

RATIO LEGIS OF THE PROVISION OF SOCIAL WORK CRIMINAL SANCTIONS IN LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE

M. Fachryan Arief¹, Saiful Abdullah²

^{1,2} Universitas Trunojoyo Madura

Correspondence E-mail: mfachryanarief@gmail.com

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Abstract

Social work punishment is one of the non-imprisonment alternative punishment threats accommodated in Article 85 paragraph (8) of Law Number 1 Year 2023 on the New Criminal Code (KUHP). This provision creates changes in the punishment system in Indonesia. The purpose of the criminal sanction of social work is to provide guidance and mentoring in order to become a good and useful person, especially since the punishment is not intended to degrade human dignity. However, efforts to realize this goal must be carried out through a clear and precise mechanism for the implementation of social work punishment, but the New Criminal Code has not clearly established the mechanism or institution responsible for the implementation of social work punishment. On this basis, this study aims to analyze the ratio legis (purpose) of the regulation of social work punishment in the New Criminal Code and recommend the concept of ideal implementation supervision arrangement in the future. This type of research is normative and the results conclude: First, social work punishment is regulated due to the occurrence of over capacity and is considered ineffective as a coaching space. Second, the ideal concept of the implementation of social work punishment to support the purpose of punishment is not only sufficiently carried out by law enforcement officials and/or Correctional Institutions, but the involvement of social institutions and other institutions will provide a more optimal correctional influence.

Keywords: *Ratio Legis, Criminal, Social Work.*

1. INTRODUCTION

Criminal law is all the rules and prohibitions applied by the state with the threat of suffering if it violates its rules in order to create law enforcement. A country applies these rules with the intention of providing clarity on prohibited acts, when and what things can be sanctioned for their actions, and how punishment is applied to violators. Sanctions in criminal law are forcing and suffering to the violator, therefore making criminal law different from other existing laws. Criminal sanctions are imposed to provide a deterrent to the perpetrator so that he knows the consequences of what he has done. This is in line with the existing criminalization in Indonesia, which is directed at retaliation against the perpetrator. The old Criminal Code regulates the types of criminal sanctions in Article 10, there are 2 (two) types of sanctions in it, namely main punishment and additional punishment. (Khaidarulloh, 2023).

One of the main types of criminal sanctions is imprisonment. Until now, there are still many decisions made by judges with imprisonment sanctions, this is due to the threat of criminal offenses in the old Criminal Code, the majority of which are punishable by imprisonment. Therefore, there is no other option for a judge to impose a verdict with imprisonment sanction because the old Criminal Code has regulated so. The view of today's society towards imprisonment is as a place of retribution or suffering for bad people. Imprisonment is a punishment for individuals as a consequence of their actions by limiting the movement of the perpetrators in a special place or area, accompanied by rules that must be implemented by them.

Punishment in criminal law can indeed be considered successful in imprisoning a criminal offender, but over time, civilization problems with criminal sanctions one after another began to emerge. (Purwadiyanto, 2015). Criminal sanctions in the old Criminal Code are considered to have been left behind or no longer in accordance with the development of increasingly advanced times. Imprisonment has been considered ineffective as a place of guidance, even in reality, the perpetrators of criminal acts who are supposed to improve themselves to return to society can actually share their knowledge of crime. Developed countries from around the world began to

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aggressively seek a substitute for imprisonment sanctions in the hope of alternative criminal sanctions that provide more optimal and effective results for criminal offenders. (Firmansyah, 2024).

The Indonesian state then responded to the development of this increasingly advanced era by reforming its criminal law. With the enactment of Law Number 1 Year 2023 (New Criminal Code) which will replace the old Criminal Code that previously became the basis for imposing criminal sanctions in Indonesia. The reformation of criminal law is in line with the policy to protect human rights. The New Criminal Code adds to the existing main criminal sanctions, one of which is the criminal sanction of social work. Social work punishment is chosen as an alternative criminal sanction in the hope that it can provide guidance and eliminate community stigmatization of criminal offenders who are labeled as bad people, so that later the perpetrators can live their future life in society properly. (Jamilah & Disemadi, 2020).

