

The Ideal Conception Of Social Work Criminal Prosecution Based On Rehabilitative Justice And Optimization Of The Role Of The Prosecutor's Office Of The Republic Of Indonesia In The Indonesian Criminal System

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Abstract. *The reform of national criminal law through Law Number 1 of 2023 concerning the Criminal Code marks a paradigm shift in punishment from a custodial orientation to a more humane and rehabilitative non-custodial approach. Within this framework, this study first analyzes legal protection for convicts in the non-custodial punishment system. Non-custodial punishment is seen as capable of providing more substantive legal protection because it maintains the social, economic, and family rights of convicts while minimizing the negative impacts of imprisonment such as stigmatization, dehumanization, and social disintegration. Furthermore, this study examines the urgency of implementing community service as the principal non-custodial punishment in the Indonesian penal system. Community service has legal urgency because it aligns with the principles of human rights protection and proportionality of punishment; sociological urgency because it reduces the social and economic burden caused by correctional overcrowding; and philosophical and utilitarian urgency because it supports the goals of rehabilitation and social benefit. Thus, community service is not merely a complementary alternative but a strategic instrument in reforming the national penal system. Finally, this study formulates an ideal concept for implementing social work sentences oriented towards rehabilitative justice and optimizing the role of the Indonesian Attorney General's Office in its implementation. This ideal concept must be based on the principles of rehabilitation, proportionality, protection of human dignity, and a measurable and accountable oversight mechanism. In an integrated criminal justice system, the Indonesian Attorney General's Office plays a strategic role as a driving force through progressive prosecution policies, assessments of the eligibility of non-custodial cases, and coordination of the implementation of social work*

sentences effectively and sustainably. This study uses a normative legal research method with a statutory, conceptual, and comparative approach through a literature review of regulations, doctrines, scientific journals, and international instruments.

Keywords: *Legal Protection; Non-Custodial; Rehabilitative Justice; Role Of The Prosecutor's Office; Social Work.*

1. Introduction

The Republic of Indonesia is a state of law, this is emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This regulation emphasizes that every aspect of national and state life must be based on the principles of law and applicable legislation.¹Therefore, in every form of implementation of state administration, legal aspects must be used as a guideline, including in the concept of the criminal system.

The criminal justice system is a series of rules, policies, and practices that regulate the imposition of criminal sanctions on someone who is proven to have committed a crime.²This system encompasses all aspects, from the type of crime and sentencing procedures to its implementation. It aims to achieve justice, maintain order, and provide a deterrent effect and rehabilitation for inmates. As a nation based on the rule of law, Indonesia has three legal objectives: justice, expediency, and legal certainty. When imposing criminal sanctions, these three values must be the primary objective, whether in the form of punishment or rehabilitation for inmates.³However, real practice in the legal world often does not emphasize all values and tends to forget one value and an understanding arises where the value of justice is the most important value in the legal world.⁴The criminal justice system in Indonesia must be designed and implemented in accordance with the principles of substantive justice that guarantee a balance between protecting society, the rights of victims, and the human rights of prisoners.⁵

Prisoners' human rights can be realized through legal protection. Legal protection for prisoners is a fundamental aspect of the correctional system, aiming to ensure that prisoners' basic rights are met while serving their sentences.⁶This legal protection covers various aspects, including the fulfillment of basic needs, access to justice, and oversight mechanisms to prevent abuse of authority in the implementation of punishment.⁷With clear and systematic legal protection, it is hoped that the correctional system will be more humane and effective in achieving the goals of rehabilitation and social reintegration for prisoners.⁸

¹The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3).

²Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, Alumni, Bandung, 1992.

³Jimly Asshiddiqie, *Constitution and the Legal State*, Constitution Press, Jakarta, 2006.

⁴Melisa et al., 2023, "Legal Position in Realizing Justice and Welfare in Indonesia", *Journal of Islamic Law and Social Institutions*, No. 1, Vol. V, p. 241.

⁵Constitutional Court of the Republic of Indonesia, Decision Number 65/PUU-VIII/2010.

⁶Law Number 12 of 1995 concerning Corrections.

⁷R. Soesilo, *Criminal Code and its Commentaries*, Politeia, Bogor, 1995.

⁸Indonesian Correctional Institution, *Annual Report 2022*, Ministry of Law and Human Rights, Jakarta, 2022.

