

## Implementation of Criminal Social Work Based on the National Criminal Code from the Perspective of Justice and Legal Benefit

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**Abstract.** *Community work is an alternative to short-term imprisonment which aims to provide an opportunity for perpetrators of criminal acts to improve themselves and improve their social relations with the community. The objectives of this study: 1). To find out and analyze the implementation of social work according to Law Number 1 of 2023 concerning the Criminal Code; 2.) to find out and analyze social work from the perspective of the principles of justice and legal benefits; 3.) To find out and analyze the weaknesses of social work based on the National Criminal Code from the perspective of justice and legal benefits. This study uses an empirical legal approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of legal certainty and the theory of the legal system. The results of the study conclude that: 1) The implementation of social work according to Law Number 1 of 2023 concerning the Criminal Code, namely the application of Social Work, must first pay attention to the readiness of HR infrastructure, facilities and infrastructure, and budget needs so that it can be an effective and optimal alternative to short-term imprisonment; 2). Community service punishment in the perspective of the principle of justice and legal benefits is the application of community service punishment as an alternative to short-term punishment can provide an effective solution to criminal law problems in Indonesia, especially in the context of overcapacity of correctional institutions. Community service punishment not only reduces the burden on the criminal justice system, but also reflects the values of justice and legal benefits that focus on the social reintegration of offenders. However, the success of its implementation is highly dependent on clear regulatory support, human resource readiness, and community involvement; 3). The weakness of community service punishment based on the National Criminal Code in the perspective of justice and legal benefits is that it does not regulate the minimum number of hours a day a convict must commit*

*a crime and there is no supervisor such as a supervisor to oversee the course of this crime.*

**Keywords:** *Community; Criminal; Implementation; Service.*

## 1. Introduction

Based on the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, Article 1 Paragraph (3) states that Indonesia is a country based on law.<sup>1</sup> This means that law is a tool to support the implementation of the state's duties and functions in providing security and public order, protecting the lives and property of citizens and realizing justice in society.

As a country governed by the rule of law, all relationships between citizens, as legal subjects, must comply with and obey applicable legal regulations. The purpose of law is to achieve justice, legal certainty, and benefit within society. Law is also used to maintain order in society, preventing those who violate the law from taking the law into their own hands. This is closely related to the realm of criminal law.

Laws are created and enforced to regulate and protect the interests of citizens to prevent conflict and to protect human rights. Law is a set of rules, regulations, and regulations, both written and unwritten, relating to the regulation of relations between citizens in society.<sup>2</sup>

In the criminal justice process, there are several stages that must be passed by justice seekers, both at the level of inquiry, investigation, examination in court up to the stage of sentencing decisions and even legal efforts if used by the parties, which of course require a lot of time, energy and costs for justice seekers.<sup>3</sup>

Criminal law enforcement is necessary for criminal law to have meaning. Criminal law enforcement is part of a criminal justice system. The criminal justice system consists of the principles and objectives of criminal punishment, the rules of punishment, and the material of punishment. The foundation of the criminal justice system in Indonesia is inseparable from the Criminal Code (KUHP), established through Law Number 1 of 1946, a legacy of the Dutch East Indies government. According to the current Criminal Code, there is no written

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<sup>1</sup>Mahfud MD, Building Legal Politics, Upholding the Constitution, Jakarta: PT. RajaGrafindo Persada, 2011, p. 17

<sup>2</sup>Yahya Harahap, 2015, Discussion of Problems and Application of the Criminal Procedure Code (Court Hearing, Appeal, Cassation, and Judicial Review), Jakarta: Sinar Grafika, p. 1

<sup>3</sup>Andri Winjaya Laksana, Restorative Justice in the Settlement of Cases of Children in Conflict with the Law in the Juvenile Criminal Justice System, Journal of Legal Reform, Volume IV No. 1 January - April 2017

formulation regarding the objectives and guidelines for criminal punishment in Indonesia.<sup>4</sup>

According to Bambang Waluyo, the current criminal justice system under the Criminal Code (KUHP) is still repressive, meaning it focuses on punishing or retaliating against perpetrators. The criminal justice system under the KUHP still adheres to a retributive paradigm, which involves providing appropriate retribution to perpetrators for the crimes they have committed. Based on this retributive paradigm, the goal of criminal justice is to deter perpetrators from committing future crimes and to prevent the public from committing further crimes.<sup>5</sup>

