

Criminal Law Policy Implementation of Criminal Social Work to Reduce Overcapacity Corporate Institutions in Indonesia

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Abstract

Law is one element that cannot be separated in society, the relationship between law and society is a reciprocal relationship. The law will continue to develop along with the development of society, so that if in the course of time the community will develop, it will automatically require legal reforms that are able to keep pace with the development of society. The imposition of a crime against someone who commits a criminal act is a very important part in realizing a good criminal justice system, in this case the judge should be able to choose which type of crime is right for the perpetrator. 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, public safety, but imprisonment also has a fairly large negative assessment. Social work crimes for perpetrators of minor crimes can fulfill the elements of development and provide protection to the community. Elements of coaching that are oriented to individual criminals who are convicted of social work criminals are protected from negative impacts such as being labeled as criminals by the community, losing self-confidence so that the convict has self-confidence which is very necessary in the process of community integration.

Keywords

Criminal Law; Imprisonment; Social Work

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Introduction

Law is one element that cannot be separated in society, the relationship between law and society is a reciprocal relationship. The law will continue to develop along with the development of society, so that if in the course of time the community will develop, it will automatically require legal reforms that are able to keep pace with the development of society. One of the legal aspects is about punishment, which process is known as criminal law. Criminal comes from the Dutch word called *straf* or better known as punishment or sanctions, more accurately interpreted as suffering inflicted by the state, by the judicial power on a person or several people as a legal consequence due to having violated the law, this unlawful act is known as a crime. (Syahrani Ridwan, 2014)

According to Andi Hamzah, punishment is referred to as a criminal sentence or punishment. 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 certain crime, for anyone who violates these prohibitions can be imposed or sentenced. 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 (Erdianto Effendi, 2011).

Law plays a role in the development of a country, of course, changing the law itself becomes a necessity while maintaining the main purpose of law as a regulator of people's lives. Limiting or protecting human interests in association is a function of law. 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 in accordance with human values and according to the mistakes made. Sentencing imposed by judges with criminal sanctions on perpetrators of law violations, 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 a very important part in realizing a good criminal justice system, in this case the judge should be able to choose which type of crime is right for the perpetrator (Soedjono, 2005).

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, public safety, but imprisonment also has a fairly large negative assessment. 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. The issue of punishment for its people is not a trivial matter, according to Sudarto, punishment requires deep attention and careful action.

Sanctions given to perpetrators also have a negative effect in the form of exile from society by eliminating independence, this results in several negative 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 it is very clear that his individual freedom will be taken away, depression, and associating with other criminals actually make him more proficient in the field of crime (Erdianto Effendi, 2011).

If we note that in Indonesia all law violations or crimes almost always lead to a prison sentence, no matter 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 by other inmates. When in prison the prisoners are exemplified as a thief, after being in prison the inmates study and after leaving he will become a big-time criminal or robber. in many cases, prison actually makes a person more friends, more evil or more skilled in carrying out his crimes.

A society that grows and develops is usually in line with its legal institutions, so the legal design always corresponds to the social context (Mukhlis R, 2018). If we look closely, this is certainly contrary to the purpose and provisions of the law, which means achieving order between human relations, maintaining the integrity of life so as to create justice in society. Convicts who are 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. Whereas 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 (Gatot Sugiharto, 2016).

Based on the Central Bureau of Statistics through the Directorate General of Corrections, there are several provinces that experience overcapacity of correctional institutions such as Riau which reaches two hundred percent. So that this province experiences a fairly large budget burden on the part of the correctional institution.

The state must prepare rooms in prisons, pay prison guards, provide food, drink and clothing, and other facilities whose nominal amounts are very large. Then the thought arises, that punishment does not have to be in the form of a prison sentence, but can be in the form of social work that is much more useful. 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 criminal is served by the convict by doing social work.

Social work crimes for perpetrators of minor crimes can fulfill the elements of development and provide protection to the community. Elements of coaching that are oriented to individual criminals who are convicted of social work criminals avoid negative impacts such as being labeled as criminals by the community, losing self-confidence so that the convict has self-confidence which is very necessary in the process of community integration (Tongat, 2011).

