



## EFFECTIVENESS OF SOCIAL WORK SANCTION AS A SUBSTITUTE FOR IMPRISONMENT IN THE PERSPECTIVE OF SENTENCING PURPOSES

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### ABSTRACT

Imprisonment is a criminal sanction that eliminates the freedom of perpetrators with the aim of providing a deterrent effect so as not to commit criminal acts and improve behavior in order to become better human beings. In this study, problems were formulated regarding the effectiveness of social work sanctions as a substitute for imprisonment from the perspective of sentencing purposes. This study uses a normative juridical approach, with descriptive-analytical research specifications. The data used are primary data obtained through an analytical study of applicable laws, followed by concepts that have been carried out, and secondary data obtained through literature studies (references from various countries that have imposed social work sanctions), which are then analyzed utilizing a comparison between primary and secondary data qualitatively. From the study results the issue regarding the effectiveness of social work sanction as a substitute for imprisonment focuses on changing the behavior of the convict in reducing the level of crime in society and the effectiveness of social work punishment for criminals associated with the purpose of sentencing, it is used as an alternative for sentencing that is in line with the purpose of sentencing itself.

**Keywords:** social work; imprisonment; sentencing

### INTRODUCTION

Imprisonment is one type of criminal sanction that is most often used as a means to solve the problem of crime in Indonesia. This can be seen from all provisions of the Criminal Code (*Kitab Undang-Undang Hukum Pidana* 'KUHP') containing the formulation of criminal offenses, which are 587 (this calculation is not only based on the number of articles, but also the formulation of offenses in every other offense, then the formulation of offenses and criminal threats for each of the other articles or paragraphs is also calculated separately), the imprisonment is listed in the 575 formulations of offenses (approximately 97.96%), either formulated singly or formulated alternatively with other types of crimes. These provisions are still being added or have not been included in the formulation of imprisonment sanctions outside those regulated in the law outside the Criminal Code.<sup>1</sup>

<sup>1</sup> Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia*, Refika Aditama (Bandung: Refika Aditama, 2009), 1.

Freedom deprivation punishment always occupies a central position in the system of criminal sanctions.<sup>2</sup> Increasing the use of the freedom deprivation punishment has become a universal problem. The purpose of the crime is to deter the perpetrators, not only to punish someone but how to return the perpetrators to society so that they do not commit crimes again.<sup>3</sup>

Barda Nawawi Arief state that imprisonment not only resulted in the deprivation of freedom but also had negative consequences on matters related to the deprivation of freedom itself. The deprivation of one's freedom also means that the deprivation of freedom of that person's efforts can

<sup>2</sup> Rudy Hendra Pakpahan, "Efektifitas Pidana Denda," *Kantor Wilayah Sumatera Utara Kementerian Hukum Dan HAM Republik Indonesia*, last modified 2015, accessed June 15, 2022, <https://sumut.kemendukham.go.id/berita-kanwil/berita-utama/efektifitas-pidana-denda>.

<sup>3</sup> Moch Zainal Abidin, "Pidana Bersyarat Perspektif Kitab Undang-Undang Hukum Pidana Dan Fikih," *Al-Jinayah: Jurnal Hukum Pidana Islam* 1, no. 2 (2015): 458-497.

have serious consequences for the socio-economic life of his family.<sup>4</sup>

In the criminal justice system, the success of punishment is greatly influenced by the subsystems that exist within the criminal justice system itself. This is because if one of the subsystems is disturbed, then the punishment is considered dysfunctional. These sub-systems consist of the police, prosecutors, courts, and corrections institutions, both institutional and non-constitutional. The combination of efficiency and effectiveness in the system is very important, because not each subsystem, by itself, produces effectiveness. Functional fragmentation in subsystems will reduce the effectiveness of the such system, and can even make the system as a whole dysfunctional.<sup>5</sup>

Nowadays, both in Indonesia and internationally, there is a tendency to look for alternatives to freedom deprivation punishment, especially short-term freedom deprivation punishment. Efforts to find alternatives to freedom deprivation punishment are based on the fact that the freedom deprivation punishment is becoming increasingly unpopular with humanitarian, philosophical, and economic considerations.<sup>6</sup> So far, imprisonment is considered a less effective crime to achieve the purpose of sentencing, even though in reality it has quite effective preventive power.

Since the idea of a punishment mechanism must have social benefits, the concept of retaliation and deterrence for convicts is slowly being abandoned. Sentencing with a more

modern concept is marked by the inclusion of interventions from other sciences (sociology, psychology, criminology, and other fields of science) in each decision-making. The Penitentiary (Correctional Facility) as a correctional institution is a determining factor for the success of an integrated criminal justice system. The sentencing process at the Penitentiary (Correctional Facility) becomes a place for behavior improvement until it reaches certain criteria before being returned to the community, so punishment is devoted to fostering convicts and at the same time protecting the community (treatment of society and treatment of offenders). But the fact is that the Penitentiary (Correctional Facility) is misused as place of learning, place to hang out with big-name criminals who are likely to give birth to new recidivists.<sup>7</sup> In addition, at the level of implementing sentencing in the field, there are still technical problems.

