

Progressive Legal Perspective on Criminal Social Work in Criminal Law Reform in Indonesia

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Abstract. *This study aims to analyze the implementation of community service in Indonesia within a progressive legal framework as part of criminal law reform. Community service is an alternative punishment that emphasizes the rehabilitation and recovery of criminals through the principle of restorative justice, by providing opportunities for perpetrators to improve their behavior while contributing positively to society. The research method used is normative legal research with descriptive-analytical specifications, based on literature studies (library research). The data used includes primary and secondary legal materials, analyzed using a syllogistic method using a deductive mindset. One of the main references is Law No. 1 of 2023 concerning the Criminal Code, which explicitly regulates community service as an alternative sanction. The results of the study indicate that community service has the potential to reduce overcapacity in correctional institutions, minimize the negative impacts of short-term detention, and strengthen the social reintegration of perpetrators. Its successful implementation requires support from law enforcement officials, the community, and the government, so that it can realize a criminal justice system that is inclusive, just, and in accordance with the ideals of progressive law.*

Keywords: *Community Service; Legal Reform; Progressive Law.*

1. Introduction

As a nation governed by the rule of law, Indonesia has an obligation to create a criminal justice system that is fair, effective, and in line with social developments. However, the reality is that correctional institutions are chronically overcrowded, which in turn creates new problems such as human rights violations against inmates and low-effective correctional facilities.¹One of the solutions offered in criminal law reform is the implementation of community service as an alternative to short-term imprisonment.

The search for alternatives to non-imprisonment is expected to replace deprivation of liberty in a manner that aligns with the goals and uses of deprivation of liberty. On the other hand, these alternative sanctions are interpreted as an effort to achieve alternative goals that deprivation of liberty cannot achieve. In other words, deprivation of liberty is misguided and needs to be replaced with a non-punitive measure.² Community service is expected to reduce the negative impacts that usually arise from criminal deprivation of liberty, such as stigmatization, dehumanization, and other negative impacts, so that individuals can continue to develop into complete human beings without losing the self-confidence that is important for the further development process.³

The application of community service has the potential to reduce the negative impacts of imprisonment, such as social stigma and dehumanization, while also making a positive contribution to society.⁴Research by Widayati (2021) in the Law Development Journal shows that alternative sanctions based on restorative justice can improve the social reintegration of perpetrators compared to pure imprisonment. This demonstrates the alignment of community service sentences with progressive legal values. However, the realization of this policy faces challenges, such as limited implementation infrastructure, monitoring mechanisms, and resistance from officials and the community.⁵Several previous studies have focused more on restorative justice for juvenile crimes or out-of-court settlements, so specific studies on social work sentences in Indonesia are still relatively limited.⁶On the other hand, comparative studies in European countries show the success of community service punishment in reducing recidivism, but it has not been fully adapted in Indonesia.

This gap between norms and practice urges further study on how community service can be implemented effectively in accordance with the spirit of progressive law. Identifying these issues is crucial to ensuring that criminal law reform truly addresses current criminal justice issues. Based on this background, this study aims to analyze the regulation and implementation of community service in Indonesia from a progressive legal perspective and compare it with practices in other countries to identify opportunities and challenges.

2. Research Methods

This study uses a normative legal approach with descriptive-analytical research specifications. Data collection was conducted through library research, collecting primary legal materials in the form of laws and regulations, court decisions, and secondary legal materials such as books, scientific journals, and expert opinions. The data analysis method used was qualitative analysis using the syllogism method through deductive thinking to assess the suitability of the social work sentence regulation with the principles of progressive law and restorative justice.

3. Results and Discussion

3.1. Regulation of Social Work Criminal Procedure in Indonesian Criminal Law

The results of the study indicate that community service punishment in Indonesia has a clear legal basis in Law Number 1 of 2023 concerning the Criminal Code (KUHP) as one of the main punishments that can be imposed by judges. This regulation is found, among others, in Articles 65 and 85 of the Criminal Code, which stipulate that community service punishment can be imposed for crimes punishable by a maximum of five years' imprisonment or a maximum fine of category II, provided that the convict declares his or her willingness to voluntarily carry out the punishment. This sanction is implemented in the form of unpaid work for the benefit of the community, the nature and form of which are adjusted to the perpetrator's abilities, do not demean their human dignity, and still pay attention to work safety.

