Undang-Undang Republik Indonesia Nomor 22 Tahun 2022 Tentang Pemasyarakatan.”

⁵⁸ Rikwan Yuda Pratama, “Tujuan Pemidanaan Rehabilitasi Bagi Pelaku Ganja Medis,” *Unes Law Review* 6, no. 4 (2024): 11449–59, <https://doi.org/https://doi.org/10.31933/unesrev.v6i4>.

⁵⁹ R. Eriska Ginalita Dwi Putri Meutya Cahyani Supriadi, “Analisis Perjanjian Mutual Legal Assistance (MLA) Antara Indonesia Dan Filipina Dalam Kasus Transfer of Prisoner Mary Jane Veloso,” *Serumpun : Journal of Education, Politic, and Social Humaniora* 3, no. 2 (2025): 106–17, <https://doi.org/10.61590/srp.v3i2.203>.

⁶⁰ Rama Fatahillah Yulianto and Ali Muhammad, “Eksistensi Institusi Pemasyarakatan Dalam Mewujudkan Reintegrasi Sosial Kepada Warga Binaan Pemasyarakatan,” *Yustitia* 7, no. 2 (2021): 173–84, <https://doi.org/10.31943/yustitia.v7i2.139>.

the obligations that the prisoner must fulfil, the Public Prosecution Service then exercises strict supervision to ensure that the prisoner has complied with the court's ruling. If the obligations are not fulfilled, the Prosecution Service is required to provide information on the maximum duration of imprisonment that the prisoner must serve. The Prosecution Service's decisions are also communicated to the competent authorities in the Member State, including confirmation that the prisoner has fulfilled the imposed obligations; decisions to modify the obligations imposed on the convicted person; decisions regarding the execution of imprisonment due to the convicted person's failure to meet those obligations; decisions on pardon or amnesty that result in the court ruling not being executed or only partially executed; and situations where it becomes impossible to supervise the imposed obligations because the convicted person cannot be located in the Netherlands. Similarly, in the case of transfer out, as long as the execution of the sentence in the administering Member State has not yet commenced, the Public Prosecution Service may revoke the certificate based on the notification of a decision from the competent authority of the administering Member State that adjusts the obligations imposed on the convicted person, the probation period, the time frame within which the obligations must be fulfilled, or the term of imprisonment that may be imposed if the obligations are not complied with. Japan also grants assisted sentences, parole, and sentence reductions, but it does not impose specific obligations that prisoners must fulfil to obtain such conditional sanctions. Japan only stipulates the types of criminal acts that may be eligible for conditional sanctions.

The Netherlands also shows superiority in terms of cost. For transfer out, the Netherlands, as the issuing Member State, covers transportation and detention expenses. At the same time, Japan places the obligation on Japanese prisoners to bear the costs incurred for their escort and transportation to Japan. Suppose the convicted person is proven unable to pay in full due to financial incapacity. In that case, the Minister of Justice may waive all or part of the expenses in accordance with a Cabinet order. Furthermore, regarding transfer requirements, both Japan and the Netherlands establish age limits for criminal responsibility applicable within their respective jurisdictions.

In addition, WETS is based on the Council Framework Decision 2008/909/JHA, which aims to facilitate the transfer of prisoners among European Union Member States for the purpose of social reintegration. This aligns with the requirement that the transferring prisoner must be a national of an EU Member State, as proven through the use of a certificate. However, with the existence of this certificate, the Netherlands does not always require the consent of either the Dutch prisoner or the Member State concerned. This allows the home country to unilaterally transfer a prisoner in the interest of public welfare and reintegration, even if the prisoner has not requested or has refused the transfer. However, the home country is obliged to provide information regarding the transfer and ensure the prisoner's right to be present in court to submit objections and file an appeal.

Meanwhile, Japan has an advantage by prohibiting both inward and outward transfers if the prisoner does not provide consent. Japan also requires that the prisoner be informed that the transfer is conducted upon a request from their home country. Prisoners are required to sign and affix their seal on the official transfer order for both inward and outward transfers. To ensure that foreign prisoners genuinely consent to the transfer out, Japan conducts interviews with those scheduled for transfer to verify their willingness to be moved. In addition, Japan provides information to foreign prisoners that their home country has submitted the transfer request.

