



## CRIMINAL POLICY OF SOCIAL WORKERS IN THE FRAMEWORK OF COMPLETING OVER CAPACITIES CORRECTIONAL INSTITUTIONS

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### ABSTRACT

*The politics of criminal law is related to the legal policy of imposing criminal sanctions on social workers which is currently a common problem. The imposition of these sanctions causes over capacities which results in the loss of the function and objectives of Correctional Institutions as fostering and protecting institutions, while research methods use normative juridical approaches using conceptual and statutory approaches. The conclusion is that the policy of imposing criminal penalties on social workers is appropriate in order to reduce over capacities. Recommendations need for legality in the form of a ministerial decree regarding the imposition of a criminal case for social workers.*

**Keywords:** Criminal Policy, Criminal Social Worker, Correctional Over Capacities.

### 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 basis of the state as the main source and its constitution, namely the 1945 Constitution of the Republic of Indonesia, political ideology of power, national development policies, to legal politics and criminal law politics.<sup>1</sup> From this description it is clear that Pancasila as the basis of the state is a source of substantive values and a source of law in carrying out reforms and establishing criminal law nationally. This need is also in line with the strong desire to achieve fairer law enforcement against all forms of criminal law violations in this reformation era.<sup>2</sup> An

<sup>1</sup> Wafda Vivid Izziyana, Arham Anom Besari, 2017, "Pengintegrasian Pidana Kerja Sosial Dalam Sistem Hukum Nasional". *Justitia Jurnal Hukum*, 1(2). h. 172

<sup>2</sup> Situmorang, V. H. 2019. "Lembaga Pemasyarakatan Sebagai Bagian Dari Penegakan Hukum", *Jurnal Ilmiah Kebijakan Hukum*. 1(3). h 89

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, it often emphasizes the deterrent effect of the expected punishment. so that criminal sanctions in the form of punishment as an alternative solution.<sup>3</sup> Criminal law in Indonesia still adheres to the imposition of sanctions according to the Criminal Code which was a former Dutch colony which is still in force until now, in addition to that the Criminal Code is also a guide in applying legal principles adhered to by Indonesian criminal law.

In the provisions of the Criminal Code article 10 which regulates the types of punishment, one of which is the main punishment includes death penalty, imprisonment, imprisonment, additional punishment. The legal concept of imposing criminal sanctions that is regulated focuses on the provision of punishment to convicts who are legally and convincingly proven to have been given a sentencing decision by a judge. Punishment is indeed a logical consequence for the perpetrator who is proven in court through the judge's decision where the perpetrator is then placed in a correctional institution as a place where convicts are subject to criminal law.

Correctional Institutions are places where coaching, rehabilitation and guidance for convicts is carried out. because the term prison has now been replaced by Correctional Institutions 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.<sup>4</sup> So that Correctional Institutions is no longer a place of retaliation but a place of repentance for convicts. Apart from that, one of the penal systems in Correctional Institutions is based on humanity so that inmates who are undergoing criminal proceedings are still given protection of their dignity.<sup>5</sup> So therefore, on the one hand, it is important to see how the condition of the existing Correctional Institutions.

The condition of Correctional Institutions is influenced by how many criminal acts are terminated in the form of sentencing decisions by judges. So the number of prisoners will affect the effectiveness of the guidance and protection that is in it, so it's not surprising that correctional institutions may experience over capacities which will be a problem. Therefore the problem being faced is no longer a matter of law enforcement during the investigation, prosecution and even in court proceedings but the law enforcement process in Correctional Institutions is also part of law enforcement which is often not monitored regarding excess capacities in Correctional Institutions which even data from the ministry of law and human rights that the capacities of

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<sup>3</sup> Mulyani, S. 2016. "Penyelesaian Perkara Tindak Pidana Ringan Menurut Undang-Undang dalam Perspektif Restoratif Justice". *Jurnal Penelitian Hukum De Jure*, 16(3). h.340

<sup>4</sup> Wibawa, 2017. "Pidana Kerja Sosial dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia". *Jurnal Media Hukum*, 2 (2), h.108

<sup>5</sup> Bambang Purnomo, 1985, *Pelaksanaan Pidana Penjara Dengan Sistem Pemasyarakatan, Ctk. Pertama*, Yogyakarta: Liberty, h. 125.