In the context of positive law in Indonesia, the criminal justice system regulates the types of punishment as stated in Article 10 of the old Criminal Code (*Wetboek van Strafrecht*), which consists of principal punishment and additional punishment. Principal punishment includes the death penalty, imprisonment, detention, and fines, while additional punishment consists of revocation of certain rights, confiscation of certain items, and announcement of the judge's decision. However, this provision has changed with the enactment of the new Criminal Code, namely Law Number 1 of 2023 concerning the Criminal Code which has been effective since January 2, 2026. In Law Number 1 of 2023 concerning the Criminal Code, Articles 64 to 66 stipulate that punishment consists of principal punishment, additional punishment, and special punishment for certain crimes specified in the law. Principal punishment in the latest regulation includes imprisonment, detention, supervision, fines, and community service. Meanwhile, additional penalties consist of revocation of certain rights, confiscation of certain goods and/or bills, announcement of the judge's decision, payment of compensation, revocation of certain permits, and fulfillment of local customary obligations. This transformation is not merely a replacement of legal norms, but rather a fundamental change in the way we view the purpose of punishment itself.

2. Research Methods

Research is a means to develop knowledge, both theoretically and practically.⁹According to Soerjono Soekanto, in general, when viewed from the research objectives, legal research is divided into two types, namely empirical or sociological legal research and normative legal research.¹⁰Empirical or sociological legal research is research to see the effectiveness of the application of law and also observe how the legal system works in society.¹¹Empirical or sociological legal research includes research into the identification of (unwritten) laws and research into the effectiveness of laws.¹²Meanwhile, normative legal research is research that places legal rules or regulations as the object of research and also conducts studies on library materials or secondary data collected.¹³Normative legal research can also be defined as a process of finding legal rules, legal principles, or legal doctrines to answer various legal problems currently being faced.¹⁴The difference between empirical legal research and normative legal research results

⁹*Ibid*, p.. 10.

¹⁰*Ibid*, p.51.

¹¹ MuktiFajar and Yulianto Achmad, *Dualism of Normative and Empirical Legal Research*, Pustaka Pelajar, Yogyakarta, 2010, p. 34.

¹² *Ibid*, p. 153.

¹³ SoerjonoSoekanto and Sri Mamudji, *Normative Legal Research*, Raja Grafindo Persada, Jakarta, 2006, p. 12.

¹⁴PeterMahmudMarzuki, *Legal Research*, Prenada Media, Jakarta, 2005, p. 35.

in differences in the technical research steps that must be taken and the research designs that must be created.¹⁵

3. Results and Discussion

3.1. Legal Protection for Prisoners in the Indonesian Penal System within the Framework of Non-Custodial Sentencing

Indonesia as a state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has the consequence that all implementation of state power, including in the field of criminal law, must be carried out based on law and uphold human rights.¹⁶ The principle of the rule of law places the protection of rights as the main foundation, so that criminal law cannot be implemented solely as an instrument of repressive power, but rather as a means to realize justice based on humanity.

Within this framework, every person sentenced to a criminal offense remains a legal subject with fundamental rights. Criminalization cannot be interpreted as the elimination of human rights, but rather as a restriction on certain rights that is carried out legally, proportionately, and based on law. Restrictions on rights in criminal penalties must be interpreted restrictively so as not to exceed the constitutionally justified objectives of criminal penalties and not to degrade human dignity.¹⁷

The principles of the rule of law and respect for human rights require that legal protection be understood not only at the normative level but also be embodied in the design and implementation of the penal system. Legal protection for prisoners is an integral part of the penal system itself, because the way the state imposes and implements punishment reflects the extent to which criminal law functions as an instrument of justice that guarantees rights, humanity, and legal certainty. In this context, understanding the concept of legal protection in the penal system is relevant to assessing how these principles are operationalized in penal practice in Indonesia.¹⁸

Legal protection in the criminal justice system is closely related to how the state interprets the position of the convicted person within the overall mechanism of criminal law enforcement. Legal protection is understood not only as a procedural guarantee at the trial stage, but also as a substantive principle that must be

¹⁵ Ronny Hanitjo Soemitro, *Legal Research Methodology and Jurimetry*, Ghalia Indonesia, Jakarta, 1988, p. 35.

¹⁶ The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3).

¹⁷ International Covenant on Civil and Political Rights, 1966, Article 10 paragraph (1); see also Barda Nawawi Arief, *Criminal Theory and Policy*, Citra Aditya Bakti, Bandung, 2003, pp. 52–53.