Given the historical background of the enactment of the Indonesian Criminal Code, which is a legacy of the Dutch criminal law, criminal law reform is needed through a revision of the new Criminal Code that is in accordance with societal values, current developments, and fulfills a sense of justice. Various criticisms of the current Criminal Code are an important reason for criminal law reform. The need for criminal code reform is also in line with the results of the 1976 UN Congress on crime prevention. The UN Congress stated that the criminal laws currently in force in various countries are generally derived from foreign laws that are unfair, outdated, and inconsistent with reality.<sup>6</sup>

Efforts to establish a new Criminal Code in accordance with the values of Indonesian society began in 1963 with the drafting of the Draft Criminal Code in a criminal law book or the Indonesian Criminal Code Book.<sup>7</sup> The policy of establishing the Indonesian National Criminal Code (KUHP) can serve as the basis for Indonesia's national criminal law system, realizing the goal of decolonizing the Dutch-inherited Criminal Code. After a lengthy process, Law Number 1 of 2023 concerning the Criminal Code was finally passed, replacing the Dutch-inherited Criminal Code.

The criminal law reforms in the new Criminal Code encompass formal criminal law, substantive criminal law, and criminal enforcement law. These three areas of law are being revised collectively or in an integrated manner to eliminate obstacles to implementation.<sup>8</sup>

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<sup>4</sup>Barda Nawawi Arief, 2016, *Policy on Formulating Criminal Provisions in Legislation*, Semarang: Pustaka Magister, p. 7

<sup>5</sup>Bambang Waluyo, 2017, *Law Enforcement in Indonesia*, Jakarta: Sinar Grafika, p. 107

<sup>6</sup>Bambang Waluyo, 2015, "The Relevance of the Restorative Justice Doctrine in the Criminal Justice System in Indonesia", *HALREV Journal*, Faculty of Law, UNHAS Volume 1 Issue 2, August 2015, p. 211

<sup>7</sup>National Legal Development Agency, 2015, *Draft Academic Paper on the Draft Law on the Criminal Code*, March 2015, Jakarta: Ministry of Law and Human Rights, p. 9

<sup>8</sup>Lilik Mulyadi, 2007, *Selected Chapters on Criminal Law, Criminology and Victimology*, Jakarta: Djambatan, p. 38

One aspect of the material criminal law reform is the reform of the Criminal Code. Three topics are included in the reform concept of the new Criminal Code: criminal acts, guilt or criminal responsibility, and criminal penalties and punishment. Regarding criminal penalties and punishment, according to the new Criminal Code, the purpose of punishment is prevention, rehabilitation, conflict resolution, restoration of balance, creation of a sense of security, and the cultivation of remorse and release from guilt.<sup>9</sup>This concept is based on the idea of balance (monodualistic) between the interests of society and the interests of individuals.

According to the criminal justice system in the old Criminal Code, sentencing is guided by Article 10 of the old Criminal Code concerning the types of punishments that can be given to perpetrators of criminal acts. Imprisonment is one of the main types of punishment often chosen by judges when sentencing perpetrators of criminal acts to create a deterrent effect. It seems as if there is no alternative type of punishment other than imprisonment. However, currently the imposition of imprisonment is receiving much sharp criticism because it is considered ineffective in creating a deterrent effect on perpetrators and is no longer in line with the objectives of punishment and correctional. Imprisonment is not the best solution in resolving crime problems. Viewed from the perspective of justice and legal benefits, the imposition of imprisonment is no longer effective, especially for minor crimes.<sup>10</sup>

In line with the development of thinking on the effectiveness of criminal punishment, Law Number 1 of 2023 concerning the Criminal Code has accommodated alternatives to imprisonment. One of these alternatives is community service. Community service has become an international trend to implement as an alternative punishment. Therefore, Indonesia, which is currently in the process of reforming its criminal law, feels the need to also implement community service. Community service is one of the main types of punishment regulated in Articles 65 and 85 of Law Number 1 of 2023 concerning the Criminal Code. Community service is intended to free convicts from guilt, and the community can actively participate in socializing convicts by doing things that are beneficial.

Community service is an alternative to short-term imprisonment that aims to provide criminals with the opportunity to improve themselves and improve their social relationships with the community. This aligns with the principle of justice in community service, which applies balanced and proportional punishments to criminals. Community service can also provide benefits by reducing prison burdens and reducing state costs for maintaining prisoners. Furthermore, community

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<sup>9</sup>See Article 51 of Law Number 1 of 2023 concerning the Criminal Code

<sup>10</sup>Kuat Puji Prayitno, 2012, "Restorative Justice for the Judiciary in Indonesia (Philosophical Juridical Perspective in Law Enforcement In Concreto)", *Journal of Legal Dynamics*, General Soedirman University, Volume 12, Number 3, September 2012, p. 408

service can increase the effectiveness of law enforcement by providing a more flexible alternative punishment that is commensurate with the severity of the crime committed by the perpetrator. This ensures that the punishment imposed is commensurate with the severity of the crime and aligns with the principle of justice in law enforcement.