In Canada, community service orders are known as Community Service Orders (CSOs) or Community Service Work (CSWs), which are generally imposed as part of probation or conditional sentences. The maximum duration of community service is 240 hours over a specified period, usually 12–18 months. CSOs aim to provide offenders with an opportunity to atone for their crimes through

¹Kusriyah, S. (2021). Spatial Synchronization and Territorial Planning Policies between Regions and National Spatial Planning. *Jurnal Daulat Hukum*, 4(2), 110. <http://jurnal.unissula.ac.id/index.php/RH/article/view/15714>

²Nadia Utami Larasati, 'Efek Prisonisasi Dan Urgensi Pemberian Pidana Alternatif Bagi First Offender', *Deviance: Jurnal Kriminologi*, 2.1 (2018), 59

³Rob Canton, (2018). 'Probation and the Philosophy of Punishment', *European Journal of Probation*, 65.3.

⁴Mujibur Rohman, S., & Widayati, W. (2021). The Role of Leaders and Community Empowerment in Village Autonomy. *Law Development Journal*, 3(4), 301. <http://jurnal.unissula.ac.id/index.php/ldj/article/view/18368>

⁵Pratiwi, E. (2020). Restorative Justice in Criminal Law Enforcement. *Jurnal Daulat Hukum*, 3(1), 95–102.

⁶Astuti, P. & Rachmawati, I. (2019). Alternative Sanctions in Criminal Justice Systems: Comparative Study. *Law Reform*, 15(2), 210–225.

meaningful contributions to society while reducing the use of short prison sentences. Empirical studies show that, despite differences in implementation between Indigenous and non-Indigenous offenders, recidivism rates within two years of serving a CSO are relatively similar.⁷

Unlike in Canada, in the Netherlands, community service, or *taakstraf*, can be imposed as a primary punishment, not simply as an additional requirement. This punishment was introduced in 1989 and became a legal alternative to imprisonment or fines in 2001. The maximum duration of *taakstraf* is 240 hours, and if not served, the sentence can be replaced with imprisonment. Experimental studies comparing the effects of community service and short-term prison sentences have shown that offenders who undergo community service have significantly lower recidivism rates than those who are imprisoned (approximately 40% vs. 60%).⁸ This confirms the effectiveness of social work in supporting rehabilitation and reducing overcrowding in correctional institutions.

Meanwhile, in England and Wales, community service was first regulated through the Criminal Justice Act 1972 under the term Community Service Order, and is now known as Unpaid Work Requirement under the Criminal Justice Act 2003. This sentence requires offenders to perform 40 to 300 hours of community service, to be completed within 12 months. Its implementation is under the supervision of the National Probation Service. The UK emphasizes public visibility, where the public can directly see offenders working, such as cleaning streets, removing graffiti, or repairing public facilities. Evaluation studies have shown that community sentences are not only less costly than imprisonment, but also more effective in maintaining social engagement and reducing job loss among offenders.⁹ As a concrete example, in 2009, singer Boy George was sentenced to 100 hours of community service cleaning streets in London, symbolizing the open application of this sanction in public spaces.

From these three countries, it is clear that, despite differing legal mechanisms, community service remains a crucial instrument in modern penal systems. Canada places it as part of probation, the Netherlands recognizes it as a stand-alone primary punishment, and the UK integrates it into community sentences, emphasizing public involvement. A striking similarity is the goal of reducing the

⁷Jeff Latimer & Steven Addario, "Are Conditional Sentence Orders Used Differently for Indigenous Offenders?" *Canadian Journal of Criminology and Criminal Justice*, Vol. 61, No. 2 (2019), p. 37–56.

⁸Hilde Wermink, René van der Laan, et al., "Comparing the Effects of Community Service and Short-Term Imprisonment on Recidivism: A Matched Samples Approach," *Journal of Experimental Criminology*, Vol. 6, No. 3 (2010), p. 325–349.

⁹Joanna Shapland et al., *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*, Routledge; 2007; Ministry of Justice UK, *Compendium of Reoffending Statistics and Analysis*, London; 2011.

use of short-term prison sentences and emphasizing the rehabilitation and social responsibility of offenders.

