

## Criminal Conviction of Social Workers in the Criminal Justice System

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### ABSTRACT

This study aims to analyze the concept of social worker sentencing policy, and to know the criminal law of social work as a solution to reduce overcapacity in Indonesian Correctional Institutions. This study uses a normative juridical method with analytical descriptive specifications. The findings showed that the current policy of imposing criminal sanctions is felt to be ineffective because every criminal who is proven and has the power of law to carry out legal proceedings in prison is still not appropriate if the weight of the crime is a minor offenses. As a solution, the imposition of criminal sanctions on social workers has been determined to be appropriate. It is necessary to have a criminal law policy so that what becomes a legal issue can be resolved effectively, likewise with the effectiveness of the provision of prison sentences, which are no longer in accordance with prison conditions, leading to an increase of 500 to 900 percent, which eliminates the duties and functions of Correctional Institutions as a coaching and protection institution for convicts. In conclusion, the policy of imposing criminal penalties on social workers is appropriate in order to reduce over capacity.

### ABSTRAK

Penelitian ini bertujuan untuk menganalisis konsep kebijakan penjatuan pidana pekerja sosial, dan untuk mengetahui hukum pidana kerja sosial sebagai solusi untuk mengurangi overcapacity di LAPAS di Indonesia. Metode dalam penelitian ini menggunakan metode yuridis normatif dengan spesifikasi deskriptif analitis. Hasil analisis menunjukkan bahwa kebijakan penjatuan sanksi pidana saat ini yang dirasa sudah tidak efektif karena setiap pelaku tindak pidana yang terbukti dan memperoleh kekuatan hukum melakukan proses hukum di LAPAS yang tetap kurang tepat jikalau bobot tindak pidananya merupakan perbuatan Tindak Pidana Ringan. Sehingga dengan adanya penetapan sanksi berupa penjatuan pidana sanksi pekerja sosial sebagai upaya solutif. Kebijakan penjatuan pidana khususnya Tindak Pidana Ringan diselesaikan di luar pengadilan perlu adanya kebijakan hukum pidana supaya apa yang menjadi persoalan hukum tersebut dapat terselesaikan secara efektif, begitu pun dengan efektifitas pemberian hukuman penjara yang saat ini sudah tidak sesuai dengan kondisi LAPAS yang semakin lama mengalami kenaikan 500 persen hingga 900 persen yang justru nantinya menghilangkan tugas dan fungsi LAPAS sebagai lembaga pembinaan dan pengayoman bagi narapidana. Kesimpulannya bahwa kebijakan penjatuan pidana pekerja sosial sudah tepat dalam rangka mengurangi overcapacity.

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## I. INTRODUCTION

Politics in criminal law is one part of the legal development plan "legal planning reform" which is carefully designed by taking into account the accompanying aspects. Starting from the foundation of the state as the main source along with its constitution, namely the 1945 Constitution of the Republic of Indonesia, political ideology of power, national development policies (Ginting, 2020). According to this description, Pancasila, as the foundation of the state, is a source of meaningful values as well as a source of law in carrying out reforms and establishing criminal law on a national scale. This requirement is also consistent with the strong desire in this reformation era to achieve fairer law enforcement against all forms of criminal law violations (Situmorang et al., 2019). An era that desperately needs "openness, democracy, good and clean government, protection of human rights, law enforcement, justice or truth in all aspects of life in society, nation and state.

In sentencing, the deterrent effect of the expected punishment is frequently emphasized, so that criminal sanctions in the form of punishment as an alternative solution are discouraged (Kahan, 2019). The Criminal Code, which was established in a Dutch colony and is still in use today, continues to be the basis for the imposition of sanctions under Indonesian criminal law (Hutabarat et al., 2022). In addition, the Criminal Code serves as a guide for the application of the legal principles that are upheld by Indonesian criminal law.

Article 10 of the Criminal Code specifies the types of punishment, among which the principal punishment includes the death penalty, imprisonment, imprisonment, and additional punishment. Consequently, the legal concept of imposing regulated criminal sanctions focuses on punishing criminals who have been legally and convincingly proven to have been sentenced by a judge. Punishment is a logical consequence for a perpetrator whose guilt is established in court by a judge's ruling and who is then incarcerated in a correctional institution as a place subject to criminal law.