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 (Erdianto Effendi, 2019). The judge sentenced several months to serve a social work sentence and the state does not need to be burdened with having to support the prisoners and even the social punishment is beneficial for the public interest. criminal social work convicts will not try to learn the crime as happens when in prison (Sudarto, 1984).

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.

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 (Sudikno Mertokusumo, 2017).

The social work crime is a legal breakthrough that is indeed expected to be implemented in Indonesia, as for some of the benefits and advantages if Indonesia applies this new type of crime, namely: Provide a sense of security against deprivation of the right to independence; Providing benefits with real work in social institutions and the community environment; Provide the best solution for overcoming overcrowding (population density) or Overcapacity (excess capacity) in prisons; Reducing the state budget for correctional institutions; Criminal social work is the best way in the process of rehabilitation or restoration; Social work crimes provide an opportunity to contribute to society by working for the community and provide opportunities to develop positive attitudes, skills, and self-confidence (Abdoel Djamali, 2009).

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This social work punishment, although not yet known and has never been enforced, has tried to be introduced through 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 important as one of the types of criminal sanctions

in Indonesia for several reasons, namely being able to improve the convict, being more useful for the convict and the community and paying more attention to human rights (Tongat, 2011).

Based on the background of the explanation above, the authors are more interested in conducting normative research using theory and analysis on Criminal Law Policy on the Application of Social Work Criminals in the Criminal System in Indonesia. The problems that are examined are What is the criminal law policy for implementing social work crimes in Reducing the Overcapacity of Correctional Institutions in Indonesia? Second, How is the criminal law policy for implementing social work crimes in achieving the goals of punishment in Indonesia?

Research Methods

Normative legal research is to find the truth of coherence, namely whether there are legal rules according to legal norms and are there norms in the form of orders or prohibitions that are in accordance with legal principles and whether someone's actions are in accordance with legal norms (not only in accordance with the rule of law) or legal principles. This study will examine the problem according to the scope and problem through a legal approach carried out with laws and regulations related to the legal issue being investigated. This study also uses a comparative approach or a comparative approach, namely by conducting a comparative study of law related to the criminal law of social work. (Burhan Ashshofa, 1996).

Discussion

1. Provisions in the Implementation of Social Work Crimes in Reducing the Overcapacity of Correctional Institutions

Social work crime is still a concept in the Draft Criminal Code. However, the implementation of social work crimes in each country is almost the same, namely, they are not paid, cannot be represented, cannot be replaced with fines, and their work has benefits for the community. The purpose of criminal social work is the same as correctional goals as regulated in Law Number 12 of 1995 concerning Corrections, namely to develop prisoners and make them good and useful human beings for themselves, others, and the homeland.

Provisions for the implementation of social work crimes can only be carried out if they are supported by the existing value system in society. Legislative and government policies are therefore necessary. Thus, the government must more carefully look at the legal values that live in society and then be incorporated into positive law in the future, such as social work crimes or other new forms of crime that are in accordance with the feelings of justice that exist in society. The community also needs to be given an understanding to accept the presence of prisoners who work in the surrounding environment and do not hinder the implementation of social work crimes.

Theoretically, social work punishment contains several dimensions, namely: First, social work punishment as a criminal deprivation of long-term independence short. In accordance with the rationale behind the birth of the species social work crime, which is to find an alternative to the crime of confiscation independence in the short term. Even with different applications, as an independent crime or as a condition related to the imposition of a criminal. conditional, the international trend that occurs is the same, namely make social work punishment as an alternative to criminal deprivation of liberty for the short term. Second, social work punishment as an alternative to sanctions if fines not paid. Social work punishment can replace imprisonment substitute if the convict of a fine fails to pay the penalty. So, if someone is accused by a judge, he is sentenced to a fine later cannot pay the fine, then instead of not paying it the convict must serve a substitute sentence. In implementation, This substitute imprisonment (fine) can be replaced with a work sentence social. Third, social work crimes within the framework of clemency. In some European countries, This social work crime can be a condition for determining clemency. Netherlands, for example, clemency can be imposed or applied to a convict on the condition that convicts must commit social work crimes (Muladi, 1995).