When compared with the traditional concept of punishment which emphasizes the aspect of retribution (*retributive justice*), social work sentences show a paradigm shift towards a system that places more emphasis on rehabilitation and restoration of social relations (*restorative justice*). Satjipto Rahardjo, through his progressive legal theory, asserts that the law must be placed to serve humanity, not the other way around, so that the application of punishment should not only be oriented towards retribution, but should also provide space for improving the behavior of the perpetrator. Thus, community service punishment becomes relevant because it can prevent the perpetrator from the negative effects of prison sentences, such as stigmatization, social dysfunction, and the potential for negative influences from other inmates' environments.

Siswanto's Dissertation (2023)¹⁰ from the Doctoral Program in Law at Sultan Agung Islamic University (UNISSULA) provides a crucial foundation for assessing the urgency of reforming Indonesia's criminal justice system. The research highlights the limitations of imprisonment, which has long been the primary punishment, but often fails to achieve the goals of punishment, including community protection, offender rehabilitation, and equitable justice. Therefore, there is a need to reconstruct criminal regulations within the National Criminal Code by prioritizing Pancasila-based justice values.

One alternative offered is community service, which is considered more humane, educational, and in line with the principles of restorative justice. This dissertation recommends reducing reliance on imprisonment by expanding the application of community service as a form of positive contribution to society. This concept aligns with Satjipto Rahardjo's progressive legal theory, which emphasizes that the law should be oriented toward human welfare, not merely rigid rules. Thus, Siswanto's research findings strengthen the argument that community service is a relevant legal instrument for realizing a criminal justice system that is fairer, more humane, and more responsive to the needs of Indonesian society.

In Indonesian criminal law, community service is a relatively new concept and was not recognized in the old Criminal Code (*Wetboek van Strafrecht*, a Dutch legacy). The old Criminal Code only regulated basic penalties such as the death penalty,

¹⁰Siswanto. (2023). *Rekonstruksi regulasi sanksi pidana penjara dalam KUHP nasional berbasis nilai keadilan Pancasila* [Disertasi, Universitas Islam Sultan Agung]. UNISSULA Repository. <https://repository.unissula.ac.id/18649>

imprisonment, detention, and fines, thus not allowing for alternative non-imprisonment punishments.

Changes began to be seen with the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). Through Article 71 paragraph (1) letter j and Article 76, community service was introduced for the first time in Indonesia, specifically aimed at children in conflict with the law. The essence of community service here is as a form of educational sanction, with a maximum time limit of four hours per day and must not interfere with the child's right to school. This emphasizes that community service is intended not merely as punishment, but also as a means of rehabilitation and social reintegration.

Further developments then occurred through the ratification of the new National Criminal Code (Law No. 1 of 2023), which will come into effect in 2026. The new Criminal Code for the first time explicitly regulates community service as one of the main types of punishment that applies generally, not limited only to children. The provisions are contained in Articles 65 to 70 of the new Criminal Code, with provisions including a maximum duration of 240 hours within a 12-month period, implementation of no more than 7 hours per day, and the requirement that this punishment can only be imposed with the consent of the defendant and for crimes that are subject to a maximum prison sentence of five years.

The introduction of community service in Indonesian positive law reflects a shift in the sentencing paradigm, from a previous emphasis on imprisonment to alternative sentencing methods that place greater emphasis on restorative justice, rehabilitation, and reducing overcrowding in correctional institutions. Thus, community service is expected to become a more humane and proportionate legal instrument, particularly for minor crimes.

Community service has several terms and conditions important in its implementation:

1. Actor Requirements— Pay attention to age (not for minors due to work restrictions) and criminal record (generally does not apply to repeat offenders, unless linked to a conditional sentence).
2. Number of Working Hours— Each country sets different limits, for example, a minimum of 9 hours in Portugal, 40 hours in Denmark, France, and the UK, and 50 hours in Norway. The maximum varies from 180 hours (Portugal) to 240 hours (France, the Netherlands, and the UK).
3. Convict's Consent—The application must be agreed to by the convict to avoid forced labor and ensure there is motivation to undergo the sentence.