Correctional Institutions (also refers to LAPAS) are places where coaching, rehabilitation and guidance for convicts is carried out, because the term prison has now been replaced by LAPAS because currently the purpose of punishment is no longer retaliation but correctional so that convicts are fostered as much as possible so that after completing the criminal process they will be useful in people's lives (Flora, 2018). As such, Correctional Institutions or LAPAS is no longer a place of retaliation but a place of repentance for convicts. Apart from that, the penitentiary system in LAPAS is one of them based on humanity so that convicts who are undergoing criminal proceedings are still given protection of their dignity (Mursyid, 2019). On the one hand, it is crucial to evaluate the condition of the current LAPAS (Emaliawati & Mulyana, 2022).

The number of crimes that are punished by judges through sentencing decisions has an impact on LAPAS's condition. Therefore, it is not surprising that LAPAS may experience over capacity, which will be a problem, as the number of prisoners will affect how effective the guidance and protection that is in it. Due to the fact that LAPAS is frequently not monitored for excess capacity, it is now clear that the issue at hand is not one of law enforcement during investigations, prosecutions, or even court proceedings. In fact, data from the ministry of law and human rights indicates that LAPAS capacity in Indonesia is over capacity by as much as 500-900 percent (Directorate General of Corrections, 2013). In order for judges in the future to be able to impose not only criminal sanctions but also social sanctions, the current state of LAPAS, which is experiencing this capacity, requires another reconstruction effort with respect to the imposition of a criminal sentence on someone who can use social worker punishment, which is among the main types of crimes in the provisions of the Criminal Code in Indonesia.

Overcapacity in LAPAS is what social sanctions are meant to address. This condition exists due to the fact that the only available place to a person who has been legally and convincingly proven guilty is the prison, meaning that there is no another community media. Social sanctions in this case also

refers to another criminal alternative as *primum remedies*, namely prioritizing the application of alternative criminals such as fines, social work, criminal forgiving, etc. in resolving a criminal case (UII, 2021). Several nations have demonstrated that substituting alternative criminals for traditional ones can significantly lower imprisonment populations (Yozami, 2021). As said by Criminal law expert, Asep Iwan Iriawan argues that alternative crimes regulated in the Draft Criminal Law (RKUHP) are one of the solutions to overcome the problem of overcrowding (over capacity) of prisons in the country, further Asep Iwan Iriawan said that "Alternative crime is indeed one solution, only we have not implemented it in Indonesia and do not know whether it is effective or not," (Yozami, 2021).

When compared to the growth in prisons, the rise in the number of people receiving government aid is small in comparison. If the issue of jail overcrowding isn't resolved quickly, it can have a negative effect on public security as inmates risk escaping and disrupting the area around the facility, or on society as a whole as ex-inmates have a greater chance of recidivism. As such, the adoption of social work crimes, one of the important criminal sanctions, is carried out for several reasons, namely that it can be used as a solution to prison overcapacity, avoid stigmatization and prisonization, the costs used are lower than prison sentences and can rehabilitate prisoners without eliminating their punitive nature (punitive) (Slat, 2020). Although, similar research has been performed before, this study will provide new insight regarding the imposition of criminal justice for social workers which is one of the efforts to reduce overcapacity in Correctional Institution (LAPAS).

Based on the preceding description of the problem's context, a studyable issue emerges, such as what is the notion of a social worker's criminal conviction policy? and to know the criminal law of social work as a solution to reduce overcapacity in Indonesian Correctional Institutions.

## II. RESEARCH METHODS

This study was a normative juridical study or doctrinal legal research with a futuristic approach, namely a legal (interpretation) approach that was carried out with reference to draft laws and regulations that will be enacted in the future (Qamar & Rezah, 2020). This research focused on studies that more in the nature of *ius constituendum* (law or law that is desired) than *ius constitutum* (law or law that is currently in effect). The legal materials was obtained through library research as secondary data in the form of primary legal materials and secondary legal materials related to the social work criminal implementation rules. The primary legal materials used in this study were the Criminal Code (KUHP), the Draft Criminal Code (R-KUHP which has become the KUHP), and Supreme Court Regulation Number 2 of 2012 concerning Adjustment of Limits on Minor Crimes and the Amount of Fines in the Criminal Code.

