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Implementation of Social Work Criminal Based on the National Criminal Law (KUHP) Based on Justice and Legal Benefits

Indra Rivani ¹⁾, Gunarto ²⁾ & Isnawati ³⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Shevaindra@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: gunarto@unissula.ac.id

³⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: isnawati@unissula.ac.id

Abstract. *This research is related to the reform of criminal law in Indonesia through social work punishment as an alternative to prison. The type of research used is normative legal research. In this legal research, the research specifications used are analytical descriptive, with a statutory approach and a conceptual approach. The types of legal materials used in this research are primary and secondary legal materials. The method of collecting legal materials used by the author in this research is literature study. The legal material analysis method carried out in this research uses qualitative analysis. The results of this research show that based on Law Number 1 of 2023 concerning the Criminal Code, social work crime is one type of basic crime which also functions as an optional punishment compared to short-term imprisonment, namely for criminal acts that are punishable by less than five years and the judge imposes imprisonment for a maximum of 6 (six) months, as well as a fine not exceeding category II. This is an implementation of the implementation of social work punishment so that it can achieve the objectives of punishment and from the perspective of justice and legal benefits.*

Keywords: *Criminal; Law; Social Work.*

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1. Introduction

Efforts to form a new Criminal Code that is in accordance with the values of Indonesian society began in 1963 with the preparation of the Draft Criminal Law in a criminal law book or the Indonesian Criminal Law Book.¹ The policy of establishing the Indonesian National Criminal Code can become the basis of the Indonesian national criminal law system as a realization of the desire to achieve the mission of decolonizing the Dutch-inherited Criminal Code. After going through a long process, Law Number 1 of 2023 concerning the Criminal Code was finally passed, which is a replacement for the Dutch Criminal Code. The reform of criminal law in the new Criminal Code includes reforms to formal criminal law, material criminal law and criminal implementation law. These three areas of law are jointly or integrately improved so that there are no obstacles in their implementation. One part of material criminal law reform is the reform of the Criminal Code. There are three materials prepared in the reform concept in the new Criminal Code, namely the issue of criminal acts, the issue of criminal error or responsibility and the issue of crime and punishment. Regarding the issue of crime and punishment, according to the new Criminal Code, the purpose of punishment is prevention, guidance/rehabilitation, conflict resolution, restoration of balance and creation of a sense of security as well as fostering a sense of regret and freeing from guilt.² This concept is based on balance (monodualistic) thinking between the interests of society and the interests of individuals. The author states his opinion about the importance of problem.

identification. The introduction ends with the research objectives. According to the punishment system in the old Criminal Code, criminal sentences were guided by Article 10 of the old Criminal Code regarding the type of punishment that could be given to perpetrators of criminal acts. This type of prison sentence is one of the main types of punishment that is often chosen by judges when giving sentences to perpetrators of criminal acts to create a deterrent effect. It is as if there is no other alternative type of punishment, other than imprisonment. However, currently the imposition of this type of prison sentence is receiving a lot of sharp criticism because it is considered to be less effective in creating a deterrent effect on perpetrators and is no longer in accordance with the objectives of punishment and correction. Prison sentences are not the best solution in solving crime problems. Viewed from the perspective of justice and legal benefits,

¹ Badan Pembinaan Hukum Nasional, 2015, *Draft Naskah Akademik Rancangan Undang-Undang Tentang KUHP Maret 2015*, Jakarta: Kementerian Hukum dan HAM, p. 9