In the context of Indonesian criminal law, which still prioritizes the theory of retribution, the implementation of community service can be considered a new innovation. The concept of community service is more closely linked to the idea of restorative justice than to the theory of retribution. According to Law Number 1 of 2023 concerning the Criminal Code, the approach to criminals as legal subjects emphasizes the concept of restorative justice, where community service is considered a more beneficial form of rehabilitation than simply imposing punishment or retribution for criminal acts.<sup>11</sup> An example of social punishment is allowing offenders to receive reasonable punishment and reintegrate into society through atonement. This way, it is hoped that the negative impacts of the large number of people imprisoned in Indonesia can be avoided or at least minimized. Community service can be an appropriate solution to address overcrowding in correctional facilities.<sup>12</sup>

## 2. Research Methods

The specifications in this legal research must be in line with the nature of existing legal science. In this legal research, the research specifications used are descriptive and analytical, which explain the problems related to the implementation of social work punishment according to Law Number 1 of 2023 concerning the Criminal Code from the perspective of justice and legal benefits. From this explanation, it will be further analyzed and reviewed regarding the relevance between the implementation of social work punishment according to Law Number 1 of 2023 concerning the Criminal Code from the perspective of justice and legal benefits. In this research, the researcher uses two approaches, namely, a statute approach and a conceptual approach that are considered relevant to the legal issues being studied. The statute approach is used because in this research the researcher starts from an analysis of the provisions of social work punishment in the new Criminal Code, as well as regulations related to the implementation of social work punishment according to Law Number 1 of 2023 concerning the Criminal Code from the perspective of justice and legal benefits. Legal research sources can be divided into research sources in the form of primary legal materials and secondary

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<sup>11</sup>Jamin Ginting, 2020, "Social Work Sanctions as an Alternative Form of Punishment in the Indonesian Legal System", Law Review Journal Volume 19 Number 3 Faculty of Law, Pelita Harapan University, March 2020, p. 246, accessed from <https://ojs.uph.edu/index.php/LR/article/view/2098>

<sup>12</sup>Asiyah Jamilah and Hari Sutra Disemadi, 2020, "Community Work Penalties: A Policy to Address Prison Overcrowding", IUS Journal of Law and Justice Studies Volume 8 Number 1, accessed from [https://jurnalius.ac.id/ojs/index.php/jurnallIUS/article/view/726/pdf\\_140](https://jurnalius.ac.id/ojs/index.php/jurnallIUS/article/view/726/pdf_140)

legal materials. Primary legal materials are authoritative legal materials that have authority. Primary legal materials consist of laws and regulations, as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation. Secondary legal materials consist of all official publications on law. Secondary legal materials consist of law books, legal journals, and commentaries on court decisions.<sup>13</sup>

### **3. Results and Discussion**

#### **3.1. Implementation of Community Service According to Law Number 1 of 2023 concerning the Criminal Code**

Criminal law reform in Indonesia is imperative to adapt the legal system to the dynamics of modern society. One critical issue is overcrowding in correctional institutions, which leads to human rights violations, degradation of rehabilitation programs, and inefficiency in the criminal justice system. Indonesian correctional institutions often face inadequate conditions, with capacities far exceeding ideal limits. According to data from the Directorate General of Corrections, in 2024, the number of inmates in Indonesia reached more than double the available capacity. This not only creates an inhumane environment but also hinders effective rehabilitation efforts for inmates.

Based on the number of correctional inmates recorded on the Directorate General of Corrections (Ditjenpas) website as of July 31, 2024, the number of prisoners and convicts throughout Indonesia was recorded at 273,392 (two hundred seventy-three thousand three hundred and ninety-two) people, where the maximum capacity to accommodate criminals is only 142,811 (one hundred forty-two thousand eight hundred and eleven) people.<sup>14</sup>

Overcrowding in correctional facilities has a significant impact as a trigger for crime, increasing the likelihood of law violations and criminal activity within the prison environment. This situation creates serious challenges, particularly in terms of supervision and control by security officers. The number of inmates far exceeding the ideal capacity creates a highly imbalanced ratio between inmates and security officers, preventing effective and comprehensive supervision.<sup>15</sup>

Furthermore, traditional approaches that rely too heavily on imprisonment often fail to provide an optimal deterrent effect. Many perpetrators of minor crimes reoffend after serving their prison sentences, highlighting the need for more effective and humane alternatives. In this regard, community service offers an innovative solution that not only reduces the burden on correctional institutions but also provides direct benefits to the community.