As comparison data, the novelty in this study is based on the results of previous studies:

1. According to Iskandar Wibawa in his research entitled “*Pidana Kerja Sosial dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia*” (Social Work and Restitution as an Alternative to Imprisonment in Renewing Indonesian Criminal Law), which published in the Journal of Media Hukum Vol. 24 No.2 on December 2017, which concluded that:
  - a) Imprisonment is seen as incapable of achieving the goal of sentencing because life in prison does not make the convicts better after discharge, but on the contrary, more and more people are committing serious crimes, so prisons are often given the nickname PTIK (‘*Pendidikan Tinggi Ilmu Kejahatan*’ or Higher Education in Crime Sciences)
  - b) The punishment of social work and restitution if used as an alternative to imprisonment is expected to be a

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<sup>4</sup> Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara* (Semarang: Badan Penerbit, Universitas Diponegoro, 1994), 44; Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia, ... Op Cit*, 71; Laras Astuti, “Eksistensi Keberadaan Lembaga Pemasyarakatan Dalam Sistem Peradilan Pidana Di Indonesia,” *Jurnal Kosmik Hukum* 17, no. 1 (2017): 21–28.

<sup>5</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995), 21.

<sup>6</sup> Eka Rose Indrawati, “Pelatihan Kerja Sebagai Sanksi Pidana Terhadap Anak Yang Berkonflik Dengan Hukum,” *Rechtidee* 13, no. 1 (2018): 22–41; Dilihat juga dalam Tongat, *Pidana Kerja Sosial Dalam Pembaharuan Hukum Pidana Indonesia* (Jakarta: Djambatan, 2001).

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<sup>7</sup> Iqram Sulhin, *Diskontinuitas Penologi Punitif: Sebuah Analisis Genealogis Terhadap Pemenuhan* (Jakarta: Kencana Prenada Media Group, 2016), 33; Fachrurrozy Akmal, “Penologi Pengayoman: Sebuah Tinjauan Pemidanaan Dalam Integrasi Ilmu Pengetahuan,” *Khatulistiwa Law Review* 1, no. 1 (2020): 39–60, <http://e-journal.iainptk.ac.id/index.php/khalrev/article/view/36/24>.

solution to cover the weaknesses of imprisonment, because social work punishment is expected to be able to cause a deterrent effect for perpetrators, so they will not repeat the crime. While restitution is expected as an effort to pay attention to and protect victims of crime. Thus, the purpose of sentencing in the form of fostering criminals and protecting victims/communities can be realized.

- c) The formulation of social work punishment and restitution in criminal law reform can be pursued with several options, namely being used as a principal punishment which the application can be threatened by imperative, alternative, cumulative, or alternative-cumulative; or as formulated in the Draft Criminal Code, namely social work punishment as the main punishment, while restitution is an additional punishment.<sup>8</sup>

2. According to Jamin Ginting in his research entitled “*Pidana Kerja Sosial dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia*” (Social work sanction as an Alternative Form of Sentencing in the Indonesian Legal System), which published in the journal *Law Review* Vol. XIX, No. 3 on March 2020, which concluded that:

- a) Social work punishment is expected to continue to be an embodiment of the theory of restorative justice, which aims not to avenge criminal acts, but to return and restore conflicts from existing cases to related parties, such as perpetrators and victims.
- b) Social work punishment can also be used as part of the main punishment, namely imprisonment. Social work punishment can be given in a decision where the convict must serve imprisonment before carrying out the social work punishment.

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<sup>8</sup> Iskandar Wibawa, “Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia,” *Jurnal Media Hukum* 24, no. 2 (2017): 105–114.

- c) Social work punishment is also expected to be a means of coaching, which can provide new abilities to the convict that can be used when returning to society after serving their sentence.
- d) Indonesia in implementing the new Criminal Code may adopt the systems and approaches that have been carried out in countries that apply social work punishment in their criminal law systems.<sup>9</sup>

3. According to Sahat Maruli Tua Situmeang, Musa Darwin Pane, and Wahyudi in their research entitled “*Optimalisasi Peran Penegak Hukum Dalam Menerapkan Pidana Kerja Sosial Dan Ganti Rugi Guna Mewujudkan Tujuan Pemidanaan Yang Berkeadilan*” (Optimizing the Role of Law Enforcers in Implementing Social Work Punishment and Compensation to Realize the Purpose of a Just Sentence), which published in the *Ius Quia Iustum Legal Journal*, Vol. 27, No. 3 on September 2020, which concluded that: Social work criminal sanction and compensation as the alternative to punishment, where the social work criminal sanction is more focused on restoring the good name of the convict and are expected to provide a lesson to the convict to correct his mistakes and provide an initiative for the convict to be able to do a job that is beneficial for the community and himself. However, the application of social work criminal sanctions and compensation cannot be applied optimally by law enforcers because there are no regulations that regulate it. Therefore, in order to realize the goal of real and just sentencing, the government and related institutions must immediately issue regulations that can be used as a legal basis for law enforcers in carrying out their duties and the courage of law enforcers to apply social work punishment.