² Lihat Pasal 51 Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP

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imposing prison sentences is no longer effective, especially for minor crimes.³ In line with the development of thinking about the effectiveness of punishment, Law Number 1 of 2023 concerning the Criminal Code has accommodated alternatives to imprisonment. One alternative to criminal punishment is social work punishment. Social work crime has become an international trend to implement it as an alternative punishment, for this reason Indonesia, which is in the process of reforming its criminal law, feels it is also necessary to implement social work crime. Social work crime is one of the main types of crime regulated in Article 65 and Article 85 of Law Number 1 of 2023 concerning the Criminal Code. Social work punishment is intended so that the convict can be freed from guilt, and the community can actively participate in socializing the convict by doing useful things. Social work punishment is an alternative to short-term imprisonment which aims to provide criminal offenders with the opportunity to improve themselves and improve their social relations with society. This is in line with the principle of justice in social work punishment which applies balanced and proportional punishment to perpetrators of criminal acts. Social work punishment can also provide benefits to reduce the burden on prisons and reduce the costs incurred by the state to maintain prisoners. Apart from that, social work punishment can increase the effectiveness of law enforcement by providing criminal alternatives that are more flexible and appropriate to the level of crimes committed by criminals. This can ensure that the punishment given is in accordance with the level of crime committed by the perpetrator of the crime and is in line with the principles of justice in law enforcement.

In the context of Indonesian criminal law which still prioritizes the theory of retribution, the application of social work punishment can be considered a new innovation. The concept of social work punishment is more closely related to the idea of restorative justice than to retribution theory. According to Law Number 1 of 2023 concerning the Criminal Code, the approach to criminals as legal subjects places more emphasis on the concept of restorative justice, where social work punishment is considered a form of rehabilitation that is more useful than simply providing a punishment or retaliation for criminal acts. Social work punishment can provide benefits to the Indonesian criminal legal system by being an alternative to short-term imprisonment. In this way, it is hoped that the negative impact of the large number of people imprisoned in Indonesia can be avoided or at least minimized.

³ Kuat Puji Prayitno, 2012, *"Restorative Justice Untuk Peradilan di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum In Concreto)"*, *Jurnal Dinamika Hukum Universitas Jenderal Soedirman Volume 12 Nomor 3 September 2012*, p. 408

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Social work punishment can be the right solution to overcome excess capacity in correctional institutions. The focus of the research that will be discussed in this research is related to the application of social work punishment as an alternative to prison sentences viewed from the perspective of justice and legal benefits.

Based on the description above, the problem formulation that can be proposed in this paper is, first, how is the implementation of social work crimes according to Law Number 1 of 2023 concerning the Criminal Code? The second problem is, how is social work criminalization from the perspective of the principles of justice and legal benefits?

2. Research Methods

The type of research used in this research is normative legal research. In this legal research, the research specifications used are analytical descriptive, which explains the problems related to the implementation of social work crimes based on Law Number 1 of 2023 concerning the Criminal Code from the perspective of justice and legal benefits. The approach method used in this research is a statutory approach and a conceptual approach. The statutory approach is used by analyzing the regulation of social work criminalization in Law Number 1 of 2023 concerning the Criminal Code, while the conceptual approach is used to link social work criminalization with the concept of justice and the benefits of law in society. The types of legal materials used in this research are primary and secondary legal materials. The method of collecting legal materials used by the author in this research is literature study. The legal material analysis method carried out in this research uses qualitative analysis. This means that the legal material that has been collected is analyzed to obtain clarity on the issues to be discussed.

3. Results and Discussion

3.1 Implementation of Social Work Crimes According to Law Number 1 of 2023 concerning the Criminal Code

The development of people's lives in Indonesia shows dynamic progress in accordance with developments in information technology and the situation of globalization in world society. On the other hand, legal problems in people's lives are also developing, especially those related to criminal acts or crime. Problems in the field of criminal law are developing following current developments. There are some old criminal law rules that are no longer in accordance with developments in society and are no longer in accordance with current developments. Therefore,

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there needs to be changes in the legal field if there are rules that are no longer appropriate, especially in the field of criminal law.⁴

In the opinion of Barda Nawawi Arief, he said that basically legal reform, especially criminal law reform, means efforts or efforts to make changes and reforms to criminal law which must be in accordance with socio-philosophical values, socio-political values and socio-cultural values. Indonesian society. These main values exist and live in Indonesian society and form the basis of social policy, criminal policy, and/or law enforcement policy.⁵

