

# JURNAL 2

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## Criminal Social Work To Overcome Overcapacity In Post-Pandemic Prisons

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### Abstract

There are currently various problems with prisons, including the emergence of problems regarding Over Capacity in prisons. Especially in the era of the Covid-19 pandemic, where prisons in Indonesia are not comparable to limited capacity space. In the renewal of criminal law, in this case, the Draft Law on the Criminal Code (RUU-KUHP) has discussed various alternative crimes, one of which is the existence of social work crimes. Research on social work crimes to overcome overcapacity in Post Pandemic Prisons (Prisons) uses normative legal research methods. The legal material used is to use library studies (Library Research). The regulations regarding social work crimes have been implemented in several countries such as the Netherlands, Portugal and Denmark. Social work crimes are also known as short-term deprivation of liberty and as an alternative attempt to carry out certain crimes with a short time.

**Keywords:** Social Work Crime; Over Capacity; Prison; Post Pandemic.

### Introduction

Indonesia is a country of legal law (*rechts stat*) the role of law occupies a primary/high position (*supermaxy of law*).<sup>1</sup> The law has a function to protect the entire Indonesian nation and all Indonesian bloodshed as stated in the 4th Paragraph of the preamble to the 1945 Constitution. The implementation of the legal objectives in the provisions of the 4th paragraph has been carried out with various efforts by the government, one of which is the existence of legal compliance. The law has always existed in society, society has never been separated from the name of the law. It is undeniable that the existence of the law at present is very far behind the development

<sup>1</sup> Bambang Sugeng Ariadi Subagyono, Zahry Vandawati Chumaida and Mochamad Kevin Romadhona, 'Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index In Indonesia' (2022) 37 Yuridika.[673].

of society. The existence of the law is expected to be able to answer every problem that occurs in people's lives. Law as a social instrument should pay attention to social developments in society by providing certainty and predictability for actions that are expected to cause serious social problems, for example efforts to overcome the spread of crime, which is therefore countermeasures and policy creation<sup>2</sup> (*policy / crime*) must be carefully calculated and implemented consistently.<sup>3</sup> The Covid-19 pandemic has infected various parts of the world and Indonesia is one of the countries that has also experienced the Covid-19 pandemic.<sup>4</sup> The Covid-19 pandemic has disrupted the condition of the country in various aspects, criminal acts actually seem to have a place in people's daily lives.<sup>5</sup> As stated by the Indonesian National Police (Polri) which stated that the crime rate increased during the corona pandemic. Karopenmas Mabes Polri, Brig. Gen. Pol Argo Yuwono stated that the increase in crime was 19.72 percent from the pre-pandemic period.<sup>6</sup> In February there were 17,411 cases. In March there were 20,845 cases. Argo stated that the cases that occurred included crimes, violations, disturbances and disasters. Of all, he stated disorders such as the discovery of corpses and suicides were the most numerous. However, he did not specify the number and location of the distribution. Bali Police data can be referred to see an increase in crime during the pandemic. The Bali police operations bureau's daily report on April 10 recorded 12 cases of crime. This figure increased to 15 crime cases in the April 20 daily report. The number of detainees during the Span of April 10-15 in Bali also increased from 492 people to 504 people.<sup>7</sup>

<sup>2</sup> Saleh Muliadi, 'Aspek Kriminologis Dalam Penanggulangan Kejahatan' (2012) 6 *Fiat Justitia: Jurnal Ilmu Hukum*. [1].

<sup>3</sup> SH Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Prenada Media 2018).

<sup>4</sup> Mochamad Kevin Romadhona, 'Does the Pandemic Affect Unemployment Rate in East Java? (A Study of Pre and Post COVID-19 Pandemic in 2016 to 2021)' (2022) 3 *The Journal of Indonesia Sustainable Development Planning* [164] <<http://journal.pusbindiklatren.bappenas.go.id/lib/jisdep/article/view/308>>.

<sup>5</sup> *ibid.*

<sup>6</sup> Defid Tri Rizky and Mochamad Kevin Romadhona, 'Prinsip Pembuktian Perkara Tindak Pidana Pencucian Yang Berdiri Sendiri (Stand Alone Money Laundering)' (2022) 5 *Media Iuris*. [381].