4. Criminal Content– The judge only determines the number of hours and the time period, while the technical implementation is regulated by the probation service.
5. Failure to Live– If failed, the consequences can be a fine, repeated community service, or conversion to imprisonment (e.g. up to 6 months in the Netherlands, 3 months in Portugal, even considered a new crime in France).

Community service punishment is developing as alternative to short-term imprisonment, born from a critique of the effectiveness of prisons. This concept is also in line with The Tokyo Rules 1990 which encourages countries to develop non-prison sanctions that are more beneficial to both perpetrators and society.

The search for alternatives to non-imprisonment is expected to replace deprivation of liberty in a manner that aligns with the goals and uses of deprivation of liberty. On the other hand, these alternative sanctions are interpreted as efforts to achieve alternative goals that deprivation of liberty cannot achieve. In other words, deprivation of liberty serves the wrong purpose and needs to be replaced with a non-punitive measure.¹¹

Referring to the effectiveness of criminal sanctions in the form of imprisonment, it shows that not all punishments can provide a deterrent effect for perpetrators of criminal acts, and cannot directly reduce crime rates.¹² Community service is a form of punishment that also emphasizes rehabilitation and reintegration of inmates into society. By prioritizing guidance and training, inmates are given the opportunity to improve themselves and develop the skills needed to live independently and productively in society. This is expected to reduce the likelihood of inmates returning to actions detrimental to society after being released from prison. Therefore, the implementation of the concept of community service will hopefully reduce the recidivism rate. With the reform of criminal law in Indonesia, manifested in the ratification of the latest Criminal Code, it is also hoped that the paradigm of imprisonment based on retribution will begin to be abandoned.¹³

With community service punishment, it is hoped that the negative impacts of the application of the punishment of deprivation of liberty, such as stigmatization, dehumanization, and other impacts, can be avoided so that people can become complete human beings without having to lose their self-confidence as provisions

¹¹Nadia Utami Larasati, 'Efek Prisonisasi Dan Urgensi Pemberian Pidana Alternatif Bagi First Offender', *DEVIANCE: JURNAL KRIMINOLOGI*, 2.1 (2018), 59

¹²Emaliawati, Saragih, and Mulyana, 'Effectiveness of Social Work Sanction as a Substitute for Imprisonment in The Perspective of Sentencing Purposes.'

¹³Kurniawan et al., "Compensation as Sanctions for the Perpetrators of Corruption in the Dimensions of Indonesian Criminal Law Renewal, *Brawijaya Law Journal* 6(2):205-223, 2019, p. 209

in the process of further development.¹⁴ While community service has many benefits, its implementation in Indonesia also faces several challenges. One of the biggest challenges is the lack of adequate infrastructure to manage community service programs. Not all regions have institutions or facilities capable of accommodating community service programs that benefit the community.

Many gaps and challenges remain in the criminal justice process, particularly in implementing complex community service sentences. One key issue is the inadequate number of law enforcement officers to handle these cases. Furthermore, limited technology and equipment also hinder its implementation. The inadequate quality of training and capacity building for law enforcement officers is also a serious issue. Unmotivating remuneration and career development systems, along with inadequate infrastructure and facilities, also pose challenges. The lack of support and resources from the government and the community exacerbates the situation. Efforts are needed to increase the capacity and support of law enforcement officers so they can carry out their duties more effectively and efficiently in handling issues related to complex community service sentences.¹⁵

From the results of this study, it can be concluded that normatively, the regulation of community service in Indonesia has accommodated the principles of progressive law and restorative justice. However, its effectiveness will depend heavily on the commitment of all parties involved—especially law enforcement officials, local governments, and the community—to ensure its implementation aligns with its stated objectives. If implemented optimally, community service will not only reduce overcrowding in correctional institutions but also serve as a strategic step in reforming criminal law to be more humane, adaptive, and humanity-oriented.

