



The social work criminal law policy reduces the overcapacity of correctional institutions

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Abstract

This study discusses the imposition of a sentence against a person who commits a crime which is a very important part of realizing a good criminal justice system, in this case, the judge must be able to choose the right type of punishment for the perpetrator. The alternative to imprisonment, in this case, social work punishment, provides for the fact that prison sentences are increasingly being criticized due to humanitarian considerations, philosophical considerations, and economic considerations. Criticism of the negative consequences of imprisonment has given rise to thoughts of looking for an alternative to imprisonment, even though imprisonment can be justified in terms of crime prevention and public safety. Social work criminal acts for perpetrators of minor crimes can fulfill elements of development and provide protection to society. Guidance elements that are oriented toward individual criminal offenders who are convicted of social work offenders are protected from negative impacts such as being labeled as offenders by society and loss of self-confidence.

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1. Introduction

Indonesia is a state of law. The foundation of the rule of law is stated in Article 1, paragraph 3 of the 1945 Constitution, which explains that Indonesia is a country where the life of the nation, society, and state is based on law. Law regulates almost all aspects of people's lives. (Soekanto, 2013) Law is one element that cannot be separated in society; the relationship between law and society is reciprocal. The law will continue to develop along with the development of society so that if, over time, the community develops, it will automatically require legal reforms that can keep pace with the development of society.

Corporations as subjects of criminal law are not recognized by the Criminal Code, this is because the Criminal Code is the legacy of the Dutch colonial government that embraces the European continental system (civil law). Continental European countries are lagging behind in regulating corporations as the subject of criminal law when compared to Common law countries, where in Common Law countries like Britain, the United States, and Canada the development of corporate accountability has begun since the industrial revolution. (Wibowo, 2018)

According to Andi Hamzah, punishment is referred to as a criminal sentence or punishment. (Setiady, 2010) Moeljatno argues that criminal law is part of the law that provides the basis and rules to determine which actions should not be carried out, prohibited or accompanied by the threat of sanctions in the form of a particular crime, for anyone who violates these prohibitions can be imposed or sentenced. (Sianturi, 2011)

In current developments, criminal law must be used for development purposes, or actions that want to be prevented by criminal law must be undesirable acts, namely actions that bring material and spiritual losses. (Effendi, 2011) Law plays

a role in the development of a country; of course, changing the law itself becomes a necessity while maintaining the primary purpose of the law as a regulator of people's lives. Limiting or protecting human interests in the association is a function of law. (Soekanto, 2005)

The purpose of punishment, of course, should pay attention to human values. The application of punishment provides an understanding that the punishment assigned to the perpetrator is by human values and according to the mistakes made. Sentencing imposed by judges with criminal sanctions on perpetrators of violations of the law, not as an attempt to take revenge.

The criminal sanctions that apply and are most widely used in laws and regulations are criminal sanctions in the form of imprisonment or confinement. The imposition of a crime against someone who commits a criminal act is essential to realizing a sound criminal justice system; in this case, the judge should be able to choose which type of crime is suitable for the perpetrator. (Sugiharto, 2016)

The alternative to imprisonment, in this case, social work punishment, gives the fact that imprisonment is increasingly being criticized for humanitarian considerations, philosophical considerations, and economic considerations. The criticisms of the negative consequences of imprisonment have given rise to the idea of looking for alternatives other than imprisonment. Even though imprisonment can be justified in terms of crime prevention and public safety, imprisonment also has a relatively large negative assessment. (Tongat, 2011)

The state can be viewed as an association of people who live and work together to pursue some common goal. The ultimate goal of every country is to create happiness for its people. (Effendi, 2019) The issue of punishment for its people is not a trivial matter; according to Sudarto, punishment

requires serious attention and careful action. (Sudarto, 1984)

Sentencing with imprisonment is a serious problem. The fact that current condition of prisons has given rise to criticism of the application of imprisonment because when perpetrators of law violators and/or criminals are sentenced to prison, the number of crimes and crimes has never decreased and is increasing. Whereas the law always protects the community, legal awareness protects its people. (Mertokusumo, 2017)

Sanctions given to perpetrators also have a negative effect in the form of exile from society by eliminating independence; this results in several harmful impacts of imprisonment, namely a prisoner can lose his identity due to the rules and procedures of prison life during any period of detention, the activities of the inmates are always in prison. Supervision of officers so that their freedom will be taken away, depression, and associating with other criminals make them more proficient in the field of crime.