## III. RESULTS AND DISCUSSION

### **Social Worker Criminal Conviction Policy**

In Indonesia, criminal policy exists as an alternative to criminal law for the imposition of social workers. This is a form of development that, the longer it is implemented, becomes the best alternative in accordance with the needs of the times, functioning as an alternative to the enforcement of a deprivation of independence for convicts who undergo criminal proceedings in which criminal social work is part of the judge's discretion in enforcing the law (Lesmana, 2020).

The adoption of social work crimes, which is one of the important criminal sanctions, is carried out for several reasons. These reasons include the fact that it can be used as a solution to the problem of overcrowding in prisons, that it can avoid stigmatization and prisonization, that the costs used are lower than those associated with prison sentences, and that it can rehabilitate prisoners without eliminating the punitive nature of their sentences (punitive). When determining the appropriate punishment for an offense, judges are required to take into account both the value of fairness and

the value of expediency (Sari & Hafrida, 2020). The enforcement of legal standards and the benefits that can be felt by both the community and prisoners are two of the values that can be found in the field of criminal social work, which is also known as "criminal social work." The implementation of social work that is carried out by criminals will be of assistance to the community, and vice versa, the community will be of assistance to the re-socialization of prisoners. If these factors could possibly be taken into consideration for the introduction of social work crimes in Indonesia.

The legal policy of imposing social workers as an effort to provide a rule model in the contemporary era so that developments in the criminal aspect can remove the shadow of the past that prioritizes the actions of convicts but the conditions of the convicts themselves regardless of how the sentence is imposed but does not reduce the number or increase in the number of convicts. Because if the criminal policy does not keep up with the times and see the existing conditions and realities, then the need for criminal law will never be fulfilled because it fails to see what the criminal law demands.

The existence of social worker legislation, which is part of the policy of imposing criminal penalties, is appropriate for use as a legal reform in the administration of basic punishment. Reforming the law is not impossible because the goal of the social worker's policy is to reform the criminal law policy, which has already been accomplished because it still employs outdated methods of punishment, despite the social worker aspect being a catalyst for the implementation of more organized legal development.

It is essential that we have a clear understanding of what is meant by the term "criminal law policy" before moving on to a more in-depth discussion of the theory behind criminal law policy. The term "policy" is taken from the terms "policy" (English) and "*politiek*" (Dutch), so that "Criminal Law Policy" can also be referred to as "Criminal Law Politics" and is often known as the terms "penal policy", "criminal law policy" or "*strafrechspolitiek*" (Moeljatno, 2021).

Literally, there is a criminal law policy as a form of criminal law enforcement itself. According to Arief (2018), criminal law policy is an action related to how criminal law policy can regulate based on the legal needs of the community and achieve what the criminal law itself aspires to. Based on this theory, the condition of the legal needs of the community is important so that if it is associated with the legal policy of criminal conviction of social workers in line with what the community wants because seeing the imposition of the criminal code is considered to have no deterrent effect and precisely the prison conditions are getting fuller because there is no longer an alternative in sentencing, therefore the concept of criminal conviction is not a reference to all criminal acts committed by the perpetrator but also needs to see the weight of a legal fight for the perpetrator

The concept of imposing social worker law only applies to minor crimes (Slat, 2020). As such, for anyone who carries out a legal requirement, they are not subject to imprisonment or confinement, but are subject to criminal law as social workers. Because of this, the concept of dropping requires seriousness, especially by the legislature in making this policy. Meanwhile, if it is not supported by these institutions then the overcapacity issue will always be a problem that will not be resolved. Because with the stages the legal policy maker has a very important role so that the formulation of the social worker's criminal imposition policy can be applied.