3.2. Criminal Law Updates Related to Article 85 (Criminal Law on Social Work) of the Criminal Code (KUHP) from a Progressive Law Perspective

Progressive law is a school of law that offers a new perspective on how the law should be implemented, with an emphasis on social justice, dynamic change, and the protection of human rights. Unlike traditional legal approaches, which tend to be rigid and focus on retribution for perpetrators, progressive law prioritizes recovery, rehabilitation, and social reintegration for both perpetrators and

¹⁴Rob Canton, (2018). 'Probation and the Philosophy of Punishment', *European Journal of Probation*, 65.3.

¹⁵Anggayudha et al; Eksistensi Pidana Kerja Sosial dalam Perspektif Hukum Progresif June 2023, *Jurnal Penelitian Hukum De Jure*, 23(2):219 DOI:10.30641/dejure.2023.V23.219-230

victims. Progressive law also seeks to respond to evolving social, economic, and cultural changes, making it more responsive to the challenges of the times.¹⁶

The characteristics of progressive law are: first, humanism, meaning progressive law emphasizes human dignity, not just punishment or retribution. This emphasis is evident in the restorative justice approach, which involves the perpetrator, victim, and community in resolving legal issues. The focus is on recovery and rehabilitation, not just punishment. Second, social justice, meaning progressive law is oriented towards achieving social justice. The law does not only apply to those with power or high social status, but must encompass all levels of society. Therefore, progressive law seeks to address inequality and overcome discrimination.¹⁷

Restorative justice and progressive law have a strong connection, as both offer a more humane approach and focus on restoration rather than punishment in law enforcement.¹⁸ Restorative justice and progressive law both emphasize a more humane approach to law enforcement, focusing on restoration and rehabilitation rather than mere punishment. Restorative justice focuses on victims, encouraging healing relationships through dialogue and mediation, while progressive law emphasizes laws that are flexible, vibrant, and relevant to community needs. Both aim to reduce the negative impact of imprisonment, improve offender behavior, and create more meaningful, inclusive, and sustainable justice.

In practice, this aligns with community service as an alternative form of criminal law. This punishment allows the perpetrator to contribute directly to society, demonstrate remorse, and restore the trust of the victim and the public. Therefore, restorative justice and community service complement each other, providing constructive justice that promotes the common good.

Human Rights (HAM) in Indonesia are guaranteed in 1945 Constitution, which affirms the basic rights of every individual, such as the right to life (Article 28A), as well as the right to form a family and continue the lineage (Article 28B)¹⁹. For more detailed arrangements, published Law No. 39 of 1999 concerning Human Rights,

¹⁶Satjipto Rahardjo, (2011). *Hukum Progresif: Urgensi dan Kritik*. (Jakarta: Epistema dan HuMa) p. 417

¹⁷Moh. Mahfud MD, (2009). "Peran Mahkamah Konstitusi dalam Pengembangan Hukum Progresif untuk Keadilan Sosial", makalah disampaikan dalam Seminar "Menembus Kebuntuan Legalitas Formal Menuju Pembangunan Hukum dengan Pendekatan Hukum Progresif". Semarang, Universitas Diponegoro, December 19.

¹⁸Syaiful Asmi Hasibuan, Christian Antonio Pardamean Tarigan, Nugraha Manuella S. Meliala, & Rachel Agatha Christi Hutabarat. (2024). Restorative Justice Sebagai Bentuk Hukum Progresif Dalam Peraturan Perundang Undangan Indonesia Tidak Untuk Menggantikan Keadilan Retributif. *Indonesian Journal of Law*, 1(1), 14–25.

¹⁹Law Number 39 of 1999 concerning Human Rights

which includes the rights to personal liberty, education, health, and protection from discrimination. This law also strengthens human rights protection through the establishment of National Commission on Human Rights as an institution that monitors and protects the implementation of human rights in Indonesia.

Indonesia's human rights regulations are also in line with international principles enshrined in the Universal Declaration of Human Rights (UDHR) and various other international instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). By ratifying these international instruments, Indonesia demonstrates its commitment to respecting and implementing human rights in accordance with global standards.²⁰

Human rights and progressive law have a close relationship because they are both oriented towards social justice and protection of individual rights²¹. Progressive law emphasizes dynamic law that supports the needs of society, with human rights as its primary foundation. In its application, progressive law not only punishes but also ensures that the rights of perpetrators are respected. Examples include: community service, which is more humane and rehabilitative because it gives the perpetrator the opportunity to improve himself without having to go to prison.