Based on the Central Statistics Agency (BPS) through the Directorate General of Corrections (Ditjen PAS) of the Ministry of Law & Human Rights, which was supplied directly by the Technical Implementation Unit in the field, it was noted that one of the provinces, namely Riau, experienced overcapacity of correctional institutions which reached 218%. This notes that Riau is one of the provinces that experiences an enormous budget burden on the part of prisons. (Badan Pusat Statistik, 2021)

Tabel 1. Data from the Central Bureau of Statistics Number of Correctional Inmates Riau Province Regional Office

Prisoners	Male	Female	Overcapacity
11.421	10.862	559	218%

In Indonesia, all law violations or crimes almost always lead to a prison sentence, no matter whether minor crimes, sandal thieves, or big-time corruptors both end up in prison. Inmates must be crammed into cramped cells, like chickens in a cage, and exceeding this capacity downgrades the supervisory ability of prison officers to oversee all activities of inmates. This excess capacity makes prisons in Indonesia more like “crime schools” where inmates receive criminal education from other inmates.

In prison, the prisoners are exemplified as thieves; after prison, the inmate study and, after leaving, will become big-time criminals or robbers. In many cases, prison makes a person more friends, eviler, or skilled in carrying out his crimes. If we look closely, this is undoubtedly contrary to the objectives and provisions of the law, which means achieving order in human relations and maintaining the integrity of life to create justice in society. (Djamali, 2009)

Convicts convicted of minor crimes with a minimum sentence, and tend to like to make trouble in prison, usually also practice new criminal science that has been educated in prison. In modern punishment, the verdict does not have to be in prison. If a citizen goes to prison, then he will become a burden on the state.

The state must prepare prison rooms, pay correctional officers, and provide food, drink, clothing, and other facilities whose nominal amounts are enormous. Then the thought arises that punishment does not have to be a prison sentence but can be in the form of social work, which is much more helpful. Meanwhile, social work crime, or in foreign terms, is often referred to as community service orders (CSO), is a form of crime in which the convict serves the criminal by doing social work. (Tongat, 2001)

Social work crimes for minor criminal acts can fulfill the development elements and protect the community. Elements of coaching are oriented towards individual perpetrators of criminal acts who, with social work criminals are protected from adverse impacts such as being labeled as criminals by the community and losing self-confidence. The convict has self-confidence, which is very necessary for the process of community integration.

Seeing the concept above, social work in the criminal system in the form of social work for perpetrators of minor crimes needs to be applied. Social work crime is used as a punishment for criminals. Social work is carried out routinely during the sentence period. The judge sentenced several months to serve a social work sentence, and the state does not need to be burdened with supporting the prisoners. Even social punishment is beneficial for the public interest. Criminal social work convicts will not try to learn the crime as happens in prison.

So far, punishment with social work crime has never been known and has never been enforced in the existing laws and regulations in Indonesia, but it is not impossible to implement considering the various benefits of this type of punishment which are not actually obtained from punishment with imprisonment, especially if it is applied to criminals. minor criminals.

The problem of punishment in Indonesian social work crimes has been regulated in several countries, especially in international law; the United States Court of Appeals, Ninth Circuit: "Social workers are entitled to rely on their experience." Social workers have the right to rely on their experience. Then it was explained again in an international journal: "While we recognize that social workers must cooperate with the police officers." In this case, it is explained that a person who is subject to a criminal social work sentence

can also cooperate with police officers. (Westlaw Classic, 2016)

