

Criminal Reform in Indonesia: A Penological Analysis of Community Service in the New Criminal Code

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ABSTRACT: Legal reform in Indonesia through the New Criminal Code introduced community service as an alternative punishment to replace imprisonment in some criminal cases. Community service aims to provide a rehabilitative effect and social reintegration for criminals, which in turn is expected to address the problem of overcrowding in correctional institutions. This study aims to analyze the application of community service from a penological perspective, and to identify the provisions of community service in the New Criminal Code and the challenges faced in its implementation in Indonesia. The approach used is a juridical-normative approach with a review of the New Criminal Code regulations, as well as qualitative empirical through interviews with relevant parties such as community counselors and correctional institutions. The results show that community service, when viewed from a penological perspective, has great potential in achieving the goals of rehabilitation and social reintegration, but is faced with several operational challenges, such as the lack of capacity of community counselors, limited infrastructure, and negative public perceptions of perpetrators. To optimize the implementation of community service, it is necessary to increase human resource capacity, strengthen the monitoring system, and educate the public. This study contributes to the development of penological theory in Indonesia and provides policy recommendations related to the implementation of more effective community service.

KEYWORDS: social work punishment, new criminal code, penology, social reintegration, alternative punishment

I. INTRODUCTION

Indonesia as a state of law, as mandated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, places law as the main foundation in organizing national and state life (Nugraha dkk. 2025). This article emphasizes that the state establishes law through norms within its regulations as a crucial aspect for realizing the state's goals. One of the legal instruments used to maintain social order is criminal law, representing a legal instrument intended to protect the constitutional rights of the people (Hiariej 2016). In the concept of criminal law, there is a fundamental aspect inherent, namely how the process of enforcement is comprehensive, also known as the principle of equality before the law. Objective criminal provisions aim to uphold justice and legal certainty in accordance with the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia, the ultimate goal of which is the realization of a just legal order based on the supremacy of applicable law (Arief 2021). Society continues to develop, and social, cultural, and technological dynamics also change, which then demands the development of criminal law to keep pace with these developments to maintain social order.

The criminal law in Indonesia currently in force is based on a code adopted from the Dutch colonial legacy, the Old Criminal Code (Wetboek van Strafrecht voor Nederlandsch-Indië). This Old Criminal Code is a product of Dutch colonial law that does not suit the characteristics of Indonesian society. Problems arise when the Old Criminal Code is deemed unable to accommodate contemporary legal needs. Many provisions in the Criminal Code are deemed irrelevant, open to multiple interpretations, and inconsistent with the principles of modern justice (Saefudin 2021). After the 1998 reforms, strong demands emerged from society for fundamental changes in the national legal system, including criminal law (Parindo dkk. 2024).

To address these issues, the government together with the House of Representatives (DPR) has ratified the New Criminal Code through Law Number 1 of 2023 (hereinafter referred to as Law No. 1/2023), which will come into effect starting in 2026 (Parindo dkk. 2024). The New Criminal Code promotes a more progressive and humanistic approach to criminal law, prioritizing the principles of restorative justice, protection of human rights, and the values of Pancasila. These reforms include the recognition of corporations as legal subjects, regulations regarding gender-based crimes, customary offenses, community service, and strengthening protection for vulnerable groups. The New Criminal Code also expands jurisdictional principles and aligns with

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developments in international law (Hartanto 2024). One of the highlights of this criminal law reform is the inclusion of criminal sanctions in the form of community service, which was previously unknown in the Old Criminal Code.

The criminal sanction in the form of community service is stated in Article 65 paragraph (1) of the New Criminal Code. This sanction, when viewed within the hierarchy of the article, is the lightest criminal sanction and is an alternative to imprisonment. This sanction is one of the government's efforts to address the problem of overcrowding that occurs in Correctional Institutions. The Public Correctional Database System (SDP) recorded that as of October 2025 the total number of inmates in Correctional Institutions was 192,333 inmates, while the available capacity should only be 101,213 inmates, this indicates that there has been an overcapacity in Correctional Institutions of almost 100%.

