



UDC 343

PERSPECTIVE OF SOCIAL WORK CRIMINAL LAW POLICY IN REVIEW OF CRIMINAL LAW REFORM

Sucitrawan I Nyoman*, Suarda I Gede Widhiana, Azizah Ainul

Faculty of Law, University of Jember, Indonesia

*E-mail: sucitrawan73@gmail.com

ABSTRACT

The purpose of the study is to look deeper into the effectiveness of alternative social work in Indonesia, through comparisons in other countries, and also to see how reducing social work can lead to a victim as a result of the implementation of such work. This study the authors use normative-law research types. This involves statue approach, and using a comparative approach. Additionally, the author USES primary and secondary legal material as a guide in outlining problems. The results of this study suggest that there are both positive and negative effects when Indonesia applies social idomy, but it can be avoided if governments examine further through the victimology approach.

KEY WORDS

Effectiveness, social work, idleness.

Indonesia is a country of law. So it is natural that all actions of the Indonesian people must be regulated by existing laws. Law is one of those complex and technical things that we often encounter as people approach law cynically. Harold J. Berman says that "after all, law is one of the basic concerns of civilized mankind everywhere, for it can provide protection against tyranny on the one hand and anarchy on the other".¹

Arnold H. Lowy as cited by Eddy Hiariej said that the characteristic of criminal law that distinguishes it from other laws lies in the existence of criminal sanctions. In the Criminal Code, it is clearly stated in Article 10 that there are 3 criminal sanctions, namely the main punishment includes death penalty, imprisonment, confinement, fine, closure, while the additional punishment includes revocation of certain rights, deprivation of certain goods, and announcement of the judge's decision.

Imprisonment in Indonesia where the Correctional Institution as the executor of imprisonment in Indonesia based on the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections, hereinafter referred to as Law 22/2022 in Article 1 point 2, what is meant by the correctional system is an order regarding the direction and limits and methods of implementing the correctional function in an integrated manner. The availability of child prisoners or so-called foster children has led to various views of these children, from the child being marked as incorrect to being marked as a criminal child.

Correctional institutions, hereinafter referred to as prisons, as a form of prevention of repetition of victims of crime again in the science of Victimology and Criminology, of course, prisons have a great responsibility in fostering prisoners. Constant sees criminology as an empirical science whose purpose is to determine the factors that cause bad and criminal acts (etiology). According to Arif Gosita, victimology is a study or scientific knowledge that studies the problem of criminal victimisation as a human problem which is a social reality. Viktimology, derived from the Latin *victima* which means victim and *logos* which means science. Terminologically, victimology refers to research that studies victims, the causes of victimisation, and the consequences of victimisation, which as a social reality is a human problem. Victimology is a science/scientific research that studies (criminal) victimisation as a social problem.

Restorative justice as a starting point for tackling crime or restoring conflict to victims, offenders and their communities, and giving primacy to their interests. Restorative justice in

¹ Harold J. Berman, *Talks on American Law*, hlm. 2.



this case provides freedom in terms of human rights to recognize the impact of the absence of justice in a simple way to return the offender to formal or legal justice while the victim does not get any justice.

At the same time, when looking at the punishment of community service, it affects the prisoner by way of the prisoner's return to society. This element of coaching targets convicts to be able to provide benefits. With the punishment of social work, it is expected to encourage self-motivation in prisoners so that they can later return to society.

Several countries have introduced social work as an alternative to solving short-term crimes and paying unaffordable fines. For example, the Netherlands, Germany, the UK, Poland, and other countries have introduced social work as an alternative to solving short-term crimes and paying unaffordable fines. This writing is made for readers to know how the effects of social work punishment on the perpetrator. so that readers know the effects of social work can cause new victims in the implementation of social work, as well as knowing how to compare with countries that have carried out alternative social work punishments.

METHODS OF RESEARCH

In this research, the author uses normative legal research. This approach uses a legal approach and a comparative approach. In addition, the author uses primary and secondary legal materials as guidelines in outlining the problem. Legislation is the legal material used in this writing. In addition, secondary legal sources, such as books, journals, articles, and websites were used. The legal materials collected, both primary and secondary, will be thoroughly analyzed using various interpretations.