There are comparisons of developed countries that have long implemented social work crimes, and of course, punishment in this way is an alternative and is widely used. *Social work crime* is a crime that can be imposed by considering personal circumstances and the defendant's actions with special conditions. In the RKUHP, it is stated as a crime generally imposed on the person who commits it for the first time (First Offender). Social work crime is a crime that is rehabilitation for prisoners or re-education; at least, this is what Andi Hamzah put forward by making a comparison of criminal law abroad. German criminal law uses the term re-education through work (Social Worker). While the Japanese Criminal Code, this work penalty is detention in the workplace for not being able to pay the fine. (Hakim, 2020)

This punishment with social work crime, although not yet known and has never been enforced, has tried to be introduced through a draft of the Draft Criminal Code which explains that social work punishment is an alternative to criminal deprivation of liberty other than imprisonment in the short term. Social work crime is a major as one type of criminal sanction in Indonesia for several reasons, namely being able to improve the convict, more beneficial for the convict and the community, and pay more attention to human rights. by using the theory and analysis of "Criminal Law Policy on the Application of Social Work Crimes in the Criminal System in Indonesia." The formulation of the problem in this research is how is the criminal law policy for the application of social work crime reducing the overcapacity of prisons in Indonesia? 2. How is the criminal law policy for implementing social work crimes in achieving the goals of punishment in Indonesia?

This study is essential, according to the author's opinion, because there is still a lack of comprehensive and concrete studies, such as the study entitled "Optimizing the role of law enforcers in applying for social work punishment and compensation in order to realize the goal of just punishment" Situmeang, s. M.T., pane, m. D., & Wahyudi, w. (2020). Optimizing the role of law enforcers in implementing social work punishment and compensation to realize the objective of just sentencing. *Journal of law ius quia iustum*, 27(3), 501-525 relating to concrete policies in the context of finding solutions to the excess capacity of prison inmates and achieving the goal of beneficial punishment.

2. Methods

The research method in this study uses a juridical normative legal method that aims to find the truth of coherence, namely whether there are legal rules according to legal norms and are their norms are in the form of orders or prohibitions by legal principles and whether a person's actions are by legal norms (not legal norms). Only by the rule of law) or legal principles. This study also examines the subject matter according to the scope and identification of the problem through a statute approach by examining laws and regulations related to the studied legal issue. This research also uses a comparative approach and interviews the Head of Class 2A Correctional Agency Pekanbaru City.

3. Result and Discussion

3.1. Provisions for the Implementation of the Implementation of Social Work Penalties in Reducing the Excess Capacity of Correctional Institutions

For everyone's information, the number of convicts living in all detention facilities and pris-

ons (all classes) in Indonesia is around 252 thousand. This number is almost 60% exceeding the capacity of prisoner shelters, which should only be able to accommodate around 170 thousand inmates. This means that there is overcapacity, even reaching 300% in several places in Indonesia. (Saputra, 2021)

The condition of correctional institutions in Indonesia is overcrowded, where the ratio of inmates to correctional institutions and the capacity of correctional institutions are not proportional. The density of convicts in correctional institutions occurs due to several factors. However, some factors need special attention; the cause of convict overcrowding in correctional institutions is the penal system. Factors that cause convict overcrowding in penitentiaries occur not only because of increased crime but also because of the penal system (Mulyono, 2016).

Referring to Law No. 12 of 1995 concerning the Correctional System, Correctional Institutions as places for fostering convicts have an essential function in realizing the criminal justice system's goals, namely returning as free and responsible members of society. In order to achieve this goal, the readiness of the rules, personnel, management, and prison facilities is required (Usman, 2020).

The resolution of the problem of overcapacity should be centered on the machine prior to the entry of criminals into prison, namely at the investigation stage by the police, prosecution at the prosecutor's office, and up to the court decision stage. This is very important so that not all criminals have to go to correctional institutions, even though some crimes can be resolved at the police and prosecutorial levels without having to be subject to corporal punishment in the form of punishment (Perkasa, 2020).