If you look at previous research, no one has previously identified the effectiveness of social work sanctions as a substitute for imprisonment. As

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<sup>9</sup> Jamin Ginting, “Sanksi Kerja Sosial Sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum Di Indonesia,” *Law Review* XIX, no. 3 (2020): 246–267.

the problem that is used as the subject matter in this study, the first revolves around the effectiveness of social work sanctions as a substitute for imprisonment imposed on perpetrators at this time. Therefore, social work sanctions cannot be effectively carried out because the rules regarding social work have not been enforced and no judge has decided on the defendant with the sanction.

According to Anggara, in Ahmad Rizky Fauzan Harahap's article entitled "*Identifikasi Tingkat Residivisme Narapidana Terhadap Program Asimilasi Dan Integrasi Covid-19 Di Indonesia*" (Identification of Convicts Recidivism Levels Against the Covid-19 Assimilation and Integration Program in Indonesia). Said that the data until April 2020, as many as 39,193 convicts are recidivists or about 0.039%. In the context of assimilation, as many as 28 assimilation convicts repeated criminal acts from around 36 thousand convicts who received assimilation rights, meaning that only about 0.039% of them were recidivists.<sup>10</sup>

In connection with this also and with the development of international human rights instruments, especially regarding crime prevention and guidance for perpetrators as well as the international congress on criminal law, ideas have developed regarding alternative sanctions to criminal sanctions that have been commonly imposed, namely alternatives to imprisonment. The development of this thinking is mainly due to the many negative sides found as a result of the imprisonment and the directing of criminal sanctions to sanctions that are more human.

While the second subject matter relates to the topic of research, which revolves around the problem of the effectiveness of social work punishment for criminals related to the purpose of sentencing. This problem was researched to determine the effectiveness of social work punishment for criminals associated with the purpose of sentencing. Many sharp criticisms have been directed at this type of freedom deprivation, both in terms of its effectiveness and in terms of the other negative consequences that accompany or relate to one's freedom deprivation. Social work

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<sup>10</sup> Ahmad Rizky Fauzan Harahap, "Identifikasi Tingkat Residivisme Narapidana Terhadap Program Asimilasi Dan Integrasi Covid-19 Di Indonesia," *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 8, no. 4 (2021): 755–761, <http://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/2762>.

punishment (community service order) is one type of punishment that based on both theoretical and practical studies carried out by European countries can be an alternative to the freedom deprivation punishment.

In Indonesia itself there has been no decision that provides social work sanctions, because according to the new rules the Correctional Law passed on 7 July 2022, ago.<sup>11</sup>

So, when looking at previous studies and the cases that occurred, the author supports the implementation of social work sanctions, as a solution so that there is no excess capacity, and there are no recidivists. However, there need to be certain conditions that can be subject to such sanctions, for example, criminal acts in which the punishment is under 2 (two) years, female perpetrators and minors, who can still be guided and directed, with the strengthening of soft skills and hard skills knowledge, which are wrapped with strong religious knowledge.

## METHOD

This study uses a normative juridical approach, with primary data as a complement, with descriptive-analytical research specifications. The data used in this study are primary data and secondary data. Primary data is obtained through an analytical study of the applicable laws, followed by concepts that have been carried out, and secondary data is obtained through literature studies (references from various countries that have imposed social work sanctions), which are then analyzed utilizing comparisons between primary data and secondary qualitatively.

## ANALYSIS RESULTS

### 1. The Effectiveness of Social work sanction as a Substitute for Imprisonment for Convicts Against Rate of Decline in Criminal Acts

Imprisonment is a punishment in the form of limiting the freedom of movement of a convict,

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<sup>11</sup> Hukum dan Kerjasama Biro Humas, "RUU Pemasarakatan Di Sahkan DPR Menjadi Undang-Undang," *Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia*, last modified 2022, accessed July 12, 2022, <https://www.kemenkumham.go.id/berita/ruu-pemasarakatan-di-sahkan-dpr-menjadi-undang-undang>.

which is carried out by closing the person in a correctional institution by requiring that person to obey all the rules and regulations that apply in the correctional institution associated with disciplinary action for those who violate these regulations.