Mechanisms and provisions for imposing social work crimes, among others:

1) Convicts of social work do not need to stay in prison. This is the basic difference from imprisonment. Someone who by the judge decided with a criminal sentence of social work to remain in their respective residences. They are only required to work certain hours without commercialized. Its implementation is carried out under the supervision of the board.

2) Category of crime. In general, in European countries, it is required that social work penalties can only be applied to crimes that are not too serious. The requirements that may be set in the application of social work crimes are requirements related to the perpetrator himself, for example the age of the perpetrator and the criminal record of the perpetrator. In the 2019 Criminal Code Bill, related to the conditions for criminal acts that can be rewarded with social work crimes, it is contained in Article 88 paragraph (1) which states, if the imprisonment to be imposed is not more than six months or the fine is not more than a category (I) fine, then the imprisonment or the fine can be replaced with a social work crime (Taufan Purwadiyanto, 2015).

The application of social work crimes is generally the same as the implementation in European countries that have implemented this type of crime. Social work crime can only be applied in certain types of crimes. Generally, countries in Europe require that social work crimes can only be applied against less serious crimes. In other words, work crime cannot be imposed or applied to types of serious crimes.

The application of social punishment for minor crimes that threaten the sentence is relatively short in accordance with the purpose of the penitentiary, namely to rebuild someone who has gone astray, in the hope that he can become a good and useful human being for himself, for others, and for homeland and its people. In short, social work

punishment is in line with the idea of penitentiary which has the aim of re-making aconvicts become complete human beings. Criminal social work committed encourage convicts to actualize their human valuessso that he will be able to control the tendencies that negative.

In addition, what needs to be noted is related to records perpetrator's crime. Social work crimes generally will not be applied against criminals who have a criminal record which is not good. In France, for example, social work crimes will not be applied to recidivists. Social work penalties can only be applied to recidivist if it is associated with a conditional sentence and not as a criminal independent.

As the provisions of the articles above are relatively human. Criminal social work committed is not forced labor, especially in the provisions of paragraph (6) it is stated that its implementation can be paid in installments by looking at the activities of the convict. these terms increasingly emphasize the humane development of prisoners on a regular basis uphold their rights and dignity. In addition, the criminal provisions for social work regulated in the 2019 Criminal Code Bill also considers the age of the perpetrator, namely: there is a prohibition for perpetrators who are still minors, based on labor law is prohibited from doing work. Thus, regarding with the age of the perpetrator in the application of social work crime, the provisions have been pay attention to the rights of perpetrators, especially with regard to child perpetrators.

Judges who impose social work crimes in court only determine the number of hours and the time period that must be met. Temporary its implementation is technically related to the place of social work crime must be served, how many hours of social work must be carried out each day, and so on, carried out by the probation service. In the implementation of social work or social crime, the perpetrator is ideally involved in activities that interact directly directly with the community. This is in line with the main purpose of service community that encourages actors to socialize and get to know issues about the community.

The ultimate goal of this social work crime is It is hoped that the perpetrator will experience a process of "humanization" that can improve confidence and personality, increase intelligence, get restore public confidence in themselves, and convey messages to the public that he and other perpetrators are only ordinary people who can make mistakes and can also change into a better human being. Social work crimes also limit the movement of perpetrators through service orders society, thereby simultaneously preventing them from committing lead to repeating the crime.

A convict who fails to serve a social work sentence will bring certain consequences. First, if the social work crime is in the form of a criminal independent, then as a result of the failure of the convict to undergo a social work sentence, in the form of being fined to a certain extent, repeating the implementation of the crime again social work, or subject to other alternative punishments. Second, if the work penalty socially determined in relation to a suspended sentence, then the failure of the convict to undergo a social work

sentence can result in suspended imprisonment. As a result of failure, the convict too may be required to repeat the social work crime.