WETS is based on the Council Framework Decision 2008/909/JHA, which facilitates the transfer of prisoners among European Union Member States without requiring bilateral agreements. WETS is binding only on EU Member States. In contrast, Japan adheres to the Council of Europe Convention on the Transfer of Sentenced Persons (1983), which applies not only to EU Member States but also to non-EU countries, including Japan. ASEAN has not yet established a binding regulation similar to the Council of Europe Convention on the Transfer of Sentenced Persons (1983). ASEAN currently has the Treaty on Mutual Legal Assistance in Criminal Matters (MLA), which facilitates legal cooperation among Member States. Still, it is not a specific convention governing the transfer of prisoners.⁶¹

From a philosophical perspective, WETS prioritizes administrative speed and legal certainty in judgment enforcement, thereby benefiting the government in terms of administrative efficiency. On one hand, within the European Union context, this philosophy allows the Netherlands to disregard the requirement for the prisoner's consent in certain cases. This fundamentally contradicts the objective of punishment set forth in the National Criminal Code and Law Number 22 of 2022 on Corrections, which prioritizes social reintegration and Human Rights principles. From a procedural perspective, WETS employs a structured and rapid process, offering ease in administrative procedures through a certificate or form that verifies the prisoner originates from an EU Member State, thus facilitating execution. On the other hand, this poses a weakness: the Netherlands ratified the Council Framework Decision 2008/909/JHA, a regional agreement for EU Member States concerning the intercountry transfer of prisoners, with the specific aim of simplifying administrative procedures for EU countries only. Given that ASEAN currently lacks a regional prisoner transfer agreement, it is difficult for Indonesia to adapt this mechanism in its entirety. Regarding legal certainty, the Netherlands has provided certainty concerning intercountry prisoner transfer with the WETS regulation, which guarantees that court judgments have cross-border force. However, the weakness here is that because WETS focuses solely on the recognition of court judgments, this can potentially create an issue regarding Indonesian legal sovereignty if it is not balanced with strict domestic control.

⁶¹ Muhammad Ikhya Apriansyah, Maria Maya Lestari, and Evi Deliana, "Efektivitas Asean Treaty On Mutual Legal Assistance (Amlat) Dalam Menghadapi Kejahatan Transnasional Di Negara Indonesia," *Jurnal Pro Justitia* 5, no. 1 (2024): 50–61, <https://doi.org/https://doi.org/10.57084/jpj.v5i1.1483>.

From a philosophical perspective, Act No. 66 of 2002 implements a consent-based and voluntary consent of the prisoner as an absolute requirement for transfer. This is therefore in line with the objective of punishment set forth in the National Criminal Code (KUHP Nasional) and Law Number 22 of 2002 on Corrections, which prioritizes social reintegration and Human Rights principles. On one hand, Act No. 66 of 2002 has a drawback because it relies entirely on the prisoner's consent and involves layered verification, which slows down the administrative and transfer procedure, thus making it less efficient. From a procedural perspective, Act No. 66 of 2002 can be applied in the international sphere through bilateral agreements between countries. This can be adapted in Indonesia as the regulation is not regional in scope and is not limited to ASEAN member states, which strengthens Indonesian state sovereignty. On the other hand, Japan only ratified the Council of Europe Convention on the Transfer of Sentenced Persons (1983), which is a multilateral treaty drafted by the Council of Europe but is open to non-European states. Consequently, if Japan wishes to carry out an intercountry prisoner transfer with a country that has not ratified the Council of Europe Convention on the Transfer of Sentenced Persons (1983), it must enter into a bilateral agreement with that country. This makes Act No. 66 of 2002 less efficient. From the perspective of legal certainty, Act No. 66 of 2002 promotes the legal protection of prisoners from arbitrary state actions. This is highly relevant to Indonesia, where the government has an obligation to protect its citizens and every person is entitled to equal opportunity before the law. On the other hand, this may cause many prisoners to refuse the transfer, which in turn hinders the goal of rehabilitation and reintegration in their home country.