Correctional Institutions in Indonesia is over capacities of around 500 percent or even 900 percent.<sup>6</sup>

The condition of Correctional Institutions that is experiencing this capacities actually needs a reconstruction effort related to imposing a criminal sentence on someone who can use social worker punishment which is part of the main types of crimes in the provisions of the Criminal Code in Indonesia so that later judges are not required to impose criminal sanctions but also can also impose social sanctions. Actually, the purpose of giving social sanctions is to overcome overcapacities in Correctional Institutions. This condition is because when someone has been legally and convincingly proven, the only place is the Correctional Institutions so that there is no community media.

Based on the description of the background of the problems above, a problem arises that will be studied, namely how is the concept of a social worker punishment policy and how is the effectiveness of social worker punishment in the context of reducing overcapacities in Correctional Institutions in Indonesia.

## RESEARCH METHODS

The research method used is normative juridical using a statutory legal approach. This approach makes legal products of legislation as a basis for conducting an analysis of the problems of imposing social punishment as a result of the overcapacity of correctional institutions which will later become part of the criminal law framework. The legal materials technique used in this research is a literature study in accordance with the problems in the research.

## RESULTS AND DISCUSSION

### **Policies on the Criminal Impeachment of social workers in the Criminal Law Framework**

The existence of a criminal policy for imposing social workers is an alternative to criminal law in Indonesia. this is a form of development which the longer its implementation can see the best alternative in accordance with what is needed by the times which functions as an alternative to the enforcement of a deprivation of independence for convicts who experience criminal proceedings where criminal social work is part of the judge's choice in imposing the law.<sup>7</sup>

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

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<sup>6</sup> Direktorat Jendral Pemasyarakatan, kementerian Hukum dan HAM <http://www.ditjenpas.go.id/ada-Correctional-Institutions-yang-kelebihan-kapasitas-hingga-900-persen>, Ada Correctional Institutions yang kelebihan Kapasitas Hingga 900 persen. Diakses Pada tanggal 19 januari 2023 pukul 18.32 WIB

<sup>7</sup> Muladi, 1995. *Kapita Selekta Sistim Peradilan Pidana*, Semarang: Badan Penerbit Universitas Diponegoro. h. 132

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 the enactment of social worker law which is part of the political policy of criminal law which is actually appropriate to be used as a legal reform in the administration of basic punishment. Reforming the law is not an impossible thing to do because the goal of the social worker's policy is to reform the criminal law policy which has been done because it still applies the old ways of punishing someone even though the social worker aspect is a trigger for the implementation of more organized legal development.

Before we discuss in more depth the theory of criminal law policy, it is important to know what is meant by criminal law policy. According to Barda Nawawi, he argues that 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 term "penal policy", "criminal law policy" or "strafrechtspolitik".<sup>8</sup>

Literally that there is a criminal law policy as a form of criminal law enforcement itself. In accordance with Wisnubroto's opinion, criminal law policy is an action related to how the criminal law policy can regulate according to the legal needs of the community and to achieve what the criminal law itself aspires to be.<sup>9</sup> Based on this theory, the condition for the legal needs of the community is important so that if it is linked to the existence of a legal policy on imposing social workers in harmony with what is the desire of the community because seeing the imposition of a criminal law is considered not to have a deterrent effect and in fact the condition of Correctional Institutions is getting fuller because it no longer exists. alternatives in imposing the sentence, because of that the concept of imposing a sentence does not also become a reference for all criminal acts committed by the perpetrator but also needs to look at the weight of a legal claim on the perpetrator.

The concept of imposing social worker law only applies to minor crimes.<sup>10</sup> for anyone who carries out a legal requirement, a prison or confinement sentence is not imposed, but a social worker criminal law is imposed. Because of this, the concept of dropping requires seriousness, especially by the legislature in making this policy. if it is not supported by these institutions then the problem of over capacities 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.

According to Barda Nawawi, important aspects in determining criminal sanctions and the purpose of sentencing are the most important things for political policy makers in criminal law by determining the ideal method and strategy for the actions to be taken.<sup>11</sup> In line with this opinion, the determination of sanctions is an important factor because it relates to the rights and

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<sup>8</sup> Barda Nawawi Arief, 2008, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Konsep KUHP Baru, Cetakan Ke-1*, Jakarta: Kencana Prenadamedia Grub. h. 26

<sup>9</sup> Lilik Mulyadi, 2008, *Bunga Rampai Hukum Pidana: Perspektif, Teoretis, dan Praktik*, bandung, PT Alumni. h. 391

<sup>10</sup> Teafani Kaunang Slat. 2019. "Sanksi Pidana Kerja Sosial Terhadap Tindak Pidana Ringan Sebagai Upaya Pembaharuan Hukum Pidana Nasional", *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* , 4(2). h. 356

<sup>11</sup> Muladi dan Barda Nawawi Arief, 1998. *Teori-teori dan Kebijakan Pidana*, Bandung: PT Alumni, h. 95

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, of course this can be used as a media for legal reflection which is currently being enforced in imposing laws by using prison sentences without looking at other factors that will be affected as a result of criminal impositions. will affect capacities in Correctional Institutions.