The principal punishment that is most often imposed on perpetrators is imprisonment. The form of punishment is by revocation of freedom of the perpetrator by placing him in a certain place such as a correctional institution or detention center. P.A.F. Lamintang stated that imprisonment is a punishment in the form of limiting the freedom of movement of a convict, which is carried out by closing the person in a correctional institution, by requiring that person to obey all the rules and regulations that apply in the correctional institution associated with disciplinary action for those who violate these regulations.<sup>12</sup>

Another consequence that is often highlighted is that the prison experience can lead to degradation or a decrease in human dignity and self-esteem.<sup>13</sup>

According to Wirjono Prodjodikoro, the objectives of sentencing are:

- a. To frighten people not to commit crimes, either by scaring people away (generals preventive) or by scaring certain people who have committed crimes so that they will not commit crimes again (special preventive); or
- b. To educate or improve people who commit crimes to become people of good character so that they become people with good character they are beneficial to society.<sup>14</sup>

<sup>12</sup> Iqbal Kamalludin and Barda Nawawi Arief, "Kebijakan Reformasi Maqâshid Al-Syar'iah Dan Kontribusinya Dalam Formulasi Alternatif Keringanan Pidana Penjara," *Al-'Adalah* 15, no. 1 (2018): 181–218; dilihat dalam Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia*, 71; dilihat juga dalam P.A.F. Lamintang, *Hukum Penitensier Indonesia* (Bandung: Armico, 1984), 86.

<sup>13</sup> A. Rizal, Heri Tahir, and Imam Suyitno, "Pemenuhan Hak Cuti Menjelang Bebas Bagi Narapidana Di Lembaga Masyarakat Kelas I Makassar," *Phinisi Integration Review* 4, no. 2 (2021): 166–175; dilihat dalam Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*.

<sup>14</sup> Fernando Tantarú et al., "Kajian Sosio-Yuridis Pembebasan Bersyarat Dan Pemberian Asimilasi Bagi Narapidana Pada Masa Pandemi Covid-19 Ditinjau

The purpose of sentencing itself is expected to be a means of community protection, rehabilitation, and resocialization, fulfillment of customary law views, as well as psychological aspects to eliminate guilt for those concerned.<sup>15</sup> Although punishment is misery, it is not meant to suffer and demean human dignity. When criminal law is placed as a sanction law, the imposition of criminal sanctions as a parameter of justice is related to real-life problems, the settlement model becomes unrealistic. Because the most reliable criminal sanctions are imprisonment. Sentencing is an activity carried out by judges to impose penalties on perpetrators in order to create a deterrent effect. Sentencing can be interpreted as the stage for determining sanctions and also the stage for imposing sanctions in criminal law.<sup>16</sup>

The justification for the need for imprisonment is not solely based on the problem or seen from the point of view of the effectiveness of the application of sanctions/punishment. The prevention of recidivism is not the only goal of the punishment and therefore it is not possible to abolish imprisonment as a means to deal with crime. Imprisonment at least separates criminals from society, thereby eliminating the opportunity for them to commit another crime. So it prevents reconviction, although it doesn't always prevent it. Even if imprisonment is not successful or effective in preventing recidivism, it still has a justification for maintaining it, because it is to 'separate criminals from society.'<sup>17</sup>

Dari Perspektif Tujuan Pemidanaan," *SANISA: Jurnal Kreativitas Mahasiswa Hukum* 1, no. 1 (2021): 34–41, <https://fhukum.unpatti.ac.id/jurnal/sanisa/article/view/515>; Dilihat juga dalam Wirjono Prodjodikoro, *Tindak Pidana Tertentu Di Indonesia* (Jakarta: Eresco, 1980), 3.

<sup>15</sup> Umi Enggarsasi, "Pola Pembinaan Narapidana Dalam Memberikan Kontribusi Keberhasilan Pembinaan Narapidana Di Indonesia," *Perspektif* XVIII, no. 3 (2013): 157–168.

<sup>16</sup> Abdul Syatar, "Relevansi Antara Pemidanaan Indonesia Dan Sanksi Pidana," *Jurnal Syari'ah dan Hukum Diktum* 16, no. 1 (2018): 118–134.