The policy in applying social work crime is quite interesting because this is a new type of crime

that can later be applied to the Indonesian Criminal Code. Social work crime is one of the main types of crime regulated in Article 65 and Article 86 of the 2019 Criminal Code Bill. In the explanation of the two articles, it is explained that the emergence of social work crimes is an alternative to short-term deprivation of liberty and fines imposed by judges on defendants. In this case, short-term deprivation of liberty is imprisonment and confinement. According to Sudarto: "Criminalization is misery given by the State to someone who violates the provisions of the Act (criminal law), intentionally so that it is felt as misery. The pattern for imposing social work

crimes is regulated in Article 86 of the 2019 Criminal Code Bill, which is that social work crimes are used as a substitute for imprisonment for less than six months and a fine under category I, namely Rp. 1.500.000.- This social work punishment must obtain approval from the convict to avoid being accused of forced labor and a maximum of 12 months with a limitation of 240 hours for those over 18 years and 120 hours for those under 18 years. The types of social work carried out are various social activities in hospitals, orphanages, schools, or other social institutions, with as much as possible adapted to the convict's profession. A few weeks ago, we visited the correctional institution in Pekanbaru; we interviewed the head of the institution named Ashar, who explained the population density in the correctional institution.

Mr. Ashar here explained again that several activities could generate an economy, ranging from sewing rooms, weaving, agriculture, plantations, animal husbandry, handicrafts, and pursuing educational packages that are expressly provided for the inmates. Some of the convicts have not explicitly carried out criminal social sanctions, but some of these activities have reflected social work criminal activities.



Head of Class 2A Correctional Agency Pekanbaru City

3.2 Social Work Crime in Achieving the Goals of Criminalization in Indonesia

Social work punishment in the criminal system, which is based on this conception, as a discourse, needs to be applied to convicts in order to trigger the emergence of shame towards the perpetrators. This effort is worth taking to awaken the human side of the perpetrators of crimes and create a culture of shame and guilt. Currently, the most reliable imposition of criminal sanctions is imprisonment. Physical and psychological suffering, loss of family members, property, honor, and

other social and humanitarian problems due to crime are not a concern in criminal law (Fajri, 2020).

In Muladi's view, social work punishment is essentially one of the alternatives offered; even in various European countries, the type of social work punishment has been well-developed (Igo, 2022).

In the implementation rules of the Dutch Criminal Code, social work punishment can be imposed based on a judge's decision which must state the number of hours worked and the nature of the work to be done. In the Dutch Criminal Code itself, there are no provisions on what types of crimes can be imposed with social work punishment, but the imposition of an exception for recidivists, crimes with severe violence, and sexual crimes (Islamy, 2022).

A social work sentence can be imposed if the panel of judges examining a case decides that the defendant will be sentenced to imprisonment for no more than 6 (six) months or a fine of no more than a Category I fine. In addition, in imposing a social work sentence, the judge the following matters must be considered: the defendant's confession of the crime committed; the working age of the accused based on the applicable laws and regulations; the defendant's consent to social work, namely after explaining the purpose and all matters related to social work punishment; the social history of the accused; protect the work safety of the accused; the religious and political beliefs of the accused; and the defendant's ability to pay the fine (Alin, 2017).

Social work crime, or in foreign terms often referred to as community service orders (CSO), is a form of crime in which the convict is served by performing the prescribed social work. So, this social work crime is an alternative crime from short-term deprivation of liberty, which is carried

out based on a certain number of hours and is carried out without pay. Social work crime is only a plan and has not been legally stipulated as one of the criminal sanctions and the criminal system in Indonesia; its legal basis is only regulated in the 2019 Criminal Code Bill. Social work crime is essential as one of the types of criminal sanctions in Indonesia for several reasons, namely more can improve the convict, be more beneficial to the convict and the community, and pay more attention to human rights.

4. Conclusion

Social work crime is one of the main crimes regulated in Article 65 and Article 86 of the Criminal Code Bill, which then contains important rules for future criminal consequences (the criminal system). The policy against the application of this social work crime is that this criminal sanction is used as a substitute for imprisonment for less than six months and a fine under category I, namely Rp. 1,500,000. This type of criminal punishment can be applied, such as working in a hospital or doing other social activities.

Social work punishment is also one way or solution in applying sanctions if it is included in the future criminal system. It is hoped that the existence of criminal social sanctions can guarantee legal certainty and benefit or reduce the impact of overcapacity and overcrowding in correctional institutions.

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