<sup>7</sup> Putu Sekarwangi Saraswati, 'Kebijakan Hukum Terhadap Penanganan Pandemi Covid-19 Di Indonesia' (2020) 14 *Kertha Wicaksana*. [147].

Penitentiaries as institutions for carrying out coaching for inmates and children are always increasing overcapacity. Based on data collected in June 2020, the number of prison residents was 230,310 people consisting of 50,276 prisoners and 180,084.1 prisons, this shows that prisons in Indonesia are experiencing overcapacity which reaches 74% on a national scale. Of the 33 Regional Offices in Indonesia, there are only 10 regional offices that do not experience overcapacity, namely the Regional Offices. D.I Yogyakarta, Kanwil Gorontalo, Kanwil Maluku, Kanwil Maluku Utara, Kanwil Nusa Tenggara Timur, Kanwil Papua, Kanwil West Papua, Kanwil Sulawesi Barat, kanwil Sulawesi Tenggara and Kanwil Sulawesi Utara. The government through the Ministry of Law and Human Rights in carrying out efforts to prevent the spread of Covid-19 in prisons has issued "Permenkumham No.10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children in the Context of Preventing and Overcoming the Spread of Covid-19, and Decree of the Minister of Law and Human Rights No.19. PK.01.04 of 2020 concerning the Release and Release of Child Prisoners through Assimilation and Integration in the Context of Prevention and Integration in the Context of Prevention and Human Rights No.19.PK.01.04 of 2020 concerning the Release and Release of Child Prisoners through Assimilation and Integration in the Context of Prevention and Integration in the Context of Prevention and Human Rights No.19.PK.01.04 of 2020 concerning the Release and Release of Child Prisoners through Assimilation and Integration in the Context of Prevention and<sup>8</sup> Integration in the Context of Prevention and Prevention and Human Rights No.19. PK.01.04 of 2020 concerning the Release and Release of Child Prisoners through Assimilation and Integration in the Context of Prevention and Integration in the Context of Prevention and Prevention and Human Rights No.19.PK.01.04 of 2020 concerning the Release and Release of Child Prisoners through Assimilation and Integration in the Context of Prevention and Integration in the Context of Prevention

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<sup>8</sup> Samuel Arsheldon, Supriardoyo Simanjuntak and Kornelius Benuf, 'Strategi Antisipasi Over Kapasitas Lapas Suatu Refleksi Atas Kebijakan Pencegahan Penyebaran Covid-19' (2020) 14 ADLIYA: Jurnal Hukum dan Kemanusiaan.[1].

and Prevention and Tackling the Spread of Covid-19". According to Yunaedi as the Director of Prisoner Development and Production Work Training of the Directorate General of Corrections of the Ministry of Law and Human Rights, out of this policy, it can save the state budget for the needs of correctional assisted citizens (WBP) to reach Rp 341 billion. The calculation is the result of a calculation of 270 days, from April to December 2020, multiplied by the cost of living of each prisoner per day, including food, health and coaching of 32. 269.

The Institute for Criminal Justice Reform (ICJR) reported that the burden of detention centers and prisons to accommodate Indonesian prisoners continued to increase by 233 percent as of January 2022. Overcapacity conditions in prisons and detention centers became serious problems, including the practice of buying and selling basic facilities that allegedly occurred in detention, causing dozens of prisoners to die as a result of fires.<sup>9</sup> The government has taken several policies such as building repairs or rehabilitation to the creation of new buildings to increase capacity.<sup>10</sup> Such a condition is a serious problem that must be resolved immediately.<sup>11</sup> As Woolf put it, "in managing prisons, it is necessary to pay attention to factors that worsen conditions in prisons, including: extreme prison density; excess of residents; poor state of the prison; riots among prisoners and others. This condition is exacerbated by the occurrence of the non-natural disaster Corona Virus Disiase 2019 (Covid-19) which has spread and caused the number of victims and losses of different property that are increasingly widespread and massive in Indonesia.<sup>12</sup> The conviction then changed more towards rehabilitative with the main goal of treating the perpetrator of the crime and putting him

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<sup>9</sup> Genta Tenri Mawagi, 'ICJR: Beban Rutan Dan Lapas per Januari 2022 Capai 223 Persen' *Antara News* (Jakarta, 2022) <<https://www.antaraneews.com/berita/2687101/icjr-beban-rutan-dan-lapas-per-januari-2022-capai-223-persen>>.