RESULTS AND DISCUSSION

Social Labour Punishment in Criminal Law Reform

Punishment according to Sahetapy where the criminal aims for retaliation, where the punishment here is given to the perpetrator with the intention of providing a deterrent effect for the actions that have been committed by way of revenge.² Therefore, it is necessary to determine the purpose of the punishment itself, with the ultimate goal of preventing it from happening again, but still prioritizing humanity in accordance with the actions committed. In essence, there are various theories in punishment such as retributive theory, relative theory, or a combined theory of the two. The need for the right formulation for law enforcement officials in prosecuting the criminal act, because basically the suffering of punishment should not exceed the consequences of the actions obtained by the perpetrator of the criminal act.³ Basically, neither the absolute theory nor the relative theory can solve the problems that arise when we imprison people for short periods of time for petty crimes.⁴

The necessity of criminal law lies in the problems and goals to be achieved, in achieving these goals it cannot be denied that there will be coercion and it is a permissible thing according to Roeslan Saleh. Seeing the purpose of punishment itself is not only to provide a deterrent effect to the perpetrators of crime, but further to be able to influence people who are not evil to be able to comply with all existing rules.⁵

It is important to further develop community service in Indonesia, so that the perception of citizens who previously saw punishment as revenge, changes from punishment to training. Social work punishment is closely related to Pancasila, especially the fifth principle of social justice for all Indonesians, where social work can indirectly cover all levels of Indonesian society and help and save someone without having to pay materially.

Paul Moedikdo Moeliono S.H gave an opinion that, "crime is an act of legal norms that is interpreted or should be interpreted by the community as a harmful, annoying act that

² Sudarto, *Kapita Selekta Hukum Pidana*, Bandung, Alumni, 1986, hlm. 21.

³ Dwiitja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia*, Cetakan Pertama, Refika Aditama, Bandung, 2006, hlm. 23.

⁴ Slat, Teafani Kaunang. "Sanksi Pidana Kerja Sosial Terhadap Tindak Pidana Ringan Sebagai Upaya Pembaharuan Hukum Pidana Nasional." *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2020): 352-360. hlm. 4

⁵ Barda Nawawi Arif, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Cetakan Keempat, Genta Publishing, Yogyakarta, 2010, hlm. 20.



should not be allowed." Seeing this understanding, it can be concluded that, currently the function of punishment is not only limited to retaliation, but broadly the function of punishment is currently as a shield to protect the perpetrator from other individuals in society, as well as protecting the community from crime. Furthermore, it is said that the current punishment is more directed towards coaching, where the prison is a place to foster prisoners before the convicts' later return to their environment.⁶

Alternative social work began with the 12th ICOPA Congress, which forced countries around the world to develop alternatives to imprisonment in their penal laws, and continued with the UN resolution in December 1990, which established the "Tokyo Rules", which include the "Standard Minimum Rules for Non-Custodial Measures" (SMR), negotiated both during and after negotiations. The punishment of community service is essentially an option when the defendant is fined but due to material constraints must alternatively fulfil a compensatory punishment in the form of community service, as in Italy, Germany, Switzerland and other countries that apply the same.

Germany uses social work punishment for offenders who are unable to pay the amount of damages obtained after committing a criminal offence, therefore the offender is given the obligation to do social work that benefits the community such as painting walls, cleaning the city environment, without being paid. Until now, social work punishment has undergone a modernisation, which eliminates the stigma of forced labour in society, so that it is changed to social work punishment voluntarily to be able to carry out its obligations. Social work punishment helps society in terms of social work. This means that when someone commits a mistake, social work can have a shaming effect on society so that they do not do it again.⁷

In a real sense, the criminal system is a system for punishing criminals. According to Nawawi Arief, the purpose of punishment is divided into two areas, namely to protect society, which basically consists of preventing, reducing or controlling crime and restoring balance in society, and protecting individuals, where basically we can not only do prevention, but also must be accompanied by rehabilitation or coaching of the perpetrator, because prison can be a place of resocialisation for the perpetrator. Indonesia in Article 10 of the Criminal Code only recognizes two types of punishment, namely main punishment and additional punishment, in keeping up with the times, short-term punishment through social work needs to be held. Short-term imprisonment according to Barda Nawawi must be seen from 3 moderate criticisms, namely from the angle of strafmodus which is seen from the point of view of the institutional or institutional coaching system, criticism from strafmaat looks at the aspect of the length of imprisonment, and criticism from the aspect of straffshort looks at the aspect of the use and imposition of imprisonment either adding or reducing imprisonment.⁸

The changes that have taken place in Indonesian society have made it necessary to update the laws on crime as they are still using laws that were created a long time ago when Indonesia was still under Dutch rule. When the legal system changes or improves the law on crime, it does not only mean changing the way law enforcement officers work. It also means changing the regulations and punishment system. The National Criminal Code does place social work punishment as the main punishment, but in its implementation it is still only an alternative to imprisonment, and the final decision is still dependent on the judge's decision. If the judge decides, they can sentence a person to social work instead of sending them to prison if the sentence is less than six months. When making a decision, judges need to think about various things, such as the character of the offender.

Currently, the alternative punishment of social work has been included in the National Criminal Code or Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code, hereinafter referred to as the Latest Criminal Code, Article 65 Number 1 which states that the main punishment consists of imprisonment, closure punishment, supervision punishment, fine, and social work punishment. However, in this regulation, it is necessary to know how the regulation of social work for minors who may become victims in the future.