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<sup>13</sup>Ibid, p. 141

<sup>14</sup>Directorate General of Corrections. [sdppublik.ditjenpas.go.id](http://sdppublik.ditjenpas.go.id)

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Community service is intended to contribute positively to society while mitigating the negative impacts often associated with imprisonment. This punishment is regulated in Article 85 of Law Number 1 of 2023 concerning the Criminal Code, which states that community service may be imposed on defendants facing a prison sentence of less than five years or a Category II fine.

In addition to providing practical benefits, community service also reflects the values of restorative justice, which emphasizes restoring relationships between the perpetrator, the victim, and the community. Mompang L. Panggabean<sup>16</sup> explains several global trends to seek alternatives to imprisonment with other criminal sanctions, including:

1. make conditional sentences (supervision sentences) more effective;
2. alternative as far as possible to criminal fines;
3. formulate community service orders.

Globally, many countries have adopted community service as part of their penal systems. For example, in Scandinavian countries, community service is widely implemented and has been shown to reduce recidivism rates. In Indonesia, the concept is still in its infancy, but its potential for effective implementation is significant, especially with a strong legal foundation under the new Criminal Code. Therefore, this research is not only relevant for understanding the context of criminal law in Indonesia but also as part of efforts to find solutions to the complex and profound problems of the correctional system.

The Indonesian Criminal Code (KUHP) was a legacy of Dutch colonial rule that dominated the criminal justice system for decades, creating challenges in enforcing the law in line with Indonesian values and culture. In an effort to modernize the legal system, this reform aims to replace colonial law with a national criminal code that is more relevant and reflects local values. The legislative process for the new KUHP involved various stakeholders, including academics, legal practitioners, and civil society, who provided input to ensure that the resulting law accommodates the needs and aspirations of the community. The Transitional Provisions of Article I of the 1945 Constitution and Law Number 1 of 1946 concerning Criminal Law Regulations form the basis for the enactment of the KUHP.

Through Law Number 1, we also know that the name of the criminal law "Wetboek van Strafrecht voor Nederlandsch Indie" was changed to "Wetboek van Strafrecht" and the law can be called "Kitab Undang-Undang Hukum Pidana" as we know it today. WvS has experienced a long journey. The concept of WvS was started in the early 1800s. However, the concept that was being drafted had to be stopped

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<sup>16</sup>Endri. (2024). Community service as an alternative to imprisonment. Jakarta: Kencana.



because the Netherlands was occupied by France from 1811 to 1813 and imposed the Code Penal (French Criminal Code) on the colony it occupied (the Netherlands).

Despite only being in effect for three years, the Penal Code remained in effect until 1886, with some amendments and adjustments. In practice, the Penal Code remained in effect for 75 years. The ratification of the new Criminal Code on December 6, 2022, marked a significant step in Indonesia's legal history, with the provision that this law would come into effect on January 2, 2026. This provides time for the public and law enforcement agencies to prepare for the transition to a legal system that is more inclusive and responsive to current social developments. Thus, the new Criminal Code is expected to not only serve as a law enforcement tool but also reflect the justice and welfare of Indonesian society as a whole.

Law No. 1 of 2023 concerning the Criminal Code represents a significant step in criminal law reform in Indonesia, focusing on the introduction of community service as a rehabilitative alternative to imprisonment. Community service aims to provide offenders with opportunities to contribute to society, which is expected to reduce the rate of relapse. This law also revises several key articles and legitimizes judges' decision to impose community service, with specific criteria to be considered to ensure fair and measured sanctions are imposed.

Implementing community service requires collaboration between the courts, correctional institutions, and the community. Criminals will be assigned tasks tailored to their skills or the needs of the local community. Examples include cleaning work, maintaining public facilities, or teaching in the community. Comprehensive educational programs should be designed for a wide range of groups, from law enforcement and lawyers to the general public. These activities can include seminars, workshops, and information campaigns explaining the categories of criminals and their associated legal implications. By increasing understanding, it is hoped that all parties will recognize their important role in the law enforcement process, which can reduce stigma against offenders and encourage active participation in rehabilitation.

Despite its numerous benefits, the implementation of community service punishment faces challenges, such as a lack of technical regulations, community resistance, and minimal coordination between relevant institutions. Furthermore, it is important to ensure that community service punishment is not misused as a form of forced labor. The development of clear and comprehensive implementing regulations for community service punishment should be a priority.

These regulations need to cover aspects such as oversight mechanisms, implementation locations, and required resources. With clear regulations, the implementation of community service will be more focused and measurable,



thereby achieving the desired rehabilitation goals. Observing current events, the existence of imprisonment no longer creates fear for criminals. The high number of regulations related to imprisonment has also led to an increase in the number of inmates in correctional institutions (prisons) and continues to be a persistent issue of discussion in Indonesia. The Head of the Class IIB Prison in Banda Aceh, Rian Firmansyah, stated that there are currently 472 inmates being held.