Community service sanctions are an alternative for law enforcement officers in sentencing criminals, as they are more oriented toward creating opportunities for criminals to actively participate in community life. Furthermore, they are expected to enable criminals to improve their behavior and atone for their mistakes without undergoing repressive prison sentences. Therefore, the application of this sanction better reflects the more rehabilitative and humane goals of punishment (Hukum 2022). However, implementing community service sanctions also presents its own challenges, namely, it relies heavily on comprehensive infrastructure and punishment programs. This is because implementing community service sanctions requires systematic procedures so that the resulting output aligns with its primary objectives (Ticoalu dkk. 2021). Furthermore, the community's unpreparedness to accept perpetrators undergoing this punishment is also a significant obstacle. This indicates the urgent need to develop a better monitoring and guidance system so that community service can be implemented effectively in the field.

This study aims to analyze the application of community service within the framework of penology, the study of various forms of punishment and their impact on offenders and society. The novelty of this study is its examination of the still-limited application of community service in Indonesia, with a focus on operational challenges in its implementation and how this concept can align penological theory with criminal practice in Indonesia. This study will focus on examining how community service sanctions are implemented from a penological perspective, particularly in relation to the objectives of punishment and social reintegration for offenders, and the regulations and challenges in implementing social service sanctions as stipulated in the New Criminal Code.

II. METHODS

This study constitutes a form of doctrinal legal research. Doctrinal research is a methodical examination of the laws controlling a certain legal category, analyzes the interrelations among legislation addressing regional issues, and forecasts future developments. The methodologies employed are the legislative approach and the conceptual approach. The conceptual framework is based on perspectives and principles that have developed within the discipline of legal science. Legal research utilizes two sources: main legal resources, which include statutory rules, and secondary legal materials, comprising legal literature in both books and periodicals.

III. RESULTS AND DISCUSSION

A. Criminal Sanctions of Social Work in the Perspective of Penology

In the Oxford Law Dictionary, the term Community Service Order or community service order is defined as ("Community Service Order," t.t.): "An order that requires an offender (who must consent and be aged at least 16) to perform unpaid work for between 40 and 240 hours under the supervision of a probation officer. Such an order replaces any other form of punishment (e.g. imprisonment); it is usually based on a probation officer's report and carried out within 12 months (unless extended). Breach of the order may be dealt with by fine or by revocation of the order and the imposition of any punishment that could originally have been imposed for the offence".

In theory, social work has several dimensions, including (Muladi 1995):

1. Community Service as an Alternative to Short-Term Deprivation of Liberty

The concept of community service was designed as an alternative to short-term imprisonment, so in European countries, it is used to replace short prison sentences. It can be implemented as a stand-alone punishment or as an additional condition to the implementation of a conditional sentence.

2. Community Service as an Alternative if Fines Are Not Paid

In some countries, such as Italy, Germany, and Switzerland, community service is an alternative to imprisonment if the offender cannot afford the fine. In these cases, convicts who cannot pay the fine will undergo an alternative sentence of community service or, if that is not possible, imprisonment.

3. Community Service in Clemency

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In several European countries, community service can be a condition for granting clemency. For example, in the Netherlands, community service can be mandatory as part of a pardon for convicts. Similarly, in Germany, community service can be substituted for prison sentences if fines are not paid through the clemency mechanism. In fact, in Germany, community service has become a condition for parole, as stipulated in Article 153 A German Criminal Procedure Code.

The concept of community service is an alternative to non-prison punishment, where the United Nations (UN) through the Tokyo Rules is trying to encourage the strengthening of the use of effective alternative non-prison punishment, so that it can reduce the situation of excess prison inmates experiencing overcrowding (Abdullah 2024). The Tokyo Rules are a standard or guideline that countries use as a reference in implementing alternative forms of punishment, published in 1990 based on UN General Assembly Resolution No. 45/110 dated December 14, 1990. The Tokyo Rules attempt to define minimum standards aimed at protecting human rights and human dignity. The document contains limitations on matters that must be considered in implementing alternative forms of punishment, as well as encouraging their implementation (Association 2003). The Tokyo Rules have two fundamental objectives: to encourage the use of alternative punishments other than imprisonment and to ensure their fair application based on respect for human rights. Such guarantees are necessary to prevent the use of any form of alternative punishment that is disproportionate. Alternative punishments other than imprisonment have benefits for the person who committed the crime and also for society, particularly for the purpose of making the person less likely to reoffend, as well as for those convicted of minor crimes and those who commit crimes requiring medical, psychiatric, or social assistance (Abdullah 2024).