¹⁸ Muladi, *op.cit.*, pp. 38–39.

inherent in the purpose and implementation of the criminal justice system itself. Criminalization that ignores legal protection has the potential to render punishment merely a means of inflicting suffering, rather than an instrument of justice that serves to foster and protect social interests.¹⁹

The relationship between criminal punishment and human rights emphasizes that the implementation of criminal penalties must not conflict with humanitarian values. Human rights serve as a limiting parameter for the state in imposing and implementing criminal penalties, so that punishment can only be justified to the extent that it is carried out legally, proportionately, and does not demean human dignity.²⁰ In this context, the principle of proportionality demands a balance between the level of guilt of the perpetrator and the severity of the punishment, while the principle of humanity emphasizes that punishment must still respect human values even if it is imposed as a reaction to an unlawful act.²¹

Differences in approaches to punishment also influence the concept of legal protection for convicts. In a retributive-oriented punishment system, legal protection tends to be narrower because punishment is understood as retribution for wrongdoing. Conversely, in a rehabilitative punishment system, legal protection takes on a broader meaning because punishment is aimed at improving the offender and restoring social relationships.²² This difference shows that the concept of legal protection is not static, but is very much determined by the sentencing paradigm adopted in a criminal law system.

The concept of legal protection within the penal system later found concrete form within Indonesia's positive legal framework, through the correctional system. Law No. 12 of 1995 concerning Corrections marked a shift in the state's perspective on prisoners, from mere objects of punishment to subjects of development directed toward their return to social life. The correctional system no longer positions imprisonment as an end in itself, but rather as a means to achieve the development and social reintegration of prisoners.²³ This framework shows that legal protection is an inherent part of the purpose of corrections itself.

The philosophy of correctional care is based on the view that prisoners remain human beings with the potential to improve. Guidance is directed at developing attitudes, behavior, and social responsibility so that prisoners can return to normal life in society after serving their sentences. Social reintegration is the primary goal,

¹⁹Muladi, *op.cit.*, pp. 36–37.

²⁰Barda Nawawi Arief, *op.cit.*, pp. 52–54.

²¹Andrew Ashworth, *Sentencing and Criminal Justice*, 5th ed., Cambridge University Press, Cambridge, 2010, p. 77–79.

²²*Ibid.*, pp. 82–84; see also Muladi, *Criminal Law and the Development of Modernization of the Criminal System*, *op.cit.*, pp. 21–22.

²³Law Number 12 of 1995 concerning Corrections, General Explanation.

emphasizing that punishment must not permanently sever prisoners' ties with their social environment.²⁴In this context, legal protection does not only mean formal recognition of rights, but also the provision of development mechanisms that enable these rights to be realized in real terms.

The Corrections Law explicitly regulates the rights of prisoners as part of legal protection, including the right to receive guidance, health services, education, and humane and non-discriminatory treatment.²⁵These regulations demonstrate that legal protection for prisoners is directly linked to the goals of correctional institutions. Fulfilling these rights is a crucial prerequisite for the correctional system to function effectively as a means of rehabilitation and social reintegration, rather than simply as a mechanism for physical confinement.²⁶

The normative framework of the correctional system, which focuses on development and social reintegration, still faces various serious obstacles in practice, particularly in the penal system, which relies on imprisonment. One major issue is the structural and widespread overcrowding of correctional institutions. Overcrowding creates an imbalance between the number of inmates and the availability of facilities, infrastructure, and human resources, thus directly impacting the quality of development and the fulfillment of inmates' basic rights.²⁷

These conditions disrupt the fulfillment of prisoners' rights to health, hygiene, security, and adequate development. Health services are suboptimal, housing does not meet humanitarian standards, and access to development activities is severely limited. In such situations, the legal protections guaranteed by the Corrections Law tend to be merely formalistic and difficult to implement substantively.²⁸Prisoners' rights are legally recognized, but are not fully realized in practice.

Furthermore, the imprisonment system also has a dehumanizing and stigmatizing effect on inmates. Placement in closed institutions often sever social ties with family and society, while also creating negative social labels that persist even after inmates have completed their sentences. This situation often triggers structural violence, both in the form of inhumane treatment and unequal power relations within correctional institutions.²⁹This situation shows that imprisonment, in

²⁴Muladi, *op.cit.*, pp. 39–41.

²⁵Law Number 12 of 1995 concerning Corrections, Article 14.

²⁶Barda Nawawi Arief, *op.cit.*, pp. 58–59.

²⁷Institute for Criminal Justice Reform, *The Condition of Overcrowding in Correctional Institutions in Indonesia*, ICJR, Jakarta, 2022, pp. 5–9.