The DPR RI and the Government have successfully completed and approved the Draft Criminal Code Law so that it became a Law, which was carried out on December 6 2022. This latest Criminal Code was then ratified through Law Number 1 of 2023 concerning the Criminal Code. Even though there is controversy, it needs to be acknowledged that this is an effort aimed at reforming criminal law in Indonesia. Remembering that so far Indonesia still uses the Criminal Code which originates from the Netherlands. Even though the Criminal Code brings a spirit of reform to criminal law, many critics say that there are still articles that are controversial and have the potential to threaten democracy, the right to privacy, and open up opportunities for criminalization of society.⁶

The reform of the Criminal Code in Indonesia talks a lot about the importance of protecting human rights and providing stronger sanctions for perpetrators of criminal acts in accordance with the values and norms that apply in Indonesia. Apart from that, the reform of the Criminal Code also discusses protection for crime victims, including protection for women and children who are often victims of violence and sexual harassment. In Randy Pradityo's opinion, the Dutch Criminal Code is no longer effective in dealing with various problems and the development of new forms of criminal acts that have emerged along with changes in society. Therefore, efforts are needed to reform Indonesian criminal law in accordance with the basic values and socio-philosophical, socio-political and socio-cultural values that exist in Indonesian society.⁷

⁴ Hari Sutra Disemadi & Kholis Roisah, 2019, "Urgency of the Contempt of Court Criminalization Policy to Overcome Harassment Against the Status and Dignity of Courts", Brawijaya Law Journal Volume 6 Nomor 2, p. 225

⁵ Barda Nawawi Arief, 2011, Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Jakarta: Prenadamedia Group, p. 29

⁶ <https://theconversation.com/panel-ahli-kuhp-baru-terlalu-privat-anti-demokrasi-dan-membuat-masyarakat-rentan-dipenjara-196049>, diakses pada tanggal 29 September 2023 pukul 17.15 WIB

⁷ Randy Pradityo, 2017, "Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat", Jurnal Legislasi Indonesia Volume 14 Nomor 2, p. 137-143, diakses melalui <https://ejurnal.peraturan.go.id/index.php/jli/article/view/92/pdf>

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According to Law Number 1 of 2023 concerning the Criminal Code, there is recognition of new forms of punishment which include supervision sentences and social work sentences as alternative forms of punishment other than prison. This is due to the many criticisms of prison sentences which are still far from the goals of punishment and correction and the existence of excess capacity in prisons. Based on Article 65 Paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code, it is stipulated that the main punishment consists of imprisonment, cover-up, fine and social work.

Social work punishment is used as a criminal option that replaces imprisonment by involving social activities aimed at changing the behavior of criminals. In several countries, including Indonesia, social work punishment is regulated in statutory regulations as an alternative to prison sentences. The aim of implementing social work punishment is to rehabilitate, reintegrate and resocialize criminals into society. However, the implementation and effectiveness of social work punishment is still a topic of debate among academics, legal practitioners and policy makers.

Social work crime is an alternative form of imprisonment which is mandated by the "Tokyo Rules" to be included in the Criminal Code of every country in the world. Social work punishment originates from Europe, namely a punishment given to perpetrators of criminal acts by doing useful work to avoid prison sentences. This type of punishment has been known in Germany since the Middle Ages, and is imposed on criminals who are sentenced to a fine but are unable to pay it, so they are obliged to carry out work that is useful for people's lives without being paid. Then at the end of the 19th century and at the beginning of the 20th century, social work punishment began to be included as an alternative to imprisonment and fines in criminal legislation in European countries, including Germany, Switzerland, Italy and Norway⁸

In its development, social work crime has undergone modernization, namely eliminating its nature as a forced labor crime in order to avoid imprisonment, and can become an independent crime or as an alternative to short-term imprisonment within a conditional criminal framework. Social work punishment as an alternative to imprisonment will eliminate the negative impact of life in prison and will cause shame for the convict himself, because his social work can be directly seen by the community, besides that his social work also directly brings benefits to society. This form of social work punishment can be carried out in hospitals, orphanages, elderly homes, schools or other social institutions, which will be adapted as best as possible to the profession,

⁸ Iskandar Wibawa, 2017, "Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia", *Jurnal Media Hukum Volume 24 Nomor 2*, p. 109

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expertise and skills of the convict. This sentence will also reduce prison overcrowding which greatly disrupts the continuity of development in prisons.