In addition to the strengths and weaknesses of both regulations for adaptation in Indonesia, this article will explain the legal consequences that Indonesia will face when adapting WETS and Act No. 66 of 2002 and outline the rules from both countries that can be adopted in Indonesia, as follows: Indonesia will adopt a hybrid model by combining administrative efficiency and procedures coupled with the voluntary consent of the prisoner. Before implementing this hybrid model, Indonesia must immediately ratify the Draft Law on Intercountry Prisoner Transfer. Currently, intercountry prisoner transfer is regulated only generally in Article 45 of Law Number 22 of 2002 on Corrections and through bilateral agreements. The adaptation of the WETS and Act No. 66 of 2002 regulations requires a legal umbrella at the level of a statute to legitimize them, as these articles and bilateral agreements do not regulate in detail the requirements for transfer in and transfer out, the procedures for transfer in and out, post-transfer supervision, the rights and obligations of prisoners, and the costs of transfer in and out. Treaties only bind the government, while a statute binds all of society. ASEAN currently lacks a regional agreement on intercountry prisoner transfer; Indonesia must ratify the Council of Europe Convention on the Transfer of Sentenced Persons (1983). This ratification will provide an advantage for Indonesia, which currently relies only on bilateral agreements, as it will simplify the preparation of administrative documents similar to the certificate found in WETS, which contains the prisoner's complete identity, the crime committed, the period of sentence served, and the remaining period

of sentence to be served. This will significantly reduce costs and time. However, Indonesia must maintain the principle that prisoner consent is an absolute requirement. To maintain Indonesian state sovereignty, the country must regulate in detail the mechanism for converting foreign sentences to align with the principle of criminal legality under the National Criminal Code. Furthermore, Indonesia needs to designate the Attorney General's Office and the Directorate General of Corrections under the Ministry of Immigration and Corrections as the central authorities responsible for rapidly processing transfer requests based on standard documents, implementing a strict post-transfer supervision system (for both transfer in and transfer out), and conducting two-way communication with the sending or receiving state during post-transfer supervision. Next, Indonesia must ensure that transferred Indonesian national prisoners immediately receive social coaching and reintegration programs. To guarantee that consent is voluntary and fully informed, as practiced in Japan, there must be a Standard Operating Procedure (SOP) involving consular authorities or the embassy and official translators, ensuring the prisoner understands the legal consequences of the transfer (e.g., the possibility of sentence conversion). Finally, Indonesia must implement the principle that a prisoner is punished only for the crime for which they were transferred, and that this principle must be legally guaranteed. This is crucial to protect Indonesian citizens transferred to Indonesia, ensuring they are not prosecuted for other crimes committed before the transfer, and to establish dual criminality to avoid violating the principle of legality in the National Criminal Code.

4. CONCLUSION

Transnational crime is a prevalent issue occurring in many countries around the world, including Japan and the Netherlands. When comparing these two countries in terms of requirements, procedures, and post-transfer supervision, both demonstrate strengths in focusing on social reintegration and the protection of prisoners' rights without diminishing the deterrent effect. The weakness of both systems lies in their territorial limitations. The Netherlands has regulations that specifically govern the transfer of prisoners among European Union Member States, making these rules binding only for EU Member States. This also provides an advantage for the Netherlands by simplifying the intercountry transfer of prisoners without the need for bilateral agreements. Meanwhile, Japan enforces regulations that are binding only on countries that have previously established agreements with Japan. Therefore, a comparison of the transnational prisoner transfer systems between Japan and the Netherlands finds that the Japanese Model excels in the aspect of Human Rights protection and guarantees the voluntary consent of the prisoner, while the Dutch/European Union Model excels in administrative efficiency through a standard certificate mechanism and an integrated intercountry supervision system. The core finding (novelty) of this research is that the comparative advantages of both systems, namely, voluntary prisoner consent from Japan and administrative efficiency from the Netherlands, can be integrated. This integration yields an Adaptive Hybrid Model that is highly relevant as a new legal framework for Indonesia. This Model enables Indonesia to achieve the objective of

punishment that prioritizes social reintegration in a rapid, humane manner, while still upholding the fundamental principles of Indonesian criminal law. Indonesia should immediately adopt and legalize this Adaptive Hybrid Model within the Draft Law on Intercountry Prisoner Transfer to resolve the issue of transferring Indonesian national prisoners effectively and justly.

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