<sup>10</sup> Agus Suhariono and others, 'Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif)' (2022) 5 *Notaire*. [17].

<sup>11</sup> Mochamad Kevin Romadhona, Bambang Sugeng Ariadi Subagyono and Dwi Agustin, 'Examining Sustainability Dimension in Corporate Social Responsibility of ExxonMobil Cepu: An Overview of Socio-Cultural and Economic Aspects' (2022) 3 *Journal of Social Development Studies*. [130].

<sup>12</sup> Wulan Dwi Yulianti, 'Upaya Menanggulangi Over Kapasitas Pada Lembaga Pemasyarakatan Di Indonesia' (2020) 18 *Al-Qisthu: Jurnal Kajian Ilmu-ilmu Hukum*. [61].

back into society through a combination of coaching, education, and training. Imprisonment is clearly regulated in Article 10 of the Criminal Code (KUHP), it is explained that one of the main forms of imprisonment is imprisonment, this type of imprisonment is the type of sanction that is most commonly contained in the Criminal Code including other laws outside the Criminal Code that regulate criminal sanctions, and can be assumed at this time in every judge's decision in the judicial process still idolizes imprisonment in his judgment.

The magnitude of the State's desire to use imprisonment in tackling crime does not always have a good and appropriate impact. The use of criminal law policies in tackling crime actually causes criminalization of common acts, and tends to lead to overcriminalization. This excessive use of criminal law is contrary to the nature of criminal law as the "last step" or known as *ultimum remedium*, the use of criminal law policy is actually used as a *Premium Remedium* in the state's efforts to control people's actions.<sup>13</sup> The condition of prisons in Indonesia is overcrowded where the ratio of the number of prison residents and the capacity of prisons is not comparable in number.<sup>14</sup> The overcrowding of inmates in prisons occurs by several causal factors. However, there is a factor that needs special attention that causes the overcrowding of inmates in prisons is the penal system. The factor causing the overcrowding of inmates in prisons occurs not only because of the increase in crime but also because of the result of the criminal system. The current overcapacity conditions in detention centers and prisons in various provinces, of course, this is not a simple problem that is left alone, there must be a serious step taken by the government to deal with this problem. In addition to the length of the process in the criminal justice system, in the end, prisoners are also placed in detention centers, then prisoners who are spending their prisons are also in prisons. In addition to these two things, the problem here is about the harmony of punishment in the judicial system in Indonesia.

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<sup>13</sup> JM van Bemmelen, *Hukum Pidana I: Hukum Pidana Material Bagian Umum* (1st edn, Binacipta 1987).

<sup>14</sup> Mochamad Kevin Romadhona and others, 'Pengembangan Objek Wisata Potensial "Kampung Tenggher": Tantangan Dan Strategi' (2022) 2 *Jurnal Dedikasi Hukum* [38] <<https://ejournal.umm.ac.id/index.php/jdh/article/view/20217>>.

The problem lies in the relationship between conviction and correctional must be restored to the concept of rationality of the mechanisms of crime countermeasures. The focus of crime prevention efforts is not only on preventing and tackling crime but also on the policies of a correctional-oriented sentencing system. Developments in prisons today have problems where one of the problems and there are some prisons in Indonesia is the problem of overcrowding of prisoners. In line with the development of the paradigm that continues to change in the midst of society and efforts to enforce human rights in the criminal justice system, improvements and changes are made to the prison system through the umbrella of correctional law, namely the Law of the Republic of Indonesia No. 12 of 1995 concerning Corrections.<sup>15</sup> Criminal law as *ultimum remedium*, which is a last resort to improve human behavior, especially criminals and provide psychological pressure so that others do not commit crimes. Because the criminal law as a last resort in the Criminal Code Bill in addition to providing prison witnesses also regulates the interpretation of alternative crimes, because so far criminal sanctions or sanctions as the most reliable parameter of justice are prison sanctions. However, in the legislative policy in the draft Criminal Code Bill from 2010 to 2019, the paradigm began to shift not to focus on efforts to impose criminal sanctions as a parameter of justice but also to develop alternative sanctions by including alternative criminal sanctions, including criminal supervision, social work, compensation payments, and fulfillment of customary obligations.<sup>16</sup>

Research on social work crimes to overcome overcapacity in post-pandemic prisons is a type of normative legal research. This approach method uses a *statute approach*, and a comparative approach. The legal materials obtained by the author will be analyzed using library studies (*Library Research*) by studying and analyzing legal materials qualitatively related to the problems to be discussed.