Progressive law emphasize fulfilment HAM by ensuring that every individual is treated fairly and humanely, both perpetrators and victims. This approach avoids repressive punishments such as excessive imprisonment, and prioritizes ways rehabilitative such as community service which gives the perpetrator the opportunity to change. In addition, progressive law prioritize srestorative justice, namely restoring relationships between perpetrators, victims, and society, in line with human rights principles that safeguard individual dignity and well-being. Thus, progressive law aims to create a legal system that is just, humane, and adaptive to societal needs.

Community service punishment is considered more effective than short-term imprisonment. Its implementation has several dimensions, namely:

1. Alternative to short-term prison sentences, as in some European countries, community service is imposed as an independent or conditional sentence.

²⁰<https://icjr.or.id/mengenal-kovenan-internasional-hak-sipil-dan-politik/>, accessed on November 15, 2024, 07.37 WIB

²¹Rufaidah, Nanik Prasetyiningsih, Penegakan Hukum HAM dalam Bingkai Hukum Progresif Berdasarkan Kasus Paniai di Papua, *Media of Law and Sharia*, Vol 4 Issue 1, 2023

2. Alternative sanctions if the fine is not paid For example, in Italy, Germany and Switzerland, convicts who are unable to pay their fines can replace them with community service.
3. Conditions for granting pardon In countries such as the Netherlands and Germany, clemency can be granted on the condition that the convict must first undergo community service.²²

Community service is in line with the principles of progressive law because it is more humane, recovery-oriented, and efficient. This punishment provides the offender with the opportunity to interact with the community, develop skills, and prevent recurrence of the crime, thus having rehabilitative value. Furthermore, community service provides the offender with the opportunity to help repair the victim's losses and rebuild damaged relationships, in line with the concept of restorative justice. Practically, this punishment is also more cost-effective than imprisonment and can alleviate the problem of overcrowding in correctional institutions. Thus, its implementation reflects the ideals of progressive law that are adaptive and equitable.

According to the author, the limitations imposed on the application of community service sentences must be carefully implemented to ensure the system operates effectively and fairly. Some criteria and limitations that can be applied to community service sentences include:

1. Types of Crime

Community service should only be applied to perpetrators of crimes that do not directly harm others or have significant social impact. Some types of crimes that may be subject to community service include:

- a. Minor Traffic Violations: Such as driving without a driver's license (SIM), parking carelessly, or other traffic violations that do not cause accidents or major material losses.
- b. Petty Theft: crimes such as theft of items of low value (e.g. theft of food or small items), which do not involve violence or threats.
- c. Petty Theft: crimes such as theft of items of low value (e.g. theft of food or small items), which do not involve violence or threats.

²²Muladi, (1995), *Kapita Selektia Peradilan Pidana*, Semarang : Badan Penerbit Universitas Diponegoro, p.139

- d. Minor Assault: a criminal act of assault that does not cause serious injury or harm to the victim, for example in the form of a minor fight that does not have a major impact.
- e. Violation of General Regulations: such as violation of local regulations or certain social norms that do not involve major physical or material losses.

2. Perpetrator Criteria

In addition to the type of crime, the criteria for the perpetrator are also important considerations. Not all perpetrators of crimes are eligible for community service. Several criteria that can be considered when determining whether an offender is eligible for community service are:

- a. Good Intention or Unplanned Offense: an offender who commits a crime due to an emergency situation, negligence, or without malicious intent (for example, theft for urgent needs)
- b. Perpetrators who show remorse: those who have admitted their mistakes and shown real regret for their actions, and are willing to improve themselves.
- c. Offenders without a serious criminal record: offenders who have not previously been involved in serious or repeated crimes, and are not indicated as having the potential to repeat serious crimes.
- d. Age and Condition of the Perpetrator: Perpetrators who are still young or who have a health condition that allows them to undertake social work without endangering themselves.