This number has exceeded the capacity of 233 prisoners. <sup>1</sup> Based on the insights and data presented, it is clear that the overcrowding of prisons beyond capacity is a major problem that requires a multi-pronged approach. The desired solution is not limited to adding or expanding prison facilities, or changing regulations regarding assimilation or integration rights. Other approaches are needed to support improvements in prison conditions in Indonesia from the current situation. With the approval of Law No. 1 of 2023 concerning the Criminal Code, various new criminal sanctions have been incorporated into the current Criminal Code in an effort to address the problem of prison overpopulation.

Substituting a prison sentence in this situation involves seeking alternatives to a shorter prison sentence using a different type of punishment. Details of the new criminal sanctions are contained in Articles 65-66 of the updated Criminal Code, while the principal and additional criminal sanctions are contained in Article 10 of Law Number 1 of 2023.

Donggala District Court Judge Andi Aulia Rahman explained the background to the introduction of the Community Service Act in Law No. 1 of 2023 concerning the National Criminal Code (KUHP). He stated that the inclusion of the Community Service Act in the National Criminal Code represents a significant step toward a more rehabilitative approach to justice.

"Fundamentally, Community Service is presented as a critique of the effectiveness of imprisonment, especially short-term imprisonment, which is considered to have deviated from the purpose of punishment itself," said Andi Aulia in an event entitled "Implementation of Community Service in the National Criminal Code" held online by the World Justice Study Forum, Saturday (22/6), as quoted from a press release received by Hukumonline.

According to Andi Aulia, the presence of Community Service is also a result of the development of global thinking regarding the realization of forms of non-imprisonment criminal sanctions, such as the Tokyo Rules 1990 (United Nations Standard Minimum Rules for Non-custodial Measures), which mentions a number of alternative types of punishment that can be developed by countries around the world, including Community Service.

In the provisions of the new National Criminal Code, Community Service is one of the 5 types of Principal Criminal Penalties that can be imposed by a Judge on a Defendant. In the regulation, it is stated that Community Service can be imposed

on defendants who commit Crimes that are threatened with imprisonment of less than 5 (five) years and the judge imposes a maximum imprisonment of 6 months or a maximum fine of category II (Rp. 10,000,000).

The implementation of community service must first consider the readiness of human resources, infrastructure, and budgetary requirements to ensure it can be an effective and optimal alternative to short-term imprisonment. Although welcomed positively by some, he continued, the implementation of community service is not without challenges and obstacles. One of these is the government's readiness in the infrastructure for community service itself. We certainly look forward to the government's implementation of implementing regulations governing the future implementation of community service.

Another challenge concerns the role of judges in imposing community service sentences. The judge's position is crucial, as he ultimately determines whether the prison sentence or fine imposed on the defendant can be an alternative to community service.

In the policy, it is stated that the Judge in imposing a social work sentence must consider at least 7 things, namely the Defendant's confession to the crime committed, the Defendant's work ability, the Defendant's agreement after being explained regarding the purpose and all matters related to the Social Work sentence, the Defendant's social history, the Defendant's work safety protection, the Defendant's religion, beliefs and political beliefs, and the Defendant's ability to pay the Criminal Fine.

Furthermore, Andi Aulia then highlighted the provisions of Article 85 paragraph (2) which states that in imposing social work sentences, judges are obliged to consider, among other things, the defendant's social history.

What needs to be considered is who is responsible for conducting research into the defendant's social history. Can the judge in the trial or the judge order the judicial review committee to conduct community research (litmas) before the trial begins? This must be clearly stated in the implementing regulations. If the judge is asked to conduct a social history investigation of the defendant, it will likely be very difficult, given the court system's limited timeframe.

### **3.2. Community Service from the Perspective of the Principles of Justice and Legal Benefit**

Sentencing someone who commits a crime is a crucial part of establishing a sound criminal justice system. In this regard, judges should be able to choose the appropriate type of punishment for the perpetrator. Therefore, the judge's role is crucial in determining the effectiveness of the punishment they impose on a perpetrator. Of the various types of punishments listed in Article 10 of the Criminal Code, imprisonment is one of the primary punishments often chosen by judges

when sentencing perpetrators. In line with the development of thinking about the effectiveness of punishment, countries around the world are beginning to seek alternative punishments that are perceived to have a positive impact on perpetrators. In this regard, community service has become a popular alternative punishment within a country's penal system. The international trend for implementing community service as an alternative punishment has led to countries like Indonesia, which are in the process of reforming their criminal law, deeming it necessary to conduct an in-depth study of this concept.