Regulations for the implementation of social work penalties in Law Number 1 of 2023 concerning the Criminal Code are technically regulated in Article 85. According to Article 85 Paragraph (1) of the Criminal Code, it states that social work penalties can be imposed on defendants who commit criminal acts that are punishable by imprisonment of less than 5 (five) years and the judge imposes a maximum prison sentence of 6 (six) months or a maximum fine of Category II.⁹

In the imposition of social work crimes, the role of the judge is very important, because the imposition of this crime depends on the judge's decision. The judge in imposing a social work sentence is obliged to consider the following matters:

- a) The defendant's confession of the crime committed
- b) The defendant's work ability
- c) The defendant's consent after explaining the purpose and all matters relating to social work punishment
- d) The defendant's social history
- e) Protection of the defendant's work safety
- f) The defendant's religion, beliefs and political beliefs
- g) The defendant's ability to pay criminal fines

The implementation of criminal social work must not be commercialized, and the defendant can be given a maximum of 240 (two hundred and forty) hours and a minimum of 8 (eight) hours. The social work sentence is carried out for a maximum of 8 (eight) hours a day and can be carried out in stages over a maximum period of 6 (six) months while still monitoring the defendant's activities while serving the social work sentence.

If the prisoner cannot fulfill all or half of his obligations to serve a social work sentence without a valid or justifiable reason, then the prisoner will be ordered to:

⁹ Lihat Pasal 85 Ayat (1) Undang-Undang Nomor 1 Tahun 2023 tentang KUHP

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- (1) Repeat all or part of the social work
- (2) Carrying out all or part of the prison sentence replaced by the social work sentence
- (3) Pay all or part of the fine that has been replaced by a social work sentence or replace the unpaid fine by serving a prison sentence

Regarding the implementation of social work crimes, supervision is carried out by prosecutors and guidance is carried out by community counselors. Court decisions regarding social work penalties must also include:

- (1) The actual length of imprisonment or the amount of the fine is determined by the judge.
- (2) The length of social work that must be carried out includes the number of hours per day and the time period for completing the social work sentence
- (3) Sanctions if the social work sentence imposed is not carried out by the Based on Law Number 1 of 2023 concerning the Criminal Code, social work crime is one of the main types of punishment which also functions as an optional punishment for short-term imprisonment, namely for criminal acts that are punishable by less than five years and the judge imposes a maximum prison sentence of 6 years. (six) months, also as a substitute for a fine not exceeding category II. This is an implementation of the implementation of social work punishment so that it can achieve the objectives of punishment and from the perspective of justice and legal benefits.

3.2 Social Work Crimes from the Perspective of the Principles of Justice and Legal Benefits

The characteristics of Indonesian criminal law which is currently still in effect through the old Criminal Code are still retributive in nature or constitute retaliation against perpetrators of criminal acts. The implementation of criminal law is more oriented towards protecting individuals, society and the state from criminal acts committed by someone. Imposing a criminal sentence on the perpetrator is an embodiment of legal justice in society. The form of imposing sanctions has so far been dominated by the crime of deprivation of liberty (imprisonment). However, the form of imposing this type of prison sentence has recently begun to be questioned as to its effectiveness in achieving the objectives of punishment. Retributive justice contained in the old Criminal Code is starting to shift towards realizing restorative justice and fulfilling the principle of legal benefit. This is what prompted the renewal of the old Criminal Code with the passing of Law Number 1 of 2023 concerning the Criminal Code. The new Criminal Code is felt to be more in line with Pancasila values and can fulfill the sense of justice and benefit in society

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In the context of changes to Indonesian criminal law, various efforts are needed to ensure appropriate relevance. Reform of Indonesian criminal law must pay attention to the interests and needs of society as an important condition for changes in criminal law that are fair and beneficial. It is hoped that with the aim of increasing the efficiency of law enforcement, fighting crime, protecting society, and dealing with social problems, social protection and social welfare will be realized.