²⁸Muladi, *op.cit.*, pp. 42–43.

²⁹Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, Anchor Books, New York, 1961, p. 14–18.

practice, often fails to carry out its legal protection function and actually has the potential to give rise to human rights violations.³⁰

The factual failure of the criminal justice system, which relies on imprisonment, necessitates a paradigm shift in sentencing toward a non-custodial approach. This shift is normatively reflected in the enactment of Law Number 1 of 2023 concerning the Criminal Code, which introduces and recognizes non-custodial punishment as part of the national criminal justice system. The new Criminal Code no longer places imprisonment as the sole primary sanction, but instead opens up space for the application of other punishments that do not focus on the deprivation of physical liberty.³¹ This change indicates an update to criminal policy that is more responsive to the principles of legal protection and human rights.

The recognition of non-custodial punishment in the new Criminal Code marks a shift in the orientation of punishment from a retributive approach to a more rehabilitative and humanistic one. Punishment is no longer solely aimed at inflicting suffering, but rather at reforming the perpetrator and restoring social relationships disrupted by the crime.³² This orientation is in line with the objectives of modern criminal justice which places humans as the main subject in the criminal law system, while also limiting the negative impacts of imprisonment which have so far hampered the protection of prisoners' rights.

Within this framework, non-custodial sentencing is positioned as a crucial instrument of legal protection because it allows for the implementation of punishment without unduly compromising the offender's fundamental rights. By maintaining the offender's connection to their social environment, the non-custodial approach is considered more effective in ensuring the principles of proportionality, humanity, and the goals of rehabilitation and social reintegration.³³ This paradigm shift becomes the normative basis for further discussion regarding concrete forms of non-custodial punishment, especially social work punishment, in the Indonesian penal system.

Legal protection within the framework of non-custodial sentencing demonstrates an approach more in line with the principles of the rule of law and respect for human rights. Non-custodial sentencing allows the state to impose criminal sanctions without depriving physical liberty, allowing convicts to continue fulfilling their social, economic, and family roles while serving their sentence. In this context, legal protection is not understood as the elimination of criminal liability,

³⁰United Nations Office on Drugs and Crime, *Handbook on Strategies to Reduce Overcrowding in Prisons*, UNODC, Vienna, 2013, p. 60–62.

³¹Law Number 1 of 2023 concerning the Criminal Code, Articles 64–66.

³²Barda Nawawi Arief, *op.cit.*, pp. 64–66.

³³United Nations, *United Nations Standard Minimum Rules for Non-Custodial Measures* (Tokyo Rules), 1990, Rule 2.3 and Rule 6.

but rather as the regulation of more proportionate and humane accountability methods.³⁴

The non-custodial approach provides greater protection for convicts' social rights, such as the right to work, earn a decent living, and maintain family and social relationships. These rights are often compromised in the prison system, resulting in long-term impacts that harm not only the convict but also their family and society. By avoiding imprisonment, non-custodial sentencing minimizes the stigmatization and social marginalization that often accrue to prisoners.³⁵

In addition to its protective nature, legal protection in non-custodial sentencing also has preventive and rehabilitative dimensions. Prevention is achieved through proportional behavioral restrictions and supervision, while rehabilitation is realized through criminal mechanisms that encourage changes in the convict's attitude and social responsibility. Within this framework, legal protection not only serves to protect the convict's rights but also supports the goal of sentencing to prevent recurrence of crimes and restore sustainable social balance.³⁶

3.2. The Urgency of Implementing Community Service as the Principal Non-Custodial Punishment in Reforming the Criminal System in Indonesia

Criminal law reform is inevitable in a dynamic state governed by the rule of law, in line with the development of social, humanitarian, and human rights values in society. Criminal law cannot be maintained as a static system, as changes in social structures and demands for justice require adjustments to the way the state responds to crime and its perpetrators. In the Indonesian context, this reform is realized through the replacement of the old Criminal Code, rooted in the *Wetboek van Strafrecht*, a colonial legacy, with Law Number 1 of 2023 concerning the Criminal Code as a national legal product.³⁷

The old Criminal Code was conceptually built on a criminal orientation that emphasized retribution and deterrence, with imprisonment as the main instrument of punishment.³⁸ This orientation aligns with the retributive paradigm, which positions punishment as the state's response to the perpetrator's wrongdoing through deliberate infliction of suffering. However, developments in modern criminal law have shown that a solely retributive approach is not always

³⁴Andrew Ashworth, *op.cit.*, p. 86–88.