In general, there are two theories about the purpose of punishment, namely absolute theory and relative theory (Darmawan dkk. 2024). Scientists create these theories by considering various aspects of the targets to be achieved in sentencing, regardless of the socio-cultural values held by the scientists (Prabawani dkk. 2025). As for these theories:

1. Absolute/Retributive Theory

This theory states that punishment is imposed solely because someone has committed a crime or offense. Punishment is an absolute consequence that must be meted out as retribution for those who have committed a crime. The justification for imposing punishment lies in the crime itself, and therefore, punishment serves to eliminate that crime (Friedman 1975). Immanuel Kant further stated that punishment requires that every unlawful act be repaid, because it is an absolute necessity that is justified as retribution. Therefore, the consequence is that any exceptions to punishment that aim to achieve a specific goal other than retribution must be set aside (Friedman 1975).

2. Objective/Relative Theory

Muladi and Barda Nawawi Arief are of the opinion that punishment is not just for taking revenge or retribution on people who have committed a crime, but has certain useful goals (Arief 1992). The main actor who initiated this theory was Karl O. Christiansen. Relative theory views that crime is not just for retaliation against criminals but has certain useful goals. The main objectives of punishment are maintaining public order, repairing losses received by society because of crime, correcting criminals, eliminating criminals, preventing crime (Koeswadji 1995).

Viewed from the scope of modern penology (new penology) it is not only punishment in special institutions (prison sentences), but also related to justification in punishment, but also related to justification in punishment, theories about imprisonment and punishment, sources of knowledge about punishment, comparative penology, history and purpose of imprisonment, Criminal Law policy, administration of imprisonment and prison inmates, sociology of imprisonment, accountability in imprisonment, parole, community-based punishment, future and vision of punishment (Situmeang, t.t.). Furthermore, based on the development of penology, when viewed from a postmodern penological perspective, it has given rise to ideas on how to reduce crime through social programs, efforts to rehabilitate criminals, and suppressing the factors that cause crime. Therefore, based on this postmodern penology, if a defendant is sentenced to prison, the imprisonment process is the final step in the criminal justice system (Situmeang, t.t.).

When viewed from the context of modern penology, the criminal sanction of community service emphasizes the importance of rehabilitation and social reintegration for perpetrators, with the goal of restoring individuals to society. This serves to provide perpetrators with the opportunity to atone for their crimes through social contributions that can have a positive impact, both on the perpetrators themselves and on society. From the perspective of community service, this form of punishment is based on the principle of restorative justice, which aims to improve the relationship between the perpetrator, the victim, and the community.

On the other hand, postmodern penology provides criticism of the traditional criminal justice system, which tends to focus on punishment as a form of retribution as stated in retributive theory, so this social work sentence is a progressive step that focuses more on social change and deconstruction of legal norms that are too harsh on perpetrators.

Therefore, when viewed from the above description, in this case, social work punishment, both from the perspective of modern and postmodern penology, the main point lies in a more humanistic and rehabilitative approach. Social work punishment reflects

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a shift from a justice system that punishes punitively (such as imprisonment) to a system that places more emphasis on recovery, reintegration, and restorative justice. Social work punishment, from a modern penological perspective, functions to support the rehabilitation process of offenders, while in postmodern penology, social work punishment acts as a fairer alternative that considers the social context and avoids stigmatization of offenders. Thus, social work punishment serves as a bridge between these two penological paradigms, combining the principles of rehabilitation and restoration in a more inclusive and constructive way for both society and offenders.