<sup>17</sup> Tantarú et al., "Kajian Sosio-Yuridis Pembebasan Bersyarat Dan Pemberian Asimilasi Bagi Narapidana Pada Masa Pandemi Covid-19 Ditinjau Dari Perspektif Tujuan Pemidanaan"; Tommy Christian Kamagi, "Kajian Yuridis Tentang Pidana Penjara Di Indonesia," *Lex Crime* VIII, no. 6 (2019): 21–28; Rifanly Potabuga, "Pidana Penjara Menurut KUHP," *Lex Crimen* 1, no. 4

According to Barda Nawawi, moderate criticism of imprisonment can be grouped into 3 (three) criticisms, namely criticism from the *strafmodus* point of view, criticism from the *strafmaat* point of view, and criticism from the *strafshort* point of view. Criticism of *Straftmodus* looks at the implementation of imprisonment, from the point of view of the system of development or treatment and the institutions or institutions. Criticism from the *strafmaat* looks at the length of imprisonment, specifically wanting to limit or reduce the use of short-term imprisonment. Criticism from the *strafshort* point of view is aimed at the use or imposition of imprisonment, which is seen as a type of punishment, namely the tendency to reduce or limit the imposition of imprisonment in a limited and selective manner.<sup>18</sup>

Although the latest Correctional Draft Law has been ratified, it can be seen earlier in Law Number 12 of 1995 concerning Correctional as a form of reform in the field of criminal law, which has brought a new atmosphere to criminal law enforcement. Since the idea of a punishment mechanism must have social benefits, the concept of retaliation and deterrence for convicts is slowly being abandoned. Sentencing with a more modern concept is marked by the inclusion of interventions from other sciences (sociology, psychology, criminology) in every decision-making.<sup>19</sup>

In Indonesian terminology Effectiveness which comes from the word effect means impact, influence, change; so, effectiveness is something that can make an impact.<sup>20</sup> Then, from the perspective of criminal law, especially in this discussion, the effectiveness of imprisonment can be viewed from two main aspects of the purpose

of sentencing,<sup>21</sup> according to Barda Nawawi Arif,<sup>22</sup> namely from the aspect of community protection and the aspect of improving the perpetrator. What is meant by the aspect of community protection includes the purpose of preventing, reducing, or controlling criminal acts and restoring the balance of society (among others resolving conflicts, bringing a sense of security, repairing losses/damages, removing stains, reinforcing values that live in society); What is meant by the improvement aspect of the perpetrator includes various objectives, among others to rehabilitate and re-socialize the perpetrator and protect him from arbitrary treatment outside the law.

In certain cases, the effectiveness of imprisonment can indeed be considered for the legislative/formulative policy stage. However, it cannot be used as an absolute benchmark to provide a justification for determining certain types of crimes. Wolf Middendorf once stated that effectiveness is only one of the criteria of punishment. It is impossible to use cruel punishment even if they prove to be very effective.<sup>23</sup>

In addition, there are two other aspects that can affect the punishment of convicts, namely the early prevention aspect (determinant aspect) and the reformatory aspect.<sup>24</sup>

The first aspect of early prevention (determinant aspect), is usually measured using a recidivist indicator. Based on this indicator "RM. Jackson" states that punishment is effective if the violator is not sentenced again within a certain period.<sup>25</sup>

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(2012): 79–93.

<sup>18</sup> Ahmad Fajri, "Pidana Kerja Sosial Dalam Membatasi Kelebihan Penghuni Di Lembaga Pemasarakatan," *Jurnal Lex Renaissance* 4, no. 1 (2019): 46–64.

<sup>19</sup> Iqrak Sulhin, *Diskontinuitas Penologi Punitif: Sebuah Analisis Genealogis Terhadap Pemenjaraan...*, *Op Cit.*; Fachrurrozy Akmal, "Penologi Pengayoman: Sebuah Tinjauan Pembedanaan Dalam Integrasi Ilmu Pengetahuan.", *Op Cit.*

<sup>20</sup> Enggi Pratama and Ahmad Fauzi, "Efektivitas Program Bimbingan Kerja Dalam Mengembangkan Life Skill Warga Binaan Penjara," *Journal of Nonformal Education and Community Empowerment* 2, no. 2 (2018): 126–140, <http://journal.unnes.ac.id/sju/index.php/jnfc>.

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<sup>21</sup> Kamagi, "Kajian Yuridis Tentang Pidana Penjara Di Indonesia."

<sup>22</sup> Enggarsasi, "Pola Pembinaan Narapidana Dalam Memberikan Kontribusi Keberhasilan Pembinaan Narapidana Di Indonesia"; Barda Nawawi Arif, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2002), 224–230.

<sup>23</sup> Syaiful Bakhri, *Perkembangan Stelsel Pidana Indonesia* (Yogyakarta: Total Media, 2009), 214; Tommy Christian Kamagi, "Kajian Yuridis Tentang Pidana Penjara Di Indonesia.", *Op Cit.*

<sup>24</sup> Abdul Mutalib, "Efektivitas Pidana Penjara Terkait Problematika Kelebihan Kapasitas Pada Lapas IIB Sleman Kanwil D.I. Yogyakarta" (Universitas Islam Indonesia, 2017), 145.

<sup>25</sup> Abdul Mutalib.