Stick<sup>17</sup> explains that this international trend has become very valuable and has even been transformed into the concept of reforming Indonesian criminal law. This conceptual transformation in criminal law is evident in the adoption of community service penalties in the draft of the new Criminal Code (RKUHP). The criminal sanctions in the Draft of the 2010 Criminal Code Bill have undergone several changes, namely, such as the criminal sanctions according to the Draft of the 2010 Criminal Code Bill (Draft of the 2010 Criminal Code Bill), namely:

1. The main criminal penalties consist of:

- a. Imprisonment;
- b. Cover-up criminal penalties;
- c. Criminal supervision;
- d. Criminal fines;
- e. Community service punishment.

2. Additional penalties consisting of:

- a. Revocation of certain rights;
- b. Confiscation of certain goods and/or bills;
- c. Announcement of the judge's decision;
- d. Payment of compensation;
- e. Fulfillment of local customary obligations and/or obligations according to the laws that exist in society.

The types of punishment contained in the draft of the Criminal Code Bill have included social work as part of the main types of punishment. Social work is quite interesting to study, because it is a new type of punishment, which if agreed upon will become one of the types of punishment applied in the Indonesian Criminal Code. Social work is one of the main types of punishment regulated in Articles 65

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<sup>17</sup>Tongat (2001). Indonesian Criminal Social Work Crime. Jakarta: Bridge.

and 86 of the 2010 Criminal Code Bill. In the explanation of both articles, it is explained that the emergence of social work is an alternative to short-term deprivation of liberty and fines imposed by the judge on the defendant. Short-term deprivation of liberty in this case is imprisonment and confinement. In order to understand further about the relevance of establishing social work as a type of punishment in the criminal system in Indonesia, the author considers it necessary to conduct a more in-depth study of the problem of social work funds with several problems:

First, how is the conceptual understanding of social work (Community Service Order) as an alternative punishment and; Second, how is the relevance of the policy of determining social work (Community Service Order) as an alternative punishment in the Lamintang system?<sup>18</sup> said that the idea of the purpose of punishment adopted today is not actually a new idea, but rather has been influenced to some extent by the thoughts of experts or writers several centuries ago, who have expressed their opinions on the justification of punishment. In general, the theory of the purpose of punishment is divided into three, namely the Red-distributive theory or better known as the theory of retribution, the relative theory or theory of purpose, and the combined theory. In relation to this theory of the purpose of punishment, many experts call it by different names, but in terms of understanding and principles, it has the same meaning and understanding.

Just like Muladi<sup>19</sup> divides theories about the objectives of punishment into 3 groups, namely:

a. Absolute Theory

Viewing that punishment is retribution for a mistake that has been committed, so it is oriented towards the act and lies in the occurrence of the crime itself. This theory emphasizes that sanctions in criminal law are imposed solely because someone has committed a crime, which is an absolute consequence that must exist as retribution for the person who committed the crime, so that the purpose of sanctions is to satisfy the demands of justice.

b. Teleological Theory (purpose)

The aim of this theory is to view punishment not as retribution for the perpetrator's wrongdoing but as a means to achieve beneficial goals, protecting society and achieving prosperity. Sanctions are emphasized on their purpose, namely to deter people from committing crimes, rather than to satisfy absolute justice. From this theory emerges the purpose of punishment as a means of

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<sup>18</sup>Lamintang, PAF (1994). Indonesian Penitentiary Law. Bandung: Armico. p. 22

<sup>19</sup>Muladi (1995). Projections of Material Criminal Law in the Future. Inaugural Speech as Professor of Law, Diponegoro University, Semarang.

prevention, both specific prevention aimed at the perpetrator and general prevention aimed at society.

#### b. Teleological Retributive Theory

This theory views the purpose of punishment as plural, as it combines teleological (purposeful) and retributive principles as a whole. This theory has a dual character, where punishment contains a retributive character insofar as it is seen as moral criticism and a response to wrongdoing. Meanwhile, its teleological character lies in the idea that the purpose of this moral criticism is to reform or change the convict's future behavior.

Basically, there are three main ideas about the goals that are to be achieved through criminal punishment, namely:<sup>20</sup>:

- a. To improve the personality of the criminal himself;
- b. To deter people from committing crimes;
- c. To make certain criminals incapable of committing other crimes.