³⁵United Nations Development Programme, *Alternatives to Imprisonment in Developing Countries*, UNDP, New York, 2007, p. 16–18.

³⁶United Nations Office on Drugs and Crime, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, UNODC, Vienna, 2007, p. 11–14.

³⁷Law Number 1 of 2023 concerning the Criminal Code, General Explanation.

³⁸Muladi, *op.cit.*, pp. 21–22.

effective in achieving the goals of punishment, particularly in preventing recurrence of crime and restoring social balance.³⁹

The new Criminal Code brings about a change in the orientation of the objectives of sentencing by placing rehabilitation, social reintegration, and protection of human rights as an integral part of sentencing policy.⁴⁰ Punishment is no longer viewed solely as a means of retribution, but rather as a legal policy instrument aimed at improving offenders and protecting society on a sustainable basis. This shift in orientation serves as a normative foundation for strengthening non-custodial forms of punishment within the national penal system.⁴¹

The shift in the orientation of punishment in the new Criminal Code is inextricably linked to the limitations of the old penal system, which was heavily dominated by imprisonment. In Indonesian criminal law enforcement, imprisonment has traditionally been the primary response to almost all types of crimes, without adequately considering the characteristics of the act or the circumstances of the perpetrator.⁴² The dominance of prison sentences has given rise to various structural problems, one of which is the condition of excess capacity in correctional institutions (overcrowding) which is systemic and continues over the long term.⁴³

Overcrowding not only impacts the technical aspects of correctional management but also directly impacts the failure of sentencing to achieve rehabilitation goals. Overcrowding hinders effective guidance, health services, and supervision, thus rendering imprisonment a non-corrective punishment and a mere means of confinement.⁴⁴ In the context of certain crimes, particularly minor and non-violent crimes, imprisonment is even considered disproportionate and counterproductive because it does not provide added value to crime prevention.⁴⁵

Furthermore, imprisonment has the potential to be a driving factor for recidivism. The repressive prison environment, minimal guidance, and rife with social stigma often reinforce criminal behavior rather than correct it.⁴⁶ This condition shows that excessive reliance on imprisonment not only creates institutional problems, but

³⁹Barda Nawawi Arief, *op.cit.*, pp. 47–48.

⁴⁰Barda Nawawi Arief, *op.cit.*, pp. 64–66.

⁴¹Andrew Ashworth, *op.cit.*, p. 18–20.

⁴²Muladi, *op.cit.*, pp. 23–24.

⁴³Institute for Criminal Justice Reform, *The Condition of Overcrowding in Correctional Institutions in Indonesia*, ICJR, Jakarta, 2022, pp. 3–6.

⁴⁴Muladi, *op.cit.*, pp. 42–43.

⁴⁵Andrew Ashworth, *op.cit.*, p. 86–88.

⁴⁶Erving Goffman, *op.cit.*, p. 14–18.

also shows the substantive limitations of the old penal system in realizing the goal of just and sustainable penalization.⁴⁷

The objectives of punishment in modern criminal law include crime prevention, perpetrator rehabilitation, and social reintegration into society. These three objectives require that punishment not only respond to unlawful acts but also produce tangible social benefits for the perpetrator and society.⁴⁸In practice, imprisonment often fails to achieve these goals, particularly in terms of rehabilitation and social reintegration. Imprisonment tends to place offenders in a closed environment that limits constructive social interaction and hinders the process of sustainable behavioral improvement.⁴⁹

The failure of prison rehabilitation is also closely related to the phenomena of dehumanization and social labeling. Prison not only deprives individuals of their physical freedom but also has the potential to reduce an individual's identity to merely "convict," a status that persists even after serving their sentence.⁵⁰This labeling makes it difficult for perpetrators to be accepted back into society and often encourages repeat criminal acts due to closed access to work, social relations, and a decent life.⁵¹In this context, imprisonment actually contradicts the goal of social reintegration which should be part of the sentencing policy.

Furthermore, imprisonment often displays an imbalance between the suffering inflicted and the benefits it yields. The suffering caused by imprisonment is not always directly proportional to the level of culpability or the effectiveness of crime prevention, particularly for certain minor or non-violent crimes.⁵²This imbalance demonstrates that imprisonment is not always a rational and proportional instrument for achieving sentencing objectives. This situation provides normative justification for the need to develop and prioritize alternative sentencing options that are more aligned with the goals of modern sentencing.⁵³

The urgency of developing alternative sentencing options finds legal legitimacy in Law Number 1 of 2023 concerning the Criminal Code, which expressly recognizes non-custodial punishment as part of the national penal system. The new Criminal Code no longer prioritizes imprisonment as the dominant sanction, but instead formulates a more diverse range of principal penalties, including community

⁴⁷Barda Nawawi Arief, op.cit, pp. 58–60.