The collection of legal materials is carried out with literature studies, namely by reading and studying both primary legal materials and secondary legal materials.

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<sup>15</sup> Fransiska Novita Eleanora, 'Pidana Penjara Di Indonesia'. [1].

<sup>16</sup> Pidana Kerja Sosial, 'Kebijakan Formulasi Dalam Ruu Kuhp Terhadap Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara' (2022) 10.[707].

Meanwhile, the analysis of legal materials is carried out through a deductive reasoning approach.

### **Criminal social work in some countries**

Social work crime is an alternative form of imprisonment mandated by the “Tokyo Rules” so that it can be included in the Criminal Code of every country in the world. Social work crime “*a community service order*” originated in Europe, which is a crime imposed on the perpetrator of a criminal act by doing useful work to avoid the criminal deprivation of liberty. This type of criminal has been known in Germany since the middle ages, and is imposed on criminals who are sentenced to fines but are unable to pay them, so they are obliged to carry out a work that is beneficial to people’s lives such as building water canals and city walls without being paid. Then then at the end of the 19th century and at the beginning of the 20th century the criminal work / *community service order* began to be listed as an alternative to the criminal deprivation of independence / freedom and fines in a criminal law in European countries, including Germany, Switzerland, Italy and Norway.<sup>17</sup>

Social work crime in its development has undergone modernization, namely eliminating its nature as *forced labor* and changing its appearance as “*a voluntarily undersignment obligation*” in order to avoid the criminal deprivation of independence, and can be an independent criminal offense or as an alternative to short-term imprisonment within the framework of a conditional “*suspended sentence*”. The criminal social work / *community service order* as another alternative to the criminal deprivation of freedom (prison) will eliminate the negative impact of life in prison and will cause shame on the convict himself, because his social work can be directly seen by the community, in addition to his social work directly bringing benefits to society. Criminal forms of social work can be carried out in hospitals, orphanages, nursing homes, schools and other social institutions, which wherever possible will be adapted to the profession, expertise and skills of the convict. This

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<sup>17</sup> Lidya Suryani Widayati, ‘Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara Jangka Pendek’ (2016) 17 *Kajian*. [569].



criminal will also reduce the density of prisons which greatly interferes with the continuity of coaching in prisons.

### **Regulation of Social Work Criminal Sanctions by Other Countries**

#### a. Netherlands

In the Netherlands the criminal penalty of social work can only be imposed as a basic criminal offense. The work carried out in criminal social work in the Netherlands is work done for the benefit of the general public service. The implementation of this sanction is with the consent of the defendant. Social work crimes in the Netherlands began to be applied since 2001 which in that year was applied to 20,000 prisoners, the implementation of this social work crime continued to grow until 2009 which has been imposed on 36,000 inmates. 21 In the first year after the social work crime was enacted, the recidivism rate was reduced to 67% lower for property crimes, 60% lower for crimes that categorized as violent. Overall, up to the first eight years of the implementation of social work crimes, the rate of recidivism was reduced by 50%.

#### b. Portugal

In Portugal, it is a sanction that allows employment in the public interest without being paid as an alternative if the dneda is not paid. Changes occurred in the 1983 Criminal Code when the criminal of social work was placed as the principal criminal, where this social work crime is still a crime of working without being paid. With the implementation of social work crimes in portugal, that from 2015 to 2019 the number of inmates in prisons in Portugal decreased every year by about 1,000 inmates. In 2018 and 2019 prisons in Portugal no longer *experienced overcrowding* as it was seen that the number of prison occupancy capacity was higher than the number of the prisoner himself. So far the Portuguese government has been successful in tackling the *overcrowding* of prisons in its country with a reduction in the prison population with an average percentage of about 44% annually.