Furthermore, it was emphasized that effectiveness is a measurement of a comparison between the number of violators who are sentenced again and those who are not sentenced again. The second aspect, namely the reformatory aspect, relates to the problem of changing the attitude of the convict. How far imprisonment can change the attitude of the convict? It is still a problem that has not been satisfactorily answered. This is due to several methodological problems that have not been resolved and there is no agreement, in particular regarding (a) whether the measures to determine have been “signs of improvement or a change in attitude in the perpetrator; the size of the recidivist rate and reconviction rate is still a lot of doubt. (b) how long is a certain period to evaluate whether there is a change in attitude after the convict has served his prison sentence.”<sup>26</sup>

The effectiveness of punishment is related to various factors. Effectiveness in this case is usually measured through punishment. Namely the type of crime, the purpose of sentencing, the effectiveness of punishment, and the impact of punishment.<sup>27</sup>

Sentencing is not intended at all as an attempt to retaliate but as an effort to foster a prisoner as well as a preventive measure against the occurrence of similar crimes. The more criminal acts that occur, it is not always related to the effectiveness of imprisonment. Schultz said that the rise and fall of crime in a country is not related to changes in its laws or trends in court decisions, but is related to the operation or functioning of major cultural changes in people’s lives. Similarly, Rubin states that punishment, whatever its nature is, whether it is intended to punish or to correct, has little or no effect on the problem of crime. In addition, sanctions in the form of criminal penalties cannot be used as a means to measure the effectiveness of imprisonment and its influence on the rise and fall of criminal acts. Habits, religious beliefs, support and disapproval of groups, suppression of interest groups, and influence of public opinion are more efficient means of regulating human behavior than legal sanctions.

If you look at some of the views above, I hope the writer thinks the same way, not all punishments can provide a deterrent effect to

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<sup>26</sup> Abdul Mutalib.

<sup>27</sup> Abdul Mutalib.

criminals, and cannot directly reduce the level of crime, if the legal umbrella or rules have not been tested and implemented.

## **2. The Effectiveness of Social Work Punishment for Criminals Is Connected to the Purpose of Sentencing**

Departing from the purpose of punishment and the purpose of criminal law are two different things. Nevertheless, the purpose of punishment cannot be separated from the currents in criminal law. So the punishment objectives are broadly divided into three, namely the punishment objectives in “absolute theory”, “relative theory”, and “combined theory”. In addition, in the development of the three theories, there are also contemporary theories about the purpose of punishment. So far, the discourse on the purpose of sentencing is still at a theoretical level. Given the importance of the purpose of punishment as a guideline in giving or imposing a sentence, then in the draft of the Draft Criminal Code which is formulated in Article 51 of the Draft Criminal Code 20 July 2022, it has been agreed that the objectives of punishment are: 1) Sentencing aims: a. to prevent the commission of criminal acts by enforcing legal norms for the security and protection of the community; b. socialize the convicts by conducting coaching and mentoring so that they become good and useful people; c. resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace in society; and d. cultivate a sense of remorse and free the guilt of the convict. 2) Sentencing is not intended to suffer and demean human dignity.<sup>28</sup>

Europe has previously viewed that imprisonment is no longer relevant in overcoming the level of crime, another alternative punishment used is known as the social work punishment “community service order” namely the punishment imposed on the perpetrator of the crime of “offender” by doing useful work to avoid freedom deprivation punishment.<sup>29</sup> Social work punishment has begun to be included as an alternative to freedom deprivation punishment

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<sup>28</sup> Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia*.

<sup>29</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana: “Pidana Kerja Sosial Dalam Konsep Rancangan KUHP Baru”* (Semarang: Universitas Diponegoro, 1995), 137.

and fines in criminal legislation in European countries, including Germany, Switzerland, Italy, and Norway. In its development, social work punishment has undergone modernization, namely eliminating its nature as a forced labor punishment and changing its appearance as a voluntarily undertaken obligation in order to avoid freedom deprivation punishment, and can be an independent punishment or as an alternative to short-term imprisonment within the framework of a conditional criminal “suspended sentence”.

After going through various processes of changing the orientation of Indonesia’s sentencing from the beginning of independence to the present, the implementation of imprisonment in Indonesia refers to Law Number 12 of 1995 concerning Correctional. The correctional system as a series of criminal law enforcement units which in its implementation cannot be separated from the development of a general conception of punishment, the convict is placed as a subject so that an effort is needed to awaken the convict to regret and not repeat their actions so that they become a law-abiding citizen. In the implementation of imprisonment, there are weaknesses, especially at the level of implementation of punishment in the field, there are still problems such as excess capacity and limitations related to budget allocations to meet the daily needs of convicts, in addition to many problems related to hygiene, sanitation, and limited space.<sup>30</sup>

Based on the latest data regarding the number of convicts in prisons and remand centers at the end of 2022 in June, there were 276,503 people. This is one of the causes of overcrowding up to 109%.<sup>31</sup> Another thing results in the ineffectiveness of imprisonment which can result in the dehumanization of criminal offenders and ultimately causes losses for criminals in the form of the inability to continue life productively in society.