⁶ Septian Hosea Panjaitan, *Faktor Penyebab Timbulnya Residivis Kasus Narkotika Di Lapas Kelas II A Pontianak Di Tinjau Dari Sudut Penologi*, Yogyakarta, Skripsi Sarjana Hukum, Pontianak: Perpustakaan Fakultas Hukum Tanjung Pura, 2015, hlm. 27-28.

⁷ Purwadiyanto, Taufan. "Analisis Pidana Kerja Sosial Dalam Hukum Positif Di Indonesia." *Lex Administratum* 3, no. 8 (2015). hlm. 6.

⁸ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, Citra Aditya Bakti, Bandung, (2003), hlm.34.



The Effects of Social Work Lead to New Victims

Social work punishment does have the purpose of releasing from guilt and accepting the convicted person back to society. However, in line with the work that will be carried out in the community, social work punishment indirectly opens up opportunities for bullying and ostracisation in the environment. Moreover, social workers are still underage, very vulnerable to bullying in the community with the stamp of the crime they committed. Social work here will indeed have a positive impact on the wider community, but of course it will have a negative impact on criminals who enter the community with the label of their crime.

This is certainly not in line with what is the purpose of social work punishment, with the aim of getting rid of the negative effects of time in prison, and bringing reform to society in the form of social work.⁹ In the implementation of social work, there must be a criminal agreement in the implementation of social work punishment to avoid forced labour. The agreement is useful to ensure that the convict has the motivation to perform social labour punishment. The content of the social punishment must also be notified, for example where the social work punishment must be carried out, and how many hours must be served, of course the notification of the place is very important to prevent bullying against the convict so that there will be no new victims due to the bullying. Portugal imposes a minimum of 9 hours and a maximum of 180 hours of community service.

According to the theory of integration, in the imposition of punishment, it is necessary to explain and separate the stages of imposition of punishment against convicts for the severity and lightness of the punishment, because this concept combines the factors of revenge and purpose or prevention. So that this social work punishment can be part of revenge and prevention, so that the condition of the convict does not deteriorate while in prison.¹⁰

Hospitals, centres for the support of the elderly and children, schools or other support institutions can carry out forms of social work punishment that are adapted to the profession, competence and skills of the convicted person. The punishment will also reduce prison overcrowding, which will significantly prevent prison overcrowding.

Social work in restorative action is said to be an alternative with the desire to facilitate the restoration of the conditions of the parties involved or affected by crime, including victims, perpetrators, communities, and governments. The goal of restoration and recovery further strengthens social work as an alternative form of punishment, namely as an alternative to imprisonment. Social work punishment can be accepted as an alternative punishment if social work punishment is able to fulfil the objectives and benefits of the main criminal offence, namely imprisonment, which is considered inefficient.¹¹

Social work as an alternative function to imprisonment, in lieu of the basic punishment, hopes to prevent or at least minimise the shortcomings of the crowded prison system in Indonesia. When implementing social work sentencing, minor offences with a maximum sentence of 6 months do not require prison time, which can be a suitable option to combat overcrowding in prisons and detention centres. However, to best manage Indonesia's problems, other non-custodial sanction options also need to be maximised such as late payment, fines, suspended sentences, and restitution and it must be recognised that every element of social work implementation must consider the offender, so that in the future the offender does not emerge as a victim.

CONCLUSION

Social work punishment can be an alternative to deprivation of liberty (imprisonment), social work is intended for convicts to restore the condition of the perpetrator, so that it can be accepted in society again. However, social work punishment needs to be considered both from the side of the perpetrator and the victim, so that later new victims do not appear as a

⁹ Wibawa, Iskandar, *op cit* (5).

¹⁰ Juniar, Nabilla Ayu, *op cit* (27).

¹¹ Sani Siti Aisyah, *Pengembangan Ide Kerja Sosial Sebagai Bentuk Pidana Alternatif diIndonesia, Jurnal Kriminologi Indonesia, Vol. 14 No. 1, 2018, hlm. 35.*



result of bullying the perpetrator who does the social work. Countries such as Italy, Germany, Switzerland, and others, have used social work punishment as an alternative form of imprisonment. Similarly, in Indonesia, the latest Criminal Code Article 65 Point 1 will regulate the alternative to imprisonment, namely social work. Social work is expected to replace the function of prison as a short-term confinement, and can minimize the crowded prison environment, so that it will break the negative stigma from the community towards prisons. Prisons are considered unable to achieve the goal of punishment, because a lifetime in prison does not bring improvement to the convict after being separated, but on the contrary the quality of the crime committed is getting worse, so prisons often have a negative stigma in society. In addition, doing social work after committing a crime can actually be beneficial for the person who committed the crime. It gives them the opportunity to help others in the community and learn new things. It also helps them feel better about themselves and become more confident. Therefore, alternative social work is something that needs to be developed in Indonesia.

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