According to Sudarto<sup>21</sup> In his book he says that in general the aims of punishment can be distinguished as follows:

- a. Retribution, recompense, or retribution; Retribution as the goal of punishment is found in what is known as absolute criminal law theory. The justification for punishment lies in the crime itself, regardless of the intended benefit. Punishment occurs because there is a violation of the law; this is a demand of justice.
- b. Influencing a person's behavior for the protection of society. Criminal penalties are not imposed for their own sake, but rather for a beneficial purpose, namely to protect society or to provide shelter. Criminal penalties have an impact on society in general. The first influence is usually called special prevention and the second is called general prevention.

According to Sudarto, as quoted by PAF. Lamintang<sup>22</sup>, the word punishment is synonymous with the word punishment. Regarding this, he said that: "punishment comes from the basic word law, so it can be interpreted as establishing the law or deciding on the punishment. Establishing the law for an event does not only concern the criminal field, but also in civil law, so the term must be conveyed its

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<sup>20</sup>Muladi (1985). Selected quotations, criminal justice system. Semarang: University Diponegoro.p.23

<sup>21</sup>Sudarto (1986). Criminal Law and Social Development: A Study of Criminal Law Reform. Bandung: Sinar Grafika. pp. 81-83

<sup>22</sup>Lamintang, PAF (1994). Indonesian Penitentiary Law. Bandung: Armico. p. 49

meaning, namely punishment in criminal cases, which is often synonymous with punishment or the imposition of a sentence by a judge.

Punishment in this case has the same meaning as sentence or veto-ordering. "According to him, *Veroordeling* cannot be translated other than punishment"<sup>23</sup>. The application of criminal penalties must be properly understood what the meaning of crime, criminal, and criminal is. It is not enough to say that the penalty must be commensurate with the severity and nature of the crime, as stated in the Circular of the Supreme Court of the Republic of Indonesia dated September 3, 1972 Number 5 of 1972. Our Criminal Code does not contain general guidelines for sentencing, namely guidelines made by lawmakers that contain principles that need to be considered by judges in imposing penalties, there are only rules for imposing penalties.<sup>24</sup>

In imposing a sentence, the person is bound to only impose the types of principal or additional sentences as stipulated in Article 10 of the Criminal Code. The Supreme Court in its decision Number 59 K./Kr/1969 has firmly stated its position that the act of adding the types of sentences stipulated in Article 10 of the Criminal Code with other types of sentences is prohibited.<sup>25</sup>

There has been a shift in the concept of punishment, which has substantially provided a fairly accurate basis for efforts to find alternatives to imprisonment. The continued desire to seek alternatives to imprisonment is also driven by the enormous costs of serving a prison sentence. These costs include basic needs for prisoners, such as food and clothing, which have increased significantly over time. This economic consideration increasingly presents a dilemma, especially with criticism of various efforts to improve the living conditions of prisoners in correctional institutions. Efforts to improve the quality of life for prisoners are often considered unfair by some critics. Imprisonment becomes a means through which criminals can receive "criminal education." Correctional institutions (LAPAS) often serve as places where criminals can improve their skills, producing more skilled criminals. The emergence of these more skilled criminals can ultimately pose a greater threat to society, adding to the burdens faced by society. Furthermore, the sanctions imposed on criminals also have a negative impact in the form of dehumanization, leading to their separation from society upon loss of freedom. In addition to the ineffectiveness of criminal penalties, another cause of perpetrators' behavior is the lack of shame after committing a crime. This actually increases the courage of the perpetrators to act without considering the guilt and shame of their actions.

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<sup>23</sup>Sudarto (1986). *Criminal Law and Social Development: A Study of Criminal Law Reform*. Bandung: Sinar Grafika. p. 72

<sup>24</sup>Ibid. p. 79

<sup>25</sup>Lamintang, PAF (1994). *Indonesian Penitentiary Law*. Bandung: Armico. p. 59

For Indonesia, which has now implemented criminal law reform, this step has been influenced by trends in other countries undergoing criminal law reform. In fact, this trend has been adapted into the concept of criminal law reform in Indonesia. The conceptual change in criminal law can be seen in the recognition of community service in the latest Criminal Code. The inclusion of community service in the Indonesian criminal law system reflects the commitment to creating a criminal law system that focuses not only on the act but also considers the perpetrator as an integral part (*daad daderstrafrecht*).<sup>26</sup>

Along with the evolution of society, the concept of community service as an alternative to imprisonment has undergone renewal, eliminating its original nature as forced labor. Currently, many European countries implement community service with a humanizing approach, making it appear as a voluntary obligation. This approach aligns with the concept of community service as an alternative to prison sentences, which previously tended to be harsh and coercive. Provisions regarding community service in Indonesia are currently regulated in Article 85 of the Criminal Code. Essentially, this type of punishment can be imposed on someone who commits a crime with a prison sentence of less than 5 years, and the judge sentences the offender to a maximum of 6 months' imprisonment or a maximum fine of category II.<sup>27</sup>