3. Duration and Type of Social Work

Limitations also need to be placed on the type and duration of community service assigned. The type of work assigned should be commensurate with the severity of the crime committed. Some examples of limitations in this regard are:

- a. Duration of Community Service: The duration of community service is usually adjusted according to the severity of the crime. For example, minor traffic violations may result in a few weeks of community service, while minor theft offenses may require longer community service, such as 1 to 3 months.
- b. Types of Social Work Activities: The activities in question can include cleaning public facilities, helping with social activities at orphanages or hospitals, working at charities, or being involved in community projects that benefit the community.

4. Monitoring and Evaluation

Another limitation that needs to be implemented is strict supervision of the implementation of community service sentences. This is to ensure that the perpetrator properly serves his sentence and does not neglect his responsibilities. Several aspects that need to be considered during supervision include:

- a. Periodic Reports: the offender must report the progress of his/her social work periodically to the competent authorities, such as the court or social institution.
- b. Supervision by Officers or Related Institutions: Correctional institutions or competent non-governmental organizations can help supervise the offender's social work activities.
- c. Evaluation of Success: After the implementation of social work is completed, an evaluation must be carried out to assess whether the social work has been successful in providing a positive impact on the perpetrator, both in terms of social rehabilitation and reducing the potential for repeat criminal acts.

5. Exception

Not all crimes are punishable by community service. Some cases that don't meet certain criteria include:

- a. Serious Crimes: Crimes involving serious physical violence, sexual crimes, or organized crime that endangers society, such as drug trafficking, or major corruption, are not suitable for community service.
- b. Crimes That Demonstrate Disregard for the Law: Offenders who blatantly display a disregard for laws and social regulations may require a firmer approach than community work.

6. Restitution and Compensation

In some cases, in addition to community service, perpetrators may also be required to provide compensation or restitution to victims as part of efforts to restore or recoup losses incurred as a result of the crime. This will help provide a sense of justice to victims and support the rehabilitation of perpetrators. By implementing clear boundaries and in accordance with the principles of restorative justice, the application of community service can be an effective instrument in the criminal justice system in Indonesia. These boundaries are also important to ensure that this system is not abused, and that perpetrators can be

given the opportunity to improve themselves through positive contributions to society.

From an Islamic legal perspective, social work punishment can be seen as a punishment instrument that is in line with the principles of *maqāṣid al-syarī'ah*, namely, maintaining public welfare, preventing harm, and providing opportunities for perpetrators to improve themselves. Islam emphasizes that the goal of punishment is not merely retribution, but also rehabilitation, restoring social relationships, and preventing recurrence of criminal acts. Therefore, the application of community service can be linked to the Islamic value of restorative justice, which emphasizes resolving problems in a just, humane, and mutually beneficial manner.

Islam itself, as explained by the Prophet Muhammad, firmly states that Islam maintains "balance", for example in the right to punishment, everyone has the right to receive punishment that is not excessive.²³ The Quran never requires Muslims to establish prisons, nor does it even recommend or teach them, because the Quran does not contain any offenses that require imprisonment or confinement. This is not because the Quran does not recognize the concept of prison, but rather, the Quran already recognizes prisons, as stated in the following verse:

إِنَّهُمْ وَأَكُنْ مِنَ الْجَاهِلِينَ Allah's blessings قَالَ رَبِّ السَّجْنُ أَحَبُّ إِلَيَّ مِمَّا يَدْعُونَنِي

"Yusuf said: "O my Lord, I prefer prison to fulfilling their invitation to me. And if You do not prevent me from their deception, of course I will be inclined to (fulfill their wishes) and I will certainly be one of the stupid people" (Qs. Yusuf: 33).

Regarding criminal law in Islamic law, it is known as the study of *fiqh jinayah*. *Fiqh* linguistically comes from the pronunciation of *faqih*, *yafqahu fiqhan*, which means to understand or understand. *Jinayah* is the result of someone's bad actions and what they try to do. The term *jinayah* as stated by Abdul Qadir Audah is, actions that are prohibited by *sharia*', whether the action concerns life, property or anything else.²⁴

One of the Indonesian Muslim figures who combined criminal law with Islamic criminal law is Hazairin. According to him, after comparing various types of punishment as alternatives to imprisonment in Indonesia, he emphasized the need for alternative punishments for perpetrators of criminal acts, namely Islamic criminal law and socially useful works/community service orders. This thinking is