Efforts to find other alternatives to the freedom deprivation punishment began with the fact that the freedom deprivation punishment is becoming increasingly unpopular, both with humanitarian

considerations, philosophical considerations, and economic considerations. For example, with humanitarian considerations, the criminal reason for freedom deprivation is becoming increasingly unpopular because this crime has a large negative impact not only on convicts but also on their families and people whose lives depend on them. Philosophical considerations, namely a shift in the philosophy of punishment, which was originally oriented to revenge, turned into coaching. Economic considerations see that the budget that must be spent to finance the implementation of the freedom deprivation punishment is not small. The costs include, among others, the living costs of convicts such as food costs, clothing costs and so on which from time to time show a fairly large number.<sup>32</sup>

Criticism of imprisonment is also related to the negative consequences arising from the implementation of the punishment which in addition to freedom deprivation also occurs negative consequences in the form of the deprivation of a normal sexual life which results in the emergence of deviant sexual behavior in the form of homosexuality and masturbation, the deprivation of the convict’s business life which results in serious for the socio-economic life of the convict, the occurrence of an evil stamp for the convict after completing their sentence which will complicate the interaction with the community, as well as the occurrence of degradation and decline in human dignity and self-esteem caused by his life experience while in prison.<sup>33</sup>

Criticisms from the point of the criminal policy include the reality on the ground that the imposition of imprisonment does not make the perpetrators better off, but the quality of their crimes increases so that a cynical view emerges in the community that prisons are PTIK, an acronym for ‘*Pendidikan Tinggi Ilmu Kejahatan*’ Higher Education in Crime Sciences. This cynical view is increasingly found in reality when cases of drug trafficking are found in prisons. So that there is a tendency for someone who has served a prison

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<sup>30</sup> Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia*.

<sup>31</sup> Ditjen PAS, “SDP Publik,” last modified 2022, accessed June 15, 2022, <http://sdppublik.ditjenpas.go.id/>.

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<sup>32</sup> Asiyah Jamilah and Hari Sutra Disemadi, “Pidana Kerja Sosial: Kebijakan Penanggulangan Overcrowding Penjara,” *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 1 (2020): 26–38.

<sup>33</sup> Iskandar Wibawa, “Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia.”



sentence to become a recidivist when he returns to society. The 12th ICOPA congress mandated the countries in the world to include alternatives to imprisonment in the Criminal Code in each country in order to reduce the negative impact of imprisonment. One alternative to imprisonment is to apply social work punishment.<sup>34</sup>

In line with the views of Judge Kennedy who concluded that even though he was sentenced to imprisonment/convicts must maintain the essence of human dignity, if a prison deprives the prisoner /convict of basic rights (eating, drinking, health, etc.), then it is not in accordance with the concept of human dignity and being civilized. The development of mass imprisonment policies has occurred at a time when recorded crime rates have generally declined. However, the use of prisons, despite clear evidence of their failure, remains deeply rooted in public policy. However, there is a reason for a more optimistic view and hope that social work and social work values can play a more constructive role with economic and socio-political support.<sup>35</sup>

Social work punishment as an alternative to imprisonment will eliminate the negative impact of life in prison and will foster shame on the convict, because his social work can be directly seen by the community, besides that his social work directly brings benefits to the community. The form of social work punishment can be carried out in hospitals, orphanages, elderly homes, schools, or other social institutions, which as far as possible are adapted to the profession, expertise, and skills of the convict. This punishment will also reduce the overcrowding of prisons, which greatly interferes with the ongoing training in prisons.<sup>36</sup>

This social work criminal sanction in its application and concept of course still pays attention to the public aspect so that the public interest is not harmed by changes in the aspect of social work criminal sanction. This social work criminal sanction is certainly expected to be a way to change the character of criminal law as a sanction law, even though there has been real peace or compensation between the parties. The

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<sup>34</sup> Iskandar Wibawa.

<sup>35</sup> Ian Cummins, "Social Work and The Penal State," *European Journal of Social Work* 20, no. 1 (2017): 54–63, <http://dx.doi.org/10.1080/13691457.2016.1206850>.