Utilizing community service as an alternative to imprisonment can also alleviate the negative impacts of prison life. Furthermore, the community can directly benefit from implementing these community service initiatives. Higher education institutions, hospitals, orphanages, and nursing homes are among the potential locations for community service. Considering the inmates' occupations, skills, and talents, the location of the program must be changed.<sup>28</sup> Thus, community service can be considered another option that can be used to address the shortcomings of the Indonesian prison system. However, a technical framework is needed to implement this community service, as the requirements stipulated in Article 85 of the Criminal Code are still generally applicable. It is certainly important to have other implementing regulations, such as Government Regulations and Attorney General Regulations, and the need to include the Agency responsible for implementing community service so that it can be implemented throughout Indonesia.

The emergence of community service penalties stems from criticism of the numerous negative impacts of imprisonment. Short-term prison sentences not only deprive the perpetrator of their liberty but also have negative consequences due to that loss. As an alternative to imprisonment, it is hoped that community service penalties can create a deterrent effect on perpetrators, preventing them

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<sup>26</sup>Explanation of Article 65 of Law No. 1 of 2023

<sup>27</sup>See Article 85 of Law No. 1 of 2023

<sup>28</sup>Explanation of Article 85 of Law No. 1 of 2023.



from repeating their crimes. This is because imprisonment has been considered ineffective in achieving its objectives, despite its deterrent effect.

In European countries, Community Service Orders (CSOs) or Community Payback Orders (CPOs) are commonly used as alternatives to imprisonment and fines. The mechanism, based on a judge's decision, can order individuals to perform between 20 and 300 hours of unpaid work.

This is the most common requirement. Each community/government department can submit ideas to their local authorities for unpaid work. Examples include: cleaning public areas, working in nursing homes, etc. They also learn skills to help them find employment through mentoring from social institutions/foundations.

Another form is that the person can be ordered to live at a certain residential address, for example with his parents. The person can be ordered to do certain things or not to do certain things. For example: prisoners can be employed in social organizations/institutions, both profit and non-profit, and also in government agencies/departments that need them. Many are found employed as field workers in the public service sector. And if the prisoner is not qualified to be a field worker, then he will be employed as an office worker. And during the period of social work, the prisoner still receives guidance, rehabilitation from the government/social institution according to his violation. For example, if the convict was previously addicted to alcohol and broke the law because of his behavior, then he will receive alcohol dependency rehabilitation services. Related to all social work activities, it must be based on the approval and instructions of the authorized court officials.

If this social work punishment is used as an alternative to imprisonment, it is hoped that it can be a solution to overcome the weaknesses of imprisonment, because it is hoped that social work punishment can have a deterrent effect on perpetrators of crimes, so that they will not repeat the crime. Although it cannot be denied that social work punishment seems lighter to carry out than imprisonment.

However, social work punishment has a greater effect, namely in the correctional system, in accordance with the objectives of punishment in the form of developing criminals and protecting victims/community, which can be realized. Social work punishment can be imposed on defendants/criminals who commit crimes with the threat of imprisonment/deprivation of liberty of less than 5 (five) years and the judge does not impose a prison sentence exceeding 6 (six) months or a criminal fine not exceeding a fine with Category/Group II.

The function of social work as an alternative to short-term imprisonment is expected to be able to distance / at least reduce the negative impacts of the massive efforts of imprisonment that are currently occurring in Indonesia. If social work is applied, then for cases of minor crimes with sentences of no more than 6 months there will no longer be a need for imprisonment. Which has many positive

impacts, namely reducing the density of the number of inmates in correctional institutions, can contribute to society through actions in social work by inmates, and become a lesson for convicts so that in carrying out these sanctions they will always be part of society, and are expected to be easily accepted by society.

#### 4. Conclusion

The implementation of community service according to Law Number 1 of 2023 concerning the Criminal Code, namely the application of community service must first consider the readiness of human resource infrastructure, facilities and infrastructure, and budget requirements so that it can be an effective and optimal short-term alternative punishment. From the perspective of the principles of justice and legal benefit, the application of community service as an alternative to short-term punishment can provide an effective solution to criminal law problems in Indonesia, especially in the context of overcapacity of correctional institutions. Community service not only reduces the burden on the criminal justice system but also reflects the values of justice and legal benefit that focus on the social reintegration of offenders. However, the success of its implementation is highly dependent on clear regulatory support, human resource readiness, and community involvement. With good cooperation between law enforcement agencies and the community, community service is expected to contribute to reducing recidivism rates and creating a more inclusive and just society.

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