⁴⁸Barda Nawawi Arief, op.cit, pp. 47–49.

⁴⁹Muladi, loc.cit.

⁵⁰Erving Goffman, op.cit., p. 15–17.

⁵¹Howard Becker, *Outsiders: Studies in the Sociology of Deviance*, Free Press, New York, 1963, p. 34–36.

⁵²Andrew Ashworth, op.cit., p. 89–91.

⁵³Barda Nawawi Arief, op.cit., pp. 64–66.

service as a form of punishment that does not involve deprivation of liberty.⁵⁴This regulation marks a shift in state criminal policy that is more adaptive to the development of modern criminal goals.

The placement of community service as the primary punishment has important normative significance because it demonstrates the state's recognition of a sentencing model that emphasizes the perpetrator's social responsibility. Unlike supplementary or alternative punishments alone, the position of community service as the primary punishment confirms that punishment without imprisonment is considered legally equivalent to imprisonment.⁵⁵Within this framework, non-custodial sentencing is no longer positioned as an exception, but rather as a legitimate and legitimate policy choice within the criminal law system.

This normative recognition also reflects a more humane and rehabilitative direction in state criminal justice policy. By incorporating community service into the core criminal code, the new Criminal Code provides a strong legal basis for the application of punishment aimed at minimizing the negative impacts of imprisonment while still ensuring the function of criminal accountability.⁵⁶The significance of this change lies in the opening of space for more proportional and recovery-oriented sentencing practices, thus strengthening the urgency of social work sentences in reforming the Indonesian penal system.⁵⁷

Beyond its normative legitimacy, the urgency of implementing community service also stems from the sociological realities that accompany the practice of imprisonment. Imprisonment imposes social and economic burdens not only on the convict but also on their family and social environment. The loss of livelihood due to imprisonment often has a direct impact on the family's economic situation, increases the risk of poverty, and creates structural social vulnerabilities.⁵⁸This burden shows that imprisonment has collateral consequences that go beyond the purpose of punishment itself.⁵⁹

The social impact of imprisonment is further exacerbated when the convict's family experiences stigma and social pressure. Being a prisoner's family often leads to discriminatory treatment, exclusion, and limited access to social and economic opportunities.⁶⁰This condition often worsens the social position of

⁵⁴Law Number 1 of 2023 concerning the Criminal Code, Articles 64–66.

⁵⁵Barda Nawawi Arief, *op.cit.*, pp. 67–68.

⁵⁶Andrew Ashworth, *op.cit.*, p. 92–94.

⁵⁷Barda Nawawi Arief, *op.cit.*, pp. 70–72.

⁵⁸Bruce Western, *Punishment and Inequality in America*, Russell Sage Foundation, New York, 2006, p. 45–47.

⁵⁹Bruce Western, *ibid.*, p. 52–54.

⁶⁰Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*, Oxford University Press, Oxford, 2007, p. 78–80.

convicts after serving their sentences, because the social reintegration process is hampered by the negative labels that have formed during their imprisonment.⁶¹ In this context, imprisonment has the potential to deepen social marginalization rather than restore social balance.

Community service offers a more adaptive sociological response to these problems. By maintaining the offender's ties to their family and community, community service allows them to undergo criminal responsibility without being separated from the social structures that support their lives.⁶² Through direct involvement in activities that benefit society, community service serves as a means of social integration that encourages the re-acceptance of offenders into their social environment.⁶³ This sociological urgency strengthens the reasons for the need for community service to be positioned as the main instrument in reforming the penal system that is responsive to the realities of society.⁶⁴

The urgency of implementing community service also has a strong legal basis, particularly within the framework of human rights protection. Criminal punishment as a form of rights restriction can only be justified if it is carried out legally, necessary, and proportionately. In this context, community service offers a less severe form of rights restriction than imprisonment, as it does not deprive the perpetrator of physical liberty while still maintaining the function of criminal accountability.⁶⁵ This approach is in line with the principle of respect for human dignity which is an integral part of the modern criminal law system.⁶⁶

From the perspective of the principle of proportionality, community service allows for a more balanced sentencing, balancing the level of culpability of the offender, the impact of the act, and the severity of the sanction. Imprisonment often causes excessive suffering, particularly for certain minor or non-violent crimes, and is therefore disproportionate to the benefits of the punishment.⁶⁷ Community service sentences, on the other hand, provide room for judges to impose more appropriate sentences and do not exceed the need to protect legal interests.⁶⁸

The legal urgency of community service is also related to the application of the *ultimum remedium* principle in criminal law. This principle places imprisonment

⁶¹Todd R. Clear, *ibid.*, p. 90–92.