c. Denmark

In Denmark, if a person is sentenced to social work, the convict is asked for a report from the body that oversees the conditional sentence. A report containing the circumstances of the convict's family, his employment history and the education of the convict. This report is used to determine whether or not a convicted person can be subject to social work crimes. In practice in Denmark, social work criminal sanctions are actually aimed at the penalized penalty of short-term imprisonment with a period of 15-18 months. But in reality the social work penalty is imposed against imprisonment which is subject to imprisonment between 6-8 months.<sup>18</sup>

Based on the comparison of the formulation of social work crimes in the Netherlands and Portugal, it can be seen that the two countries have succeeded in overcoming the problems arising from the sanctions of non-imprisonment with apply alternative sanctions of social work crime. Social work crime is the right solution for the two countries so that this punishment is exemplary or a reflection for a country that is trying to overcome problems the same in the criminal system, one of which is Indonesia. Where Indonesia is currently still *struggling* in overcoming the problem of *overcrowding* in prisons as a result of the excessive application of prison sentences. If you look at the successful implementation of social work crimes in the Netherlands and Portugal itself, this can be one of the effective forms of solutions that can overcome *overcrowding* in prisons in Indonesia itself.

**Criminal Social Work to Overcome Overcapacity in Post-Pandemic Prisons**

The Covid-19 pandemic that occurred so quickly that it hit almost all countries in the world has resulted in serious impacts in various sectors of life. For a moment, the global routine movement has stopped because the nature of the contagious Covid-19 virus is so aggressive and in various conditions it can be

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<sup>18</sup> Lidya Suryani Widayati, 'Social Work Crime as an Alternative to Short-Term Imprisonment' (2016) 17 Study 569 <<http://jurnal.dpr.go.id/index.php/kajian/article/view/376/306%0Ahttp://jurnal.dpr.go.id/index.php/kajian/article/view/376>>.

very deadly. WHO (World Health Organization) data recorded that 505 million people around the world were infected with Covid-19, of these data 6.07 million of them died.

Until now, the Covid-19 pandemic in several countries around the world has not subsided after its first emergence at the end of 2019. Nevertheless, the rate of infection has begun to be controlled through various social engineering and vaccinations. In Indonesia, Covid-19 cases have experienced a downward trend as can be seen from data from the Ministry of Health of the Republic of Indonesia as of April 18, 2022. There were recorded daily new cases below 1000. This achievement is allegedly inseparable from the participation of all elements of Indonesian society in the implementation of the vaccination program and complying with the recommendations on health protocols.

Prevention of Overcapacity in Prisons, in the renewal of criminal law, it is necessary to carry out in anticipation of the continuously increasing number of Prisoners. The imprisonment of prisoners is due to criminal acts that are threatened with the most imprisonment in the Criminal Code. When referring to the Criminal Code in Article 10, it is explained that the main crimes that can be imposed are the death penalty, life imprisonment, imprisonment, fines, imprisonment and plus the criminal cover, in the implementation of the sentence the judge tends to decide cases by imposing imprisonment, this is due to the rigid punishment system in the current Criminal Code. However, the Draft Criminal Law has accommodated measures that are expected to prevent overcapacity in community institutions, among others.

Efforts to reform the Criminal Law have been carried out since many years ago. The purpose of the law contained in the preamble to the 4th paragraph of the 1945 NRI Constitution, namely "to protect the entire Indonesian nation and to advance the general welfare based on Pancasila". National goals are synonymous with the terms "*social defence*" and "social Welfare". Based on the criminal law policy, "the purpose of punishment must be directed to the protection of society from welfare and the balance and harmony of life in society by taking into account the interests of the community / state, victims and perpetrators".