B. The Concept of Regulation and Challenges in the Implementation of Social Criminal Sanctions Listed in the New Criminal Code

The reform of criminal law (penal reform) in the Indonesian criminal law system in essence does not only emphasize partial/fragmentary legal reform but also leads to the reconstruction of a criminal law system that is integrated or integrative. This concept has the logical consequence that criminal law reform should view all components in the legal system in an integrated and inseparable manner, including the three main issues of criminal law that are an integral part of the system itself, namely "criminal act" (strafbaar feit/criminal act/actus reus), "error" (schuld/guilt/mens rea) and "criminal" (straf/punishment/poena). In line with this, Barda Nawawi Arief in his book entitled *Tujuan & Pedoman Peminanan (Perspektif Pembaharuan & Statistik Hukum Pidana)* explains that in addition to the three main issues of criminal law, there are other aspects that are an integral part of the criminal system, namely the objectives and guidelines for punishment. This is based on the idea that the criminal law system essentially has a purpose (purposive system). This purpose of punishment is the basis or justification for punishment. Therefore, the purpose of punishment must be viewed as an integral and inseparable part of the national criminal law system (Arief 2022).

Looking at the current dynamics of reform in Indonesian criminal law, it is understandable that there has been a shift in the orientation of the objectives of punishment adopted by the national criminal law system. The objectives of punishment, which were originally retributive or retribution, have now shifted to punishment that is not only aimed at providing a deterrent effect for perpetrators of criminal acts, but fundamentally emphasizes punishment as a means of prevention, rehabilitation, and providing protection for society from the threat of criminal acts. The concept of the objectives of punishment, also known as a combination of absolute and relative punishment theories, is interpreted by Andi Hamzah as an effort to achieve a balance between the elements of retribution and the elements of prevention of criminal acts (Hamzah 1993).

Article 51 and Article 52 of the New Criminal Code delineate the objectives of punishment, which include the prevention of criminal behavior, the rehabilitation of offenders, the resolution of conflicts, the restoration of equilibrium, the establishment of security and tranquility, and the instillation of remorse in offenders. Furthermore, punishment is not designed to undermine human dignity or status.

The New Criminal Code incorporates the aims of punishment, emphasizing rehabilitation of offenders while promoting deterrence and societal protection from criminal threats. In contrast to the previous Criminal Code, the imposition of criminal sanctions that emphasize incarceration, even for minor offenses, is deemed to exacerbate numerous issues within the penitentiary system, including overcrowding. Moreover, the temporary loss of liberty is anticipated to hinder the process of social reintegration, as offenders continue to endure societal stigma for having served a jail sentence, regardless of the modest nature of their offense.

The aims of criminal punishment, absent from the Old Criminal Code, have precipitated a paradigm shift in contemporary punitive measures. One of the government's initiatives to facilitate the attainment of punitive objectives under the New Criminal Code is the introduction of community service as a criminal sanction. Article 85 of the New Criminal Code delineates the conditions for community service, specifying that it may be assigned when the offense is subject to a prison sentence of less than five years, provided the judge imposes a maximum incarceration of six months or a maximum fine of category II. This article suggests that community service may serve as an alternative to incarceration as a kind of sanction. This implementation not only evaluates the efficacy of short-term incarceration for offenders but also emphasizes the rehabilitative goal of punishment. The execution of short-term incarceration is deemed to hinder the rehabilitation and reintegration of offenders. According to the theory of the relative goal of punishment, the application of social work punishment is fundamentally a mechanism employed by the state to achieve the restoration or rehabilitation of criminal offenders.

The judge must evaluate the defendant's confession, work capability, consent to the social work sentence, social history, work safety measures, religion, beliefs, political views, and financial capacity to pay the fine. The social work sentence ranges from a minimum of eight hours to a maximum of 240 hours. The implementation is limited to a maximum of eight hours in one day. If a fine is imposed, the court may allow payment in instalments over a period of up to six months, based on the convict's involvement in livelihood or other productive activities.