⁶²United Nations Office on Drugs and Crime, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, UNODC, Vienna, 2007, p. 13–15.

⁶³Council of Europe, *Recommendation CM/Rec(2017)3 on the European Rules on Community Sanctions and Measures*, Strasbourg, 2017, Rule 6–8.

⁶⁴John Braithwaite, *op.cit.*, p. 58–60.

⁶⁵Andrew Ashworth, *op.cit.*, p. 94–96.

⁶⁶Barda Nawawi Arief, *op.cit.*, pp. 52–53.

⁶⁷Andrew Ashworth, *ibid.*, p. 89–91.

⁶⁸Barda Nawawi Arief, *op.cit.*, pp. 67–69.

as a last resort after other legal means are deemed inadequate. Within this framework, community service serves as a rational alternative before the state resorts to the most repressive penal instruments.⁶⁹In addition, the application of community service is more harmonious with the correctional system which is oriented towards social development and reintegration, because from the start the punishment is directed at improving the perpetrator without having to go through the imprisonment process.⁷⁰This legal urgency strengthens the position of community service as a sentencing option that is consistent with the basic principles of Indonesian criminal law.

The urgency of implementing community service is also rooted in the philosophical foundations of rehabilitative justice and the values of humanism in modern criminal law. Rehabilitative justice views crime not merely as a violation of legal norms, but as an event that disrupts social relations between the perpetrator, the victim, and the community. Within this framework, punishment is aimed at restoring disrupted social relations through a process that emphasizes responsibility, improvement, and the active participation of the perpetrator.⁷¹This approach positions the perpetrator not as an object of punishment, but as a subject of development who has the capacity to change.⁷²

Humanism in punishment demands that punishment not treat suffering as an end in itself, but rather as a limited and measurable means to achieve behavioral improvement. Community service aligns with this view because its implementation is not based on isolation or the degradation of human dignity, but rather on the perpetrator's involvement in constructive and beneficial social activities.⁷³Thus, criminal law functions as a social learning instrument that encourages the internalization of values of responsibility and concern for the social environment.⁷⁴

Restoring social relations is at the heart of the philosophical legitimacy of community service. Through community service, offenders have the opportunity to significantly repair the impact of their actions on society, while simultaneously rebuilding previously damaged social trust. From this perspective, punishment is no longer understood as a means of retribution, but rather as a forward-looking mechanism for improvement.⁷⁵This philosophical urgency emphasizes that social work is a manifestation of punishment that is in line with the values of

⁶⁹Muladi, op.cit., pp. 25–26.

⁷⁰Muladi, op.cit., pp. 39–41.

⁷¹John Braithwaite, op.cit., p. 40–42.

⁷²Howard Zehr, op.cit., p. 18–20.

⁷³Andrew Ashworth, op.cit., p. 96–98.

⁷⁴Andrew Ashworth, op.cit., p. 100–101.

⁷⁵John Braithwaite, op.cit., p. 55–57.

rehabilitative justice and humanism, and is also relevant to the direction of reforming the criminal justice system in Indonesia.⁷⁶

The urgency of implementing community service can also be justified from a utilitarian perspective, emphasizing the efficiency and social benefits of punishment. Imprisonment requires significant state funding, from the construction and maintenance of correctional institutions to the daily operational costs of inmates. This budget burden continues to increase with the high incarceration rate and overcrowding in correctional institutions.⁷⁷ In the context of public policy, the use of state resources for imprisonment is often disproportionate to the rehabilitative benefits it produces.⁷⁸

Community service offers a more fiscally efficient alternative to sentencing because it eliminates the costs of confinement and the management of closed institutions. The state can still enforce criminal law without incurring an excessive budgetary burden, while public resources can be diverted to more productive development programs and social services.⁷⁹ From a utility perspective, social work also provides direct benefits to the community through activities carried out by the actors, such as social work, environmental cleanliness, or other public services.⁸⁰

Furthermore, community service maintains the offender's productivity while serving their sentence. The offender is not cut off from the world of work and social life, allowing their economic and social potential to continue to be utilized constructively.⁸¹ This is different from imprisonment, which often stops an individual's productivity and actually causes long-term economic losses.⁸² Thus, community service represents a punishment that has high utility value because it is able to balance the interests of law enforcement, budget efficiency, and real social benefits for society.⁸³

Placing community service as merely an alternative or complementary punishment has the potential to undermine the goal of reforming the penal system itself. If community service is positioned merely as a secondary option after

⁷⁶Barda Nawawi Arief, *op.cit.*, pp. 70–72.