The provision of criminal sanctions is a means to achieve the objectives of a focused punishment to provide a balance between “community protection and protection /guidance of individual criminal offenders”. Barda Nawawi Arief argued that in essence, punishment contains two main aspects of purpose, including “(a) Aspects of community protection against criminal acts include; crime prevention; community protection; and restoration of community balance (conflict resolution (conflict oplosing) and bringing a sense of peace (*vrede-making*)); (b) Aspects of protection / guidance of individual criminal offenders (aspects of criminal individualization) include: (1) rehabilitation, rehabilitation, resocialization (socializing) convicts from committing acts that damage / harm themselves and others / society and to be ethical (moral) Pancasila, (2) exonerate guilt, and (3) protect the perpetrator from the imposition of sanctions or arbitrary reprisals (criminal is not intended to suffer and degrade human dignity)”.<sup>19</sup>

There are several theories of punishment that have formulated the existence of different punishments. Retreative theory, formulates that the purpose of punishment is solely to fulfill the ambition of revenge without having any further purpose. Meanwhile, utilitarian theory suggests that the purpose of punishment has a further purpose than just retaliation. According to utilitarian theory, punishment has a purpose for prevention, both general and special. Beyond these two theories there is a theory of an integrative nature, which articulates the purpose of punishment at once. According to integrative theory, the purpose of punishment is plural, that is, both as retaliation and as a prevention.

According to Prof. Muladi, about the theory of integrative punishment (humanity in the pancasila side), that the purpose of punishment is to repair damage both individually and socially caused by criminal acts. This conception departs from the basic assumption, that a criminal act is a disturbance to the balance that results in individual and social damage.<sup>20</sup>

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<sup>19</sup> Barda Nawawi Arief, *Tujuan Dan Pedoman Pemidanaan (Perspektif Pembaharuan Dan Perbandingan Hukum Pidana)* (Pustaka Magister 2017).

<sup>20</sup> Muladi, *Conditional Criminal Institutions* (Alumni 1995).

The correctional system in Indonesia has applied the integrative theory that has been accommodated in the law on corrections, elements of integrative theory can be seen to be a step to curb the perpetrators of criminal acts within a certain time as a step of retaliation for the actions they committed. The restraint in question is carried out in "Community Institutions (Prisons) and Detention Centers (Rutan) with a maximum security system". Elements of theory are relatively visible in the implementation of the stages of coaching carried out in the community system. Judging from the description above, the application of integrative theory in community institutions is indeed appropriate to be applied.

Barda Nawawi Arief and Muladi stated that the relationship between the determination of criminal witnesses and the purpose of conviction is an important point in carrying out criminal political planning strategies. Determining the purpose of punishment can be the basis for determining the means, means or actions used. The policy of establishing what criminal sanctions are considered best to achieve the goal, at least close to the goal, cannot be separated from the issue of selecting various alternative sanctions. The issue of selecting various alternatives to obtaining which criminal is considered the best, most appropriate, most appropriately the most successful or effective is a matter that is not easy. Viewed from a criminyl political point of view, the non-recognition of the increasing development of criminality can actually be caused by the inaccuracy of the type of criminal sanctions chosen and established.

The provisions regarding punishment in the Criminal Code, when compared to the Criminal Code that is currently in force, have undergone several fundamental changes. The section on sentencing includes the purpose of punishment, guidelines for punishment and reasons regarding the imposition of punishment for criminal offenders. This arrangement is more complete than the provisions of the Criminal Code in force today. RKUHP adheres to a two-track system (doble track system) where in addition to criminal offenders can be sentenced to criminal sanctions (criminal punishment), can also be subject to various actions (treatment). In addition, the types of punishment in the RKUHP will also increase with the existence of

social work crimes which are part of the main crime, a type of criminal act that has never been known before in the Indonesian Criminal Code.<sup>21</sup>

The application of Integrative Theory in Community Institutions has not been able to optimally reduce overcapacity in prisons and detention centers because the number of criminals and detainees is increasing. The large number of prisoners is because the Criminal Code as a rule governing prohibited acts does not clearly and explicitly regulate the purpose of punishment, so law enforcement officials are always inclined to prosecute and judges tend to sentence criminals to prison, because the theories and thoughts adopted or believed by law enforcement officials are not one thought.

The legal basis for the existence of prisons in Indonesia is contained in Law Number 12 of 1995 article 1 number 3 which reads “The Penitentiary, hereinafter referred to as prison, is a place to carry out the training of Prisoners and Correctional Students”. In principle, prisons, apart from being a place for implementing prisons, also function as educational and development institutions, as educational institutions, meaning prisons educate prisoners to become quality human beings, namely having faith in God and having good spirits, and as a development institution, it means making productive human beings either in prisons or when they are in society in order to succeed national development. As an alternative effort to reduce prison overcapacity, namely “inmate development program Reduction in the period of serving a sentence by doing a job is either a provision for prisons through inmate training programs inside or outside prisons provided by the government or social institutions”. This alternative in the Criminal Code Bill is called the Criminal Work Social Work.<sup>22</sup>

The criminal code in force now does not yet recognize the criminal term social work. But it has already been formulated in the Criminal Code Bill. The draft

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<sup>21</sup> S Rukmi, ‘Criminal Prospects for Social Work in Indonesia’ (2012) VII Legal Discourse <<http://ejournal.unisri.ac.id/index.php/Wacana/article/view/403>>.