Next, the New Criminal Code reconstructs the types of punishment as stated in Article 64, Criminal punishment consists of:

- a. main punishment;
- b. additional punishment; and
- c. special punishment for certain criminal offenses as stipulated in the Law.

In addition to Article 65, the main punishment as referred to in Article 64 letter a, consists of:

- a. basic punishment;
- b. imprisonment;
- c. confinement punishment;
- d. supervision punishment;
- e. fines; and
- f. **social work punishment.**

Additionally, the New Criminal Code, in Article 85 paragraph (1) regulates that social work punishment can be given by the judge to the perpetrators of criminal offenses punishable by a maximum sentence of 6 months or a maximum fine of category II. The criminal sanction of social work in the New Criminal Code is an adoption of the legal sanction system that has been implemented by developed countries such as Canada, the United States, and the Netherlands. Those developed countries set social work punishment first as another alternative to impose legal sanction from the deprivation of freedom of the perpetrators. Social work punishment is a punishment sanction imposed to criminal offenders by performing social work in the community. The New Criminal Code, in Article 85 paragraph (8) regulates that the implementation of social work carried out by criminal offenders will be supervised by the prosecutor's office and guided by Community Supervisor. (Hakim, 2020).

However, the current problem is that social work punishment will be difficult to be given to criminal offenders because there is no institution authorized to implement social work punishment. Furthermore, the supervision conducted by the prosecutor's office is not yet clearly regulated on how the form of supervision will be implemented under the New Criminal Code. This clearly shows that the regulation related to social work punishment in the New Criminal Code still contains legal issues of incompleteness of norms, as according to Gustav Radburch, the law must be made certain in writing (positive), clear and does not cause deficiencies. (Ali Achmad, 2009). Furthermore, there are principles in the formation of good laws and regulations, one of which reflects legal certainty. (Rokilah, *et.al.*, 2021). Therefore, it is necessary to have a firm form of regulation related to supervision carried out by the prosecutor's office on the implementation/execution of social work criminal sanctions in the future in order to ensure legal certainty in the future.

There have been several previous studies that examine social work criminal sanctions and the formulation policy of these criminal sanctions. **First**, Research conducted by Susilo Nugroho in 2018 with the Title: "Urgency and Prospect of Social Work Criminal System Arrangement in Indonesia". This research examines the urgency and prospects of arrangements related to the application of social work criminal sanctions in the framework of an alternative to imprisonment in Indonesia before the New Criminal Code. **Second**, the research conducted by Muhammad Fajar Septiano with the title: "Social Work Criminal as an Alternative to Short-Term Imprisonment". This research examines the need for development and an ideal model for the application of social work criminal sanctions as an alternative to short-term imprisonment.

Meanwhile, the research that the author intends to conduct is different from the previous research described above, because this research will refer to the new Criminal Code that examines the ratio legis of social work criminal arrangements, as well as the ideal concept in the future in the regulation of social work criminal sanctions based on legal certainty. Therefore, in order to analyze more deeply about the criminal sanction of social work as one of the

new types of criminal sanctions in criminalization in Indonesia, of course the author considers it necessary to conduct a further study of the problem of this criminal social work.

2. RESEARCH METHODS

The research typology used in this paper is normative legal research. Conceptually, normative legal research is put forward by many experts as dogmatic legal research, which in character is directed at evaluating positive law, and contains prescriptive elements or a normative dimension. In line with this, to thoroughly explore the issues in this research, it will be based on primary legal materials sourced from statutory regulations and secondary legal materials sourced from bibliographic literature. The approaches used are the statute approach, conceptual approach and comparative approach (Mamudji & Soekanto, 2009).

3. RESULTS AND DISCUSSION

3.1. Ratio Legis of Social Work Criminal Sanction Arrangement in the New Criminal Code

Law is a product of moral crystallization, values, and identity of the community, so it is important for lawmakers to properly understand the principles of values prevailing in society which are then to be poured as norms in a law. In addition, it is also necessary to realize that the formation of a law must have a foundation/spirit/ratio legis to clarify the outline of the content material in the law. Conceptually, ratio legis is legal thinking according to common sense, reason or reasoning which is the reason or purpose of the birth of legal regulations. Thus, in relation to the law, it can be understood that the ratio legis is the heart of the law which is used as the essence / rationale of a law. (Triyanto, 2017). Furthermore, the consideration or reason to be traced in the context of this research is the provision of social work sanction in the New Criminal Code.