²³Lopa, Baharuddin. (1996). *Al-Qur'an dan Hak-Hak Asasi Manusia*. Yogyakarta: Dana Bhakti Prima Yasa, p. 53

²⁴Khallaf, Abdul Wahab. (1968). *Ilmu Ushul Al Fiqh. Kuwait: Ad Dar Al Kuwaitiyah*, p. 11

based on a penological perspective, which states that the punishment imposed on perpetrators of crimes must be able to achieve the objectives of punishment, both in terms of general deterrence and specific deterrence. However, the implementation of punishment oriented towards humane care (such as probation) has proven to be more effective in reducing the possibility of repeating crimes (recidivism) compared to several other forms of punishment.²⁵

The relevance of implementing community service penalties in the Criminal Code currently being prepared by the state certainly has a basis, both normatively and morally, sociologically, politically, and philosophically. Conversely, Islamic law aligns with the draft Criminal Code regarding community service penalties. Islam fundamentally favors avoiding imprisonment, as imprisonment, in its various forms, tends to have a negative impact on convicts rather than beneficial consequences.²⁶

Community service as an alternative to criminal punishment is not explicitly mentioned in classical Islamic texts, but the principles underlying punishment in Islam allow for modern interpretations that can include non-imprisonmental forms of punishment, including community service. In Islamic criminal law, the primary purpose of punishment is education (*ta'dib*) and moral and social restoration, not just retribution. Principles of justice and balance (*'adalah wa i'dil*) demands that the punishment be proportional and take into account the humanitarian aspects of the perpetrator. The concept of restorative justice (*al-'adl al-ijtimā'i*) is also emphasized, namely restoring the losses of victims and society through the positive contribution of the perpetrator. Community service can be seen as in line with this principle because it provides an opportunity for rehabilitation and social recovery. In the context of *ta'zir*, a punishment imposed by the authorities for the public good, community service can be a more educational alternative to imprisonment. Although there are no specific provisions in classical texts, Islamic history demonstrates the flexibility of implementing restorative punishments. Therefore, community service, as a modern form of punishment, is acceptable under Islamic law as long as it fulfills the objectives of sharia, namely upholding justice, educating the perpetrator, and protecting the public interest.

Overall, although community service is not explicitly mentioned in classical Islamic legal sources, Islamic principles prioritizing justice, education, and rehabilitation allow for community service as a legitimate form of criminal punishment within the context of Islamic criminal law. Community service can be an effective

²⁵M. Hasbi Ash-Shiddiqi, Alhusni, Yudi Armansyah, Wacana Penerapan Sanksi Kerja Sosial dalam Perspektif Hukum Islam Universitas Islam Negeri Sulthan Thaha Saifuddin, Jambi. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* Vol.19, No.1, June 2021, p.41-51

²⁶*ibid*

alternative, while maintaining humanitarian values and supporting Islamic law's goal of improving the moral and social well-being of individuals and society. The relevance of implementing community service punishment certainly has a legal, normative, sociological, political, and philosophical basis. Conversely, Islamic law aligns with the reform of the Criminal Code regarding community service sanctions. Islam fundamentally favors avoiding imprisonment, as imprisonment, in its various forms, tends to have a negative impact on convicts rather than beneficial consequences.

4. Conclusion

The implementation of community service under Indonesian positive law, as stipulated in the latest Criminal Code (Law No. 1 of 2023), reflects the state's efforts to integrate restorative and rehabilitative justice values into the criminal justice system. Under Article 85, courts can impose community service on perpetrators of non-dangerous crimes, with the aim of benefiting the community while also providing the perpetrator with space to recover. This mechanism not only eases the burden on correctional institutions, which are often overcrowded, but also allows the community to play an active role in the perpetrator's rehabilitation process. Community service also represents a progressive legal principle that emphasizes rehabilitation, justice, and restoration. With a more humane approach, this system provides an opportunity for offenders to assume responsibility through meaningful social contributions, while simultaneously reducing the risk of recidivism due to the ineffectiveness of prison sentences in the rehabilitation process. However, for optimal implementation, clear regulations, strict oversight, and ongoing evaluation are required to ensure that community service truly achieves its primary goal of rebuilding social balance and improving the quality of justice in society.

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