Based on the description regarding the current policy of imposing criminal sanctions which are deemed to be ineffective because every perpetrator of a crime that is proven and has the power of law to carry out legal proceedings in Correctional Institutions is still not appropriate if the weight of the crime is a skewed crime. So that with the determination of sanctions in the form of imposing criminal sanctions on social workers as a solutive effort.

### **Effectiveness of Criminal Sentences for social workers who are over capacities in Correctional Institutions**

The effectiveness of criminal imposition by imposing criminal sanctions becomes ineffective 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 Correctional Institutions. The effect of the existence of a criminal imposition system has caused overcapacities in Correctional Institutions as a place to provide guidance and protection for convicts.<sup>12</sup>

The over-capacities condition of Correctional Institutions causes the role of Correctional Institutions to not be maximal in providing guidance and protection for these prisoners so that this actually eliminates the role of Correctional Institutions as legal subjects who are given the authority to carry out punishments for convicts.<sup>13</sup> Even though convicts are subject to restrictions on their rights and actions, it is certainly a problem if Correctional Institutions are in full condition.

Based on the theory of legal expediency initiated by Jeremy Bentham, this theory emerged due to legal political policies which at that time did not have any impact.<sup>14</sup> Based on this, the current sentence of imprisonment needs to be seen whether it then provides legal benefits or not. If you look at it more deeply, the aspect that is the problem is the overcapacities of Correctional Institutions, which is 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. So, if the Correctional Institutions overcapacities will actually issue a more burdensome burden considering the number of convicts, according to the data at the beginning of the article, an increase in capacities of around 500 percent to 900 percent is in the category of no longer effective when a person is sentenced to a Correctional Institutions.

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<sup>12</sup> Shinta Rukmi, 2008, "Prospek Pidana Kerja Sosial Di Indonesia", *Wacana Hukum*. VII(1), h. 78

<sup>13</sup> Lifiana Tanjung, 2018. "Peran Pekerja Sosial Dalam Pendampingan Anak Sebagai Saksi Pada Proses Peradilan Pidana Di Pengadilan Negeri Klas I A Padang", *Unes Law*. 1(2). h. 208.

<sup>14</sup> Sonny Keraf, 1998, *Etika Bisnis Tuntunan dan Relevansinya*, Yogyakarta: Kanisius, h. 93-94.

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.

That a denser social network in Correctional Institutions Correctional Institutions can increase the aggregate crime rate. This may be due to different mechanisms, such as knowledge sharing among criminals or imitation of peer behavior. However, the density of social interaction that exists in Correctional Institutions may also serve as a deterrent to criminal activity. So social sanctions are more capable of upholding honesty where the density of social interaction is higher. These social sanctions attach a sense of guilt and shame to criminal behavior, every convict who commits a crime is indeed caused by the influence of crime within the scope of Correctional Institutions.

Based on the description above, the author has an idea to resolve the over capacities which is currently a crucial issue, as follows:

1. Whereas the Minister of Law and Human Rights issued a Ministerial Decree concerning the imposition of criminal justice for social workers with the principle of administering criminal prosecution of social workers specifically for convicts who have committed oblique crimes, then convicts who have served less than 2 years with the duration of the sentencing process who have already undergone the sentencing.
2. 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
3. Give an appeal to law enforcement officials if a criminal act is an oblique crime, so as much as possible it is resolved through mediation

## **CONCLUSION**

Legal politics in the imposition of criminal justice for social workers is one of the efforts to reduce overcapacities in Correctional Institutions. Because later on the policy of imposing criminal penalties is not that in particular criminal acts tend to be resolved outside the court and there is a need for a criminal law policy so that what is a legal issue can be resolved effectively. It also seeks to straighten out what is the goal of criminal law, namely that it is no longer the goal of retaliation but correctional whose legal orientation is not retaliation but rather improving the legal culture of society.

The effectiveness of the provision of prison sentences is no longer in accordance with the conditions of Correctional Institutions, which are increasingly increasing by 500 percent to 900 percent, which in turn eliminates the duties and functions of Correctional Institutions as a coaching and protection institution for convicts. On the other hand, the state budget through the APBN will continue to increase because of the number of convicts. so that it is important for ministers 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 crooked 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.

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