Whereas, efforts to reform criminal law have recently been made by the Indonesian people with the enactment of the New Criminal Code. Furthermore, the New Criminal Code now only consists of 2 (two) books each containing general rules and articles that ensnare criminal offenses so that there is a difference with the old Criminal Code or which consists of 3 (three) books. (Aisyah, 2018).

The New Criminal Code will be enacted after 3 years from its enactment in 2026. (Slat, 2020). When looking at the main punishment in the New Criminal Code, there is a new main punishment, namely social work punishment. Social work punishment has actually been conceptualized for a long time by the Indonesian people as stated in Article 64 of Draft Criminal Code Year 1989/1999 which explains about social work punishment which reads:

“Social work punishment is a new type of main punishment, which in various countries has been widely implemented. The inclusion of this type of punishment is a consequence of the acceptance of “daad daderstrafreft” criminal law, which as far as possible seeks to develop an alternative to freedom punishment. For the convicted person, this type of punishment can help to relieve him/her from the sense of guilt and through this type of punishment, the community can actively participate to condition the convicted person by doing useful things, the success of this type of punishment is more or less dependent on the supporting infrastructure”.

Social work punishment or community service order was born due to the view that fines are less effective if implemented widely so that this type of criminal witness was born as the fourth generation. Community service order can be said to emerge as an alternative criminal sanction or substitute for deprivation of liberty in this case short-term imprisonment and substitute for light fine. (Ecep Nurjamal, 2023) The effort in exploring alternative or substitute of imprisonment is based on the decline of trust that causes dislike towards imprisonment both from the humanitarian, economic, and philosophical sides. Departing from the humanitarian side, the crime of restriction of freedom is considered to have a major negative impact on residents of correctional institutions (hereinafter referred to as prison), besides that it is also considered to have an impact on families to individuals whose survival depends on the residents of the residence. Furthermore, the author will elaborate on the reasons for the regulation of social work criminal sanctions, namely because of the Over Capacity Correctional Institution. (Purwadiyanto, 2015).

The enactment of social work sanction as the main punishment as stipulated in Article 64 paragraph (1) letter e of the New Criminal Code. The implementation of the alternative criminal restriction of release can be seen in the formulation of Article 85 paragraph (1) of the New Criminal Code which reads:

“Social work punishment can be imposed to defendant who commits criminal offense punishable by imprisonment of less than 5 (five) years and the judge imposes imprisonment of at most 6 (six) months or a maximum fine of category II. The provision of Article 85 paragraph (1) of the aforementioned Law stipulates

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that the criminal offense that can be applied social work punishment as a substitute or alternative to the criminal offense is the criminal offense of restriction of release for no more than 6 months and/or category II fine as stipulated in Article 79 paragraph (1) letter b of the New Criminal Code which basically category II fine is set at a maximum of Rp10,000,000.00 (ten million rupiah)”.

Furthermore, the reason for regulating the above provisions is actually based on the ineffectiveness of imprisonment due to the main problem faced by the prison, namely the full capacity of the prison or over capacity. The full capacity of the prison is considered to greatly hamper the coaching process that should be carried out on the prisoners and also complicate the existing supervision process. The level of over-occupancy in correctional institutions is still experiencing over capacity, as found in the Directorate General of Corrections as of November 24, 2023, which states that correctional institutions in Indonesia have a capacity of 93,531 residents but in fact the total occupants of correctional institutions as of the date a quo is 187,390.138 This clearly illustrates the overcapacity of correctional residential institutions in Indonesia. (Renggong, 2015).

The situation that occurs now raises the main problems in prisons, one of which has been mentioned earlier regarding the difficulty in terms of supervision and security guarantees in prison which have decreased. The purpose of the prison as a space for guidance for criminal offenders is not realized, instead the coaching process is used by the perpetrators as a place to learn new crimes of a higher level or called the school of crime.(Fajri, 2019).