2. Criminal Law Policy Implementation of Social Work Crime in Achieving the Goals of Criminalization in Indonesia

Social work crime is a form of corporal punishment. The crime was served by the convict by performing the prescribed social work and by certain conditions. The target of the criminal object is to be imposed on physical/energy of the convict/perpetrator. In the General Elucidation of the 2019 Criminal Code Bill also it was emphasized that the preparation of the National Criminal Code in order to replace The Criminal Code, a legacy of the Dutch colonial government with all its changes is one of the efforts in the framework of the development of national law. Business carried out in a directed and integrated manner in order to support national development in various fields, in accordance with the demands of development as well as the level of legal awareness and dynamics that develop in public. Based on the grounds contained in the preamble to the Bill The 2019 Criminal Code, the reformulation of criminal law arrangements carried out includes.

Determination of criminal acts (criminalization) which is very much different from the current Criminal Code. There are 743 articles recorded in the 2019 Criminal Code Bill, of which 513 are articles regarding criminal acts and the rest are articles of general provisions. The existence of a fairly basic change from the initial concept to the last concept shows that the issue of imposing sanctions in the 2019 Criminal Code Bill is always adjusted to the development of the living conditions of the nation and state. The new material regulated in the Criminal Code Bill is related to social work criminal sanctions. Social work crime is a form of crime that is carried out by the convict by doing the prescribed social work.

In Indonesia, the criminal system recognizes social work crimes as included in the concept of social work Criminal Code Bill. In Article 66 paragraph (1) of the 2019 Criminal Code Bill, it is stated that i) criminal The principal consists of imprisonment, closing punishment, supervision punishment, criminal punishment fines, and social work penalties, and ii) additional penalties as referred to in Article 65A Draft of the 2019 Criminal Code Bill which consists of the revocation of certain rights, confiscation of certain goods and/or bills, announcement of judge's decision, payment of compensation, revocation of driving license, and fulfillment of local customary obligations and/or obligations under the law that live in public. Further explanation regarding social work crime in the Bill The 2019 Criminal Code is regulated in Article 88 paragraph (1) which states, if the prison sentence is which will be imposed for not more than six months or a fine of not more from a Category I fine, then the imprisonment or the said fine can be replaced with social work punishment.

Based on the provisions of the article, it can be concluded that social work crimes cannot be imposed in every criminal act that occurs. In principle, social work crimes are an

alternative to minor crimes and are imposed on short-term criminal deprivation of liberty. This conception departs from the idea that social work crime is a type of crime that will be imposed on perpetrators of crimes that are not too serious. This means that social work crimes can never be imposed when the crime committed by the defendant is a serious crime. Based on the provisions of Article 88 of the 2019 Criminal Code Bill, social work crimes can be imposed in the event that: 1. The judge considers imposing a sentence imprisonment of not more than six months. Thus, in the case of a judge considering imposing a prison term of more than six months, the social work penalty cannot be imposed. This provision is based on the philosophy that social work punishment is indeed an alternative to criminal short-term deprivation of liberty. 2. The judge will consider impose a fine by not exceeding the category or maximum one hundred and fifty thousand rupiahs.

The existence of criteria in the implementation or provision of social work criminal sanctions, of course this alternative can reduce the excess of occupants in prisons which has been a fairly complicated problem in solving it. There are various kinds of social work that serve as punishment for criminals. For example, such as cleaning public toilets, cleaning ditches or gutters, sweeping streets, working in nursing homes, and so on. This social work is carried out routinely during the sentence period. The judge sentenced him to several months to serve a social work sentence. Through social work crime, the convict will not try to repeat the crime he has committed because if he commits another crime, the court will impose a prison sentence and a fine.

Conclusion

Social work crime is an alternative to short-term imprisonment and is a solution in reducing overcapacity in correctional institutions, in addition, if this social work crime is included in the criminal system is expected to avoid or at least minimize the negative impact of massive efforts to imprison that are currently taking place in Indonesia. If the social work crime applied then to cases of minor crimes whose punishment is not more than 6 months there is no longer a need for a prison sentence, which can be one of the right alternatives in overcoming overcrowding in prisons and prisons. However, in order to be able to overcome the situation of overcapacity in prisons, In Indonesia, maximally, it is also necessary to maximize other non-prison alternatives such as diversion, fines, conditional punishment, and compensation.

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