In this regard, it is possible to interpret the capacity of the prison as the capabilities or capacity of the prison for the number of inmates who will spend their sentences in it in order for them to perform their coaching responsibilities in the most effective manner possible. Exceeding the maximum prison capacity reduces the prison's ability to protect the rights of prisoners. The fulfillment of health requirements is becoming increasingly difficult, infrastructure is inadequate, and coaching activities are not optimal because not all assisted residents can receive coaching. Additionally, prison overcrowding affects the degree of security in prisons. The imbalance between the number of correctional officers and the number of assisted residents leads to easy conflicts between assisted residents, which then spark prison riots.

According to Barda Nawawi Arief (2018), important aspects in determining criminal sanctions and the purpose of punishment are the most important things for decision makers in imposing criminal penalties by determining the ideal method and strategy for the actions to be taken (Lamintang & Lamintang, 2022). In line with this opinion, the determination of sanctions is an important factor because it relates to the rights and obligations of the offender, which will be subject to restrictions, so in the context of imposing a worker's crime, it is certainly one of the legal references in determining sanctions. The sanction determination policy that is regulated will see how effective the current imposition of sanctions is, as this can be used as a media for legal reflection which is currently being enforced in imposing laws using prison sentences without looking at other factors that will be affected as a result of the criminal imposition will affect capacity in LAPAS.

According to the description of the current policy of imposing criminal sanctions, it is believed to be problematic. This is because every criminal who is proven and has the legal power to carry out legal proceedings in LAPAS is still not appropriate if the severity of the crime is a minor crime. As a potential solution, social workers ought to be exposed to criminal sanction.

### **Criminal Conviction of Social Workers in the Criminal Justice System in LAPAS**

The criminal imposition by imposing criminal sanctions becomes problematic because the criminal law adopted by the Criminal Code uses a juvenile lens, namely that anyone who is guilty on the basis of a court decision must be imprisoned in LAPAS. The effect of the existence of a criminal imposition system has caused overcapacity in LAPAS as a place to provide guidance and protection for convicts (Ulfah, 2021).

The over-capacity condition of LAPAS has resulted in the role of LAPAS not being optimal in providing guidance and protection for these convicts so that this actually eliminates the role of LAPAS as a legal subject that is given the authority to carry out punishments for convicts (Tanjung, 2018). Even though convicts are subject to restrictions on their rights and actions, it is certainly a problem if LAPAS is full.

Based on the theory of legal expediency initiated by Jeremy Bentham, this theory emerged as a result of a criminal imposition policy which at that time did not have any impact (Bertens, 2022). Based on this, the current sentence of imprisonment needs to be seen whether it then provides legal benefits or not. If it is examined more deeply, the aspect that is the problem is the existence of overcapacity in LAPAS, which is already a benchmark for failure in imposing sentences on convicts. Even though the sentence has not had a significant impact, the state has suffered a loss in terms of the state budget because it has provided facilities for daily needs three times a day which are the rights of convicts that must be fulfilled. Hence, if LAPAS is over capacity it will actually issue more burdens considering the number of inmates according to the data at the beginning of the article about an increase in capacity of around 500 percent to 900 percent which is no longer effective in the category of someone being sentenced to LAPAS.

In imposing sanctions in the form of imprisonment it is no longer effective because it can lead to stigmatization, in the sense that other people are reluctant to interact with the convict but it should be noted that social sanctions do not need to follow public punishment, because social sanctions do not need to follow public punishment, because they are based on information transmission through social networks and do not need to rely on formal evidence), that the effectiveness of social norms against crime, because of guilt and shame.

The judge who orders Social Workers is only responsible for setting the required minimum number of hours and length of time. Probation is responsible for the technical aspects of its implementation, such as determining where the social work will be done, how many hours a day it will be done, and so on. To effectively implement social work or social crimes, the offender should have direct contact with members of the community. The main goal of Social Workers is for volunteers to meet new people

and learn more about local issues, so this is in keeping with that goal. The ultimate goal of this social work crime is for the perpetrator to pursue a process of "humanization" in the hopes that this will improve his trust and personality, boost his intelligence, restore people's faith in him, and send a message to society that he and other perpetrators are just ordinary people who can make mistakes and can also change into better humans. Community service orders for social work crimes further restrict offenders' mobility, reducing the likelihood that they will engage in further criminal behavior.