The school of crime labeled against prisons is a form of community assessment on prisoners who have finished their sentence from prison do not see a better personality, but instead have more knowledge of crime than they did before. This is caused by the environment in prisons which is colored by prisoners with various crimes committed so that perpetrators who commit low levels of crime will gain knowledge from prisoners with high crime rates. In addition to the school of crime that occurs in prisons, over capacity also results in the creation of poor conditions for prisoners in terms of rest and activity so that this causes new suffering received by prisoners. According to C.I Harsono, there are several negative impacts caused by the criminal restriction of freedom against prisoners including: (AMIR, 2017).

- 1) Prisoners lose their identity due to the life they live in prison (Loos of Personality);
- 2) Creating a feeling of insecurity in prisoners due to the surveillance directed at them (Loos of Security);
- 3) The birth of a protracted feeling of pressure on prisoners so that it has an impact on the coaching they undergo (Loos of Liberty);
- 4) There are restrictions on the communication of prisoners with anyone (Loos of personal Communication);
- 5) Prisoners lose good service, this is because each activity is carried out alone (Loos of Good and Service);
- 6) Prisoners are not fulfilled their biological needs and miss their families (Loos of Heterosexual);
- 7) Prisoners lose their self-esteem, this is caused by the treatment given to prisoners in prison (Loos of Prestige);
- 8) Prisoners lose their confidence as a result of the deprivation of independence that occurs (Loos of Belief);
- 9) The loss of creativity that should be owned by prisoners due to the impact of protracted depressed feelings so that freedom of imagination is limited (Loos of Creativity).

Furthermore, looking through the economic side of the implementation of the criminal restriction of release, it is classified as a large budget required to finance the implementation of the punishment itself. The required budgets are used for food and operational costs in prisons, which over time the costs are increasing. The large budget becomes a problem in its implementation because on the other hand there is criticism from various parties aimed at the development or improvement of the life of prisoners in prison, while the budget required is already large and increasing.

Muladi argued the importance of restrictions in the use of criminal restriction of release, especially short-term restriction of release. The view brought by Muladi is in line with the existing global currents. Nowadays, the global flow leads to restrictions on the use of short-term release restriction punishment, one of which is the result of the United Nations congress related to The Prevention of crime and the Treatment of offenders. Thus, the provisions related to the punishment that can be applied with social work punishment is set for no more than 6 months is a response to the conception of national law to the global current towards efforts to find alternatives or substitutes for short-term imprisonment. (Wahyuningsih, 2014). The problem of over capacity in prisons is expected to be minimized by the legalization of social work punishment, but also as a form of change or shift in the concept of the criminal system towards guidance.

3.2. Ideal Concept of Social Work Criminal Sanction Arrangement through Supervision System in the New Criminal Code

Criminal law reform or criminal law reform includes several things, namely in the field of legal substance, legal structure, legal culture of criminal law. Criminal law reform in the field of legal substance is related to material and formal criminal law, and criminal execution law. The reform in the field of substance is based on the development of the Criminal Code in force in Indonesia is part of the past of the Indonesian nation which is considered that the values contained in the Criminal Code are no longer in accordance with the current development of national civilization. Therefore, reform in the field of substance is the first step to formulate a rule that is in accordance with the values that live in Indonesia. (Friedman, 2019).

In addition to the orientation of reform starting from substance reform, for the effectiveness of the enactment of a law it is also important to reform in the field of criminal law structure itself relating to institutional management, institutional administration, and management of law enforcement agencies in carrying out law enforcement coordination tasks. In this context, what is meant is the formulation of social work punishment as a reform of criminal law that is closer to the correctional pattern of criminals. Then the existence of the idea of social work punishment is also inseparable from the consideration of prison overcrowding factors, the ineffectiveness of prisons as institutions that provide guidance and stigmatization of prisoners after leaving the Correctional Institution until in 2023 the draft criminal code has been passed into the New Criminal Code. Criminal Law several criminal formulations and actions are regulated, namely:

“Criminal punishment consists of:

- a. Basic punishment;
- b. Additional punishment; and
- c. Special punishment for certain criminal offenses as stipulated in the Law”.

“Principal punishment consists of:

- a. Imprisonment;
- b. Exile punishment;
- c. Supervision punishment;
- d. Fines; and
- e. Social work punishment”.