<sup>36</sup> Iskandar Wibawa.

criminal principle as the *ultimum remedium* is of course expected to continue so that the existing problems are resolved with certainty without any harm to human rights.<sup>37</sup>

The development of criminal law certainly follows the development of the era which changes the perception of criminal law itself. This cannot be separated from the policy of crime prevention by using criminal law as a method. In the old model of criminal law, the retributive theory or the theory of retaliation is "a relic of barbarism". The purpose of this statement is to explain that criminal law is used as retaliation for the actions of others as a form of legacy from the barbaric attitudes of the past.<sup>38</sup>

Through social work criminal sanction, it will trigger the emergence of shame for the convicts and a sense of guilt for the actions committed. As discussed in the previous paragraph regarding the purpose of sentencing contained in Article 51 which prioritizes prevention, socializing convicts, resolving conflicts, fostering a sense of remorse, and freeing the convict guilt, then social work punishment itself in the perspective of criminal law in Indonesia should not be included in the commercial aspect, therefore the implementation of social work punishment is purely to realize the theory of restorative justice, so that in the end the social work punishment is more of coaching rather than just punishment without any deterrent effect for the convict. Starting from the concept of crime as restorative justice which aims to return conflict to the affected parties such as victims and perpetrators, restorative justice also emphasizes human rights and the need to recognize the impact of social injustice in simple ways to restore them rather than simply giving the perpetrator formal or legal justice and the victim not getting any justice.<sup>39</sup>

Social work punishment has benefits for perpetrators, namely, it can provide opportunities to contribute to the community by working for the community and provide opportunities to develop positive attitudes, skills, and self-confidence. The benefits of social work punishment for institutions

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<sup>37</sup> Jamin Ginting, "Sanksi Kerja Sosial Sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum Di Indonesia."

<sup>38</sup> Jamin Ginting.

<sup>39</sup> Jamin Ginting.

that participate in providing a place to carry out social work punishment are giving perpetrators the opportunity to participate in community programs and learn about them and the availability of volunteers to help in the workplace. Meanwhile, the benefits of social work punishment for the wider community are that the costs of social work are lighter by employing perpetrators in the community rather than putting them in prison.<sup>40</sup>

The main purpose of social work punishment is rehabilitation and restoration. The essence of the purpose of social work criminal rehabilitation is to increase the self-confidence and self-esteem of violators. This can be achieved by the convict who does work in the community that is beneficial to society and/or to people in need. It is hoped that by doing so, the convict will develop a sense of social responsibility and that their views and their role in society will change. Social work punishment in the context of restoration is a means that can enable the process of restoring the condition of all parties involved or affected by a crime, including victims, perpetrators, communities, and government. The purpose of rehabilitation and restoration is to strengthen social work as an alternative form of punishment, namely an alternative to imprisonment. The social work punishment can be accepted as an alternative punishment if the social work punishment can fulfill the objectives and benefits of the freedom deprivation punishment (prison) which is considered ineffective.<sup>41</sup>

In its development, the social work punishment has undergone modernization, which is eliminating its nature as a forced labor punishment and changing its appearance as a voluntarily undertaken obligation in order to avoid freedom deprivation punishment, and can be an independent punishment or as an alternative to short-term imprisonment within the framework of a suspended sentence. The social work punishment /community service order as another alternative to the freedom deprivation punishment (prison) will eliminate the negative impact of life in prison and will cause embarrassment to the convict himself,

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<sup>40</sup> Tommy Leonard, "Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana Di Indonesia," *Yustisia* 5, no. 2 (2016): 468–483.

<sup>41</sup> S. Aisyah, "Pengembangan Ide Kerja Sosial Sebagai Bentuk Pidana Alternatif Di Indonesia," *Jurnal Kriminologi Indonesia* 14, no. 1 (2018): 25–42.

because his social work can be directly seen by the public, in addition to his social work directly brings benefits to the community. The form of social work punishment can be carried out in hospitals, orphanages, elderly homes, schools, and other social institutions, which as far as possible will be adapted to the profession, expertise, and skills of the convict. This crime will also reduce the density of prisons which greatly disrupts the continuity of development in prisons.<sup>42</sup>

## CONCLUSION

The effectiveness of Prison Sanctions used to deal with criminal acts, which is currently happening with the level of criminal acts committed by the perpetrators can be seen from the point of view of public persuasion, but not all punishments can provide a deterrent effect to the perpetrators, and cannot directly reduce the level of crime, if the legal umbrella or regulation has not been tested and implemented, as well as social work sanction that will be enforced, after the ratification of the Correctional Law passed on 7 July 2022. In this way, the effectiveness of social work punishment for perpetrators of criminal acts is associated with the purpose of sentencing, namely to repair individual and social damage caused by criminal acts, the function of social work criminal sanction is an alternative to imprisonment in the short term, with the hope of minimizing the negative impact of the massive imprisonment effort currently taking place in Indonesia

## SUGGESTION

The suggestion put forward by the author is that in line with the ratification of the latest Draft Correctional Law, which discusses social work sanctions, the government can socialize and synergize between what happens inside the correctional institution and outside the correctional institution because not all people can accept it, if not given a deep understanding.

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<sup>42</sup> Iskandar Wibawa, "Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia."

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