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Judging from these provisions, this criminal law reform has accommodated alternative sentencing options for minor crimes. The consideration of livelihood opportunities for convicts indicates that community service punishment has gradually attempted to rehabilitate and reintegrate the perpetrators. By not isolating the perpetrators from society and severing their economic or social ties, it has provided a means of rehabilitation for the perpetrators without creating new problems. As Sudarto stated, community service as a form of national criminal law reform is essentially part of criminal policy, which is fundamentally a rational effort by society to combat crime (Sudarto 1996).

However, the implementation of community service requires cooperation between the government, law enforcement officials, and the community. Convicts serving community service will be assigned tasks appropriate to their expertise and the needs of the community. One of the main challenges in implementing community service in Indonesia is the public perception that imprisonment is still the most appropriate and "fair" form of punishment for criminals. The strong legal culture in Indonesian society tends to be oriented towards retribution, where punishments that inflict physical suffering or restrict freedom are considered more effective in providing a deterrent effect (Napitupulu dkk. 2019).

Comprehensive educational programs should be designed for a wide range of groups, from law enforcement and lawyers to the public. Community leaders, non-governmental organizations, and the media also play a strategic role in building a positive public perception of the application of community service. For example, community leaders can promote principles of legal benefit that emphasize rehabilitation and social responsibility of offenders, while the media can highlight success stories of offenders who have made positive contributions to their communities (Widyastuti 2021).

In addition to the issue of public perception, there is a lack of infrastructure and support systems. To ensure that offenders serve their sentences properly and in accordance with applicable regulations, the implementation of community service requires adequate facilities and supervisors. However, many regions in Indonesia, especially remote areas, lack the necessary facilities to support this program. Implementing community service programs equitably is difficult because facilities such as hospitals, public parks, schools, and social institutions are still very limited. Supervision of offenders on community service is a crucial element that has not been fully facilitated. Supervisory personnel, such as correctional officers, often lack training and are inadequate in number to handle large numbers of offenders on community service. This raises concerns about the program's accountability and effectiveness, especially when offenders are placed in difficult-to-access locations. Without adequate supervision, there is concern that the implementation of community service will be suboptimal, ultimately eroding public trust in the program (Widyastuti 2021). The implementation of community service requires cross-sectoral collaboration. The government cannot address the shortage of supervisors and infrastructure alone. The implementation of community service requires support from various parties, such as community organizations, educational institutions, and the private sector. By providing more locations for community service, additional human resources, and training programs for supervisors and perpetrators, this collaboration can help fill the infrastructure gap.

Another challenge is the lack of specific regulations governing community service, other than those stipulated in the New Criminal Code. Regulations concerning the implementation of community service should be developed, particularly regarding the technical implementation of the New Criminal Code's social service provisions. With clear regulations, the implementation of community service will be more focused and measurable, thereby achieving the desired rehabilitation goals and preventing misuse of community service as a form of forced labor. Furthermore, rigorous evaluation of its implementation is essential. Evaluations should be conducted to assess the effectiveness of community service. This can be done by periodically collecting data on offenders, victims, and the resulting social impacts. Evaluation results should serve as a basis for future policy improvements and development, ensuring that existing policies remain relevant and effective. Indicators of success include the level of social reintegration of offenders and a reduction in recidivism rates.

IV. CONCLUSION

Criminal sanctions, when viewed from a penological perspective, particularly within modern and postmodern penology, place greater emphasis on the rehabilitation and social reintegration of the perpetrator. Community service offers the perpetrator an opportunity to improve themselves and reduce social stigma, thus becoming a more constructive solution to the social reintegration process.

This community service sentence is a form of criminal law reform with a restorative justice spirit. The existence of this sanction is a solution to the problem, overcapacity in Prisons, where this punishment allows offenders to remain integrated into society while undergoing rehabilitation. However, the lack of technical regulations regarding the implementation of this punishment poses a serious challenge. Furthermore, there are limited supporting infrastructure, limited understanding among law

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enforcement officials and the public, and the risk of forced labor. Therefore, comprehensive technical regulations are needed that govern coordination between elements to support the effectiveness of social punishment.

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