Efforts to socialize criminals must go hand in hand with the purpose of punishment, which previously focused on retaliation efforts towards efforts to improve the perpetrators of crime. In reality, the form of imprisonment provides more stigmatization that a person who has been imprisoned will still be seen as a criminal when returning to society, especially with the assumption that an inmate who served a criminal period in prison gained additional knowledge about crime. Not a few prisoners who have been released from prison become more skilled or more evil criminals when they return to society, as a result of which the fear that arises in society is increasing and the feeling of threat and insecurity about the existence of a person who has been released from his criminal period. Another impact arising from the provision of sanctions is the behavior of ostracism by the community towards convicts which may trigger convicts to commit crimes again. (Ecep Nurjamal, 2023).

As a form of non-imprisonment alternative punishment, this is a step to determine the alternative punishment of deprivation of liberty which tends not to be optimal from humanitarian considerations, philosophical considerations, and economic considerations. Criminal deprivation of liberty has several impacts, such as a prisoner can lose his/her identity due to the rules and procedures of prison life, while undergoing punishment, the prisoner is always supervised by officers so that he/she is less safe and always feels suspected of his/her actions, so that this becomes a reflection of the lack of freedom and limitations in the individual's independence.

Social work punishment as one of the alternatives to imprisonment regulated in Article 85 of the New Criminal Code is the imposition of social work punishment. The imposed social work punishment is an effort to overcome the overcrowding of correctional institutions due to the overcrowding of correctional institutions. Imprisonment which is carried out in correctional facilities aims to socialize the perpetrators of crime to be accepted back into society, but in practice this is very difficult to realize because the paradigm of punishment carried out is still conventional. Prisons are intended not only as a place to punish criminals, but also as a place to foster and nurture prisoners so that after the prisoners have completed their sentence they have the ability to adapt back into a good and useful society in the surrounding environment. (Sugihartati, 2014).

The emergence of social work punishment in the New Criminal Code in its applicable provisions can be collaborated by involving social activists such as social foundations to be directly involved in the efforts of fostering convicts sentenced to social work punishment. This collaboration concept is inseparable from the efforts of the purpose of punishment, one of which is to socialize the convict by providing guidance and mentoring to become a

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good and useful person. Through this concept, there is a role of the community in directly socializing convicts, of course, with clear coordination between the institutions authorized to do so. (Wibawa, 2017).

A humanist pattern of punishment that focuses on improving the behavior of convicts, First, the formulation of social work punishment which is considered closer to the correctional pattern of criminals. Second, the overcrowding factor that makes the prison ineffective as an institution that provides guidance, and Third, the stigmatization of convicts after being released from prison. The ideal concept of social work punishment with a collaboration system in the New Criminal Code emphasizes the involvement of various parties, both law enforcers and social activists who are directly correlated with the community so that the goal of socializing prisoners can be achieved.

Furthermore, coordination between the above institutions will relate to the implementation of social work punishment and also affect the implementation of the punishment against a prisoner. Coordination is needed both by the social institution as a job provider with the correctional facility that provides guidance, or the prosecutor's office as the supervisor of the organizer to ensure that the inmates carry out the social work duties properly. The impact that arises if there is no collective coordination between the relevant institutions will have an impact on the work of prisoners who are not good because of the lack of supervision in its implementation, which leads to the non-fulfillment of the implementation of social work as it should be.

4. CONCLUSION

The consideration of the regulation of social work punishment sanction based on 85 paragraph (8) Number 1 Year 2023 of the Criminal Code is aimed as an alternative based on the reason of over capacity in correctional institutions and also the negative stigma by the community towards prison residents and is considered ineffective as a space for guidance, coupled with the increasing cost budget in correctional institutions. The conceptual transformation in the criminal and punishment system, which was originally oriented towards retaliation, changed to the direction of the concept of guidance, also became the basis for the consideration of the birth of Social Work Punishment.

Furthermore, Article 85 paragraph (8) of Law Number 1 Year 2023 on the Criminal Code regulates that the supervision of social work is carried out by the prosecutor's office. The form of mandatory report supervision can be applied to social work punishment, however, in order to support the implementation of supervision, of course the ideal concept of social work punishment with a supervision system needs to be improved based on collaboration so that in the future the New Criminal Code needs to emphasize the involvement of various parties both law enforcers and social activists who are directly correlated with the community so that the goal of socializing prisoners can be achieved.

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