⁷⁷Institute for Criminal Justice Reform, *Alternative Sentencing in Indonesian Criminal Law Reform*, ICJR, Jakarta, 2022, pp. 18–20.

⁷⁸Todd R. Clear, *op.cit.*, p. 65–67.

⁷⁹United Nations Office on Drugs and Crime, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, UNODC, Vienna, 2007, p. 19–21.

⁸⁰Council of Europe, *Recommendation CM/Rec(2017)3 on the European Rules on Community Sanctions and Measures*, Strasbourg, 2017, Rule 9–11.

⁸¹Andrew Ashworth, *op.cit.*, p. 102–104.

⁸²Andrew Ashworth, *op.cit.*, p. 105–106.

⁸³Barda Nawawi Arief, *op.cit.*, pp. 72–74.

imprisonment, the orientation of punishment will remain focused on imprisonment as the primary response to criminal acts. Such a pattern risks maintaining the old retributive paradigm and hindering the realization of rehabilitative and humane punishment.⁸⁴In practice, non-custodial punishments which are only alternative tend to be rarely applied because they are still considered less "firm" than imprisonment.⁸⁵

Therefore, the affirmation of community service as the principal punishment has strategic significance in ensuring normative equality between custodial and non-custodial punishments. Its status as the principal punishment provides strong legal legitimacy for judges to impose community service without first having to consider imprisonment as the primary standard.⁸⁶Thus, non-custodial sentencing is no longer seen as an exception, but rather as a legitimate and rational primary choice in accordance with the character of the crime and the condition of the perpetrator.⁸⁷

The placement of community service as the primary punishment also requires consistent implementation by law enforcement officials, from prosecution to sentencing. Without such consistency, the normative provisions in the new Criminal Code have the potential to be ineffective and remain merely symbolic.⁸⁸This consistency requires a change in the mindset of law enforcers so that they no longer view imprisonment as the main measure of the success of criminal law enforcement.⁸⁹This change in mindset is an important prerequisite for community service to truly function as a just, effective, and rehabilitative punishment instrument for offenders.⁹⁰

4. Conclusion

Legal protection for prisoners in the Indonesian penal system, within the framework of non-custodial sentencing, embodies the principle of the rule of law, which guarantees the human rights of every person, including convicts. Legal protection in this context is no longer limited to the fulfillment of formal rights during imprisonment, but has evolved into substantive and rehabilitative protection. Non-custodial sentencing can maintain the continuity of the social, economic, and family rights of convicts, while minimizing the negative impacts of imprisonment such as stigmatization, dehumanization, and social disintegration.

⁸⁴Barda Nawawi Arief, *op.cit.*, pp. 74–75.

⁸⁵Andrew Ashworth, *op.cit.*, p. 110–112.

⁸⁶Law Number 1 of 2023 concerning the Criminal Code, Articles 64–66.

⁸⁷Barda Nawawi Arief, *op.cit.*, pp. 76–78.

⁸⁸Muladi, *op.cit.*, pp. 44–45.

⁸⁹Muladi, *op.cit.*, pp. 46–47.

⁹⁰United Nations Office on Drugs and Crime, *Handbook on Non-Custodial Measures*, UNODC, Vienna, 2007, p. 27–29.

Thus, the non-custodial orientation broadens the meaning of legal protection from merely procedural to just and socially reintegrative protection. The urgency of implementing community service as the principal non-custodial punishment in reforming the Indonesian penal system is based on the need for reform of penal policy that no longer relies on imprisonment as the primary instrument. Community service has legal urgency because it aligns with the principles of human rights protection and proportionality of punishment; sociological urgency because it can reduce the social and economic burden caused by overcrowding in correctional institutions; and philosophical and utilitarian urgency because it supports the goals of rehabilitation, social responsibility of offenders, and benefit to society. Therefore, community service cannot be positioned merely as a complementary alternative, but rather as a strategic and integral non-custodial principal punishment in the national penal system.

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