According to the theory put forward by Gustav Radbruch regarding the purpose of law, it states that the purpose of law is to realize justice, benefit and legal certainty. Likewise, in enforcing Indonesian criminal law, it is aimed at realizing these three things. However, in practice there is often a conflict between justice and expediency on the one hand and legal certainty on the other.

The new Criminal Code also aims to realize justice, benefit and legal certainty. However, the new Criminal Code places greater emphasis on aspects of justice and legal benefits. This is stated in Article 53 Paragraph (2) regarding sentencing guidelines which states that if there is a conflict between legal Based on the new Criminal Code, the implementation of Social Work Crimes is very crucial considering the urgency of reform in a fairer criminal law system. In order to achieve the interests of society at large, efforts are needed to reform criminal law by accommodating the interests of perpetrators, victims and society. To achieve these criminal objectives, better coordination between criminal justice subsystems and consistent policies in the application of criminal penalties are essential. This will provide a sense of security and comfort for people in living their lives in Indonesia. Therefore, the implementation of Social Work Crimes is a real manifestation of the social, philosophical and juridical framework of Indonesian society itself.

In social work sentences, convicts are given the opportunity to carry out useful social tasks as an effort to rehabilitate and defend themselves. Social crime punishment is considered more effective than prison because it gives convicts the opportunity to improve themselves and increase their social abilities so that they can once again contribute as useful members of society. So that the convicts seem to pay for their mistakes in a more positive and productive way than just sitting in prison. Social work punishment is considered more efficient than prison because the costs required to carry out social work sentences are lower than the costs required

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to keep someone in prison. Social conflicts arising from prison can be reduced, because criminals can return to being useful members of society and making positive contributions. Even though not all convicts can receive social work punishment, with the passing of the Criminal Code it is hoped that there will be a classification. The use of social work punishment as a new form of punishment can be based on an approach that assumes that the law must develop and adapt to social changes. The parties from the criminal justice subsystem must understand and make a breakthrough that the law should not be fixed, but must be flexible and continuously adapt to changes in society, so that the law must function to achieve justice and benefit. The applicable law is progressive by prioritizing individual rights, freedoms and protection against discrimination. With a progressive legal approach which emphasizes that the law must continue to develop and adapt according to the times and the development of society

In the context of implementing social work punishment, progressive legal theory emphasizes that the law must be used as a means to achieve social justice and protect individual rights. The application of social work penalties must be carried out fairly and not show discrimination, taking into account the social and cultural background of the violations that occurred. In this case, progressive legal theory suggests that the application of social work punishment should provide opportunities for offenders to improve themselves, not just punish and limit them. Therefore, progressive legal theory is the basis for the application of social work sentences that are fair and do not show discrimination, and provide opportunities for convicts to improve themselves and return to society as better citizens. This is the application of social work punishment in realizing the objectives of punishment with a perspective of justice and legal benefits. I certainty and justice, then the judge must prioritize the sense of justice.

4. Conclusion

Based on the results of the analysis and discussion that has been carried out, the conclusions obtained are:

(1)Based on Law Number 1 of 2023 concerning the Criminal Code, social work crime is a type of basic crime which also functions as an optional punishment for short-term imprisonment, namely for criminal acts that are punishable by less than five years and the judge imposes a prison sentence. a maximum of 6 (six) months, also as a substitute for a fine not exceeding

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category II. This is an implementation of social work criminalization so that it can achieve the objectives of punishment and from the perspective of justice and legal benefits.

(2)The application of social work punishment must provide opportunities for offenders to improve themselves, not just punish and limit them. Therefore, progressive legal theory is the basis for the application of social work sentences that are fair and do not show discrimination, and provide opportunities for convicts to improve themselves and return to society as better citizens. This is the application of social work punishment in realizing the objectives of punishment with a perspective of justice and legal benefits.

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