Social work crimes are well-known in Indonesia because they were incorporated into the idea of the Criminal Code Bill. In Article 66 paragraph 1 of the 2017 Criminal Code Bill, it is stated that i) the primary crimes include imprisonment, cover-up crimes, supervisory crimes, fines, and social work crimes; and ii) additional crimes as referred to in Article 65A of the 2017 Criminal Code Bill Concept consist of the suspension of certain rights, the seizure of specific items and/or bills, the announcement of judges' decisions, the payment of compensation, the suspension of driving privileges, and fumigation (Saputra, 2021). The 2017 Criminal Code Bill further explains the social work crime in Article 88 paragraph (1), which states that if the sentence to be given is less than six months in jail or the fine is less than the Category I fine, the sentence or fine may be substituted with a social work crime.

On the basis of the article's provisions, it can be concluded that social work crimes cannot be imposed for every criminal conduct. In theory, social work offenses are an alternative to minor offenses and are imposed for the crime of temporary deprivation of liberty (Saputra, 2022). Obviously, the existence of criteria in the implementation or provision of criminal sanctions for social work can reduce the overpopulation of prisons, which has been one of the most difficult issues to resolve. As a form of punishment, numerous types of community service are assigned to offenders. For instance, cleaning public toilets, cleaning ditches or sewers, sweeping the streets, assisting the elderly, etc. This social work is regularly performed during the duration of the punishment. The judge sentenced him to several months of community service. As a result of social work crimes, convicted criminals will not perpetrate additional crimes because the court will punish them with imprisonment and fines if they do.

In light of the fact that the Minister of Law and Human Rights has issued a Ministerial Decree on the imposition of criminal justice for social workers, outlining the principle of administering criminal prosecution of social workers in the case of convicts who have committed minor crimes, then convicts who have served less than 2 years with the duration of the sentencing process who have already undergone the sentencing. Convicts who are given a sentence of less than one year must be subject to social worker sanctions which will later be coordinated with the service to be empowered. In addition, it is important for the minister to carry out policies regarding the imposition of criminal punishment for social workers made by a decision of the ministry of law and human rights specifically for someone who commits a minor crime and convicts who have served a sentence of 2 years or less are replaced with social workers who will be coordinated by the regional social services.

A more extensive social network in the LAPAS may contribute to an increase in the overall rate of criminal activity. This may be the result of different mechanisms, such as the sharing of information among criminals or the imitation of peer behavior. Nevertheless, the mass of social interaction in LAPAS may also serve as a deterrent against criminal activity. Consequently, social sanctions are more effective at maintaining honesty where there is a greater degree of social interaction. These social sanctions give criminal behavior a sense of guilt and shame, and every prisoner who commits a crime does so as a result of criminal activity that occurs within the confines of the Correctional Institution.

#### IV. CONCLUSION

Legal politics in the imposition of criminal justice for social workers is one of the efforts to reduce overcapacity in Correctional Institution (LAPAS), hence the need for a criminal law policy arises from the fact that criminal conviction policies, particularly those involving minor offenses, are often resolved outside of the court system. This makes it necessary to have a criminal law policy in order to effectively resolve legal issues and to provide prison sentences that are in accordance with prison conditions. As prison populations rise by 500 percent to 900 percent, the role of prisons as coaching facilities will be eliminated. On the other hand, the state budget through the APBN will continue to increase because of the number of convicts. The convicts who have been convicted of a crime will experience feelings of embarrassment and remorse as a result of the criminal sanction, which will be administered through social work.

In order to reduce prison overcapacity in Indonesian Correctional Institution, social work crimes must be encouraged for a variety of reasons, including restoring normalcy to prisoners' lives, lowering the number of inmates who would increase prison capacity, rehabilitating prisoners, and other advantages. The existence of social worker legislation, which is part of the policy of imposing criminal penalties, is appropriate for use as a legal reform in the administration of basic punishment. The legal policy of ordering social workers is an attempt to provide a rule model in the modern era so that advances in the criminal aspect can dispel the shadow of the past, which puts a premium not on the actions of convicts but on their conditions, regardless of the sentence imposed.

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