<sup>22</sup> Victorio Hariara Situmorang, ‘Penitentiaries As Part Of Law Enforcement’ (2019) 13 Scientific Journal of Legal Policy[85].

Criminal Code then regulates the categorization of types of criminals in 3 (three) broad categories, namely principal criminals, additional criminals and criminals that have a special nature. Then in the types of criminals there are some changes. Significantly, such changes can affect correctional conditions and policies. In relation to the main crime, Article 65 paragraph (1) of the Criminal Code Bill states that the main criminal form is: a).imprisonment; b).criminal cover; c).criminal supervision; d).criminal fines; and e).criminal social work.

Provisions for the implementation of social work crimes will only be able to be carried out if they are supported by the existing value system in society. Legislative and governmental policies are therefore necessary. Thus, the government must more carefully look at the legal values that live in society to then be incorporated into positive law in the future, as well as social work crimes or other new forms of criminal work that correspond to the feeling of justice found in society. The community also needs to be given an understanding to accept the presence of prisoners working in the surrounding environment and not to hinder the implementation of social work crimes.<sup>23</sup>

Theoretically, social work crime contains several dimensions, namely: First, social work crime as a short-term criminal deprivation of independence. In accordance with the rationale behind the birth of a type of social work crime, namely to find alternatives to the criminal deprivation of independence for the short term. Even with a different application, as an independent criminal or as a condition relating to the imposition of a conditional sentence, the international tendency that occurs is the same, that is, to make the criminal criminal alternative of deprivation of liberty for the short term. Second, social work crime as an alternative to sanctions if the fine is not paid. Social work crimes can replace substitute imprisonment if the convicted fine fails to pay the fine. Thus, if any defendant by a judge is sentenced to a fine and then cannot pay the fine, then in exchange for non-payment of the fine the convict must serve a substitute sentence. In its implementation, it is this

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<sup>23</sup> Ahmad Fajri, 'Social Work Crimes In Limiting Excess Occupants In Prisons' (2019) 4 Lex Renaissance Journal.[46].

substitute imprisonment (fine) that can be replaced by a social work crime. Third, the criminalization of social work within the framework of clemency. In some European countries, this social work crime can be a condition of the establishment of clemency. For example, clemency can be imposed or applied to a convict on the condition that the convict must commit a social work crime.<sup>24</sup>

The Criminal Code Bill of 2019, in Article 85 already includes an alternative to imprisonment under 6 months. In the Criminal Code Bill, judges can choose social work crimes into criminal sanctions when the judge will impose imprisonment under 6 months or a fine that does not exceed category II (two) or Rp. 10,000,000.00 (ten million rupiah). The social work crime (community service order) which has been adopted into the Criminal Code Bill is a form of criminal sanctions that have been carried out previously by European countries such as the Netherlands and the United Kingdom which makes social work crimes as another alternative to criminal deprivation of independence / freedom.

Defendants who commit criminal acts/crimes with the threat of imprisonment less than 5 (five) years ago then the judge sentences them to imprisonment not exceeding 6 (six) months or a fine not exceeding a fine with category /class II can be sentenced to social work. There are several considerations for the criminal application of this social work, namely: a).the defendant's confession to the crime/crime he committed; b).the defendant's employability; c).the consent of the accused after the explanation of the purpose/purpose and all matters relating to the criminalization of social work; d).the defendant's social history; e).protection of the defendant's occupational safety; f).the defendant's religious and political beliefs; and g).the defendant's ability to pay a criminal fine. The implementation of social work crimes must not be commercialized, and can be imposed on the defendant a maximum of 240 (two hundred and forty) hours and a minimum of 8 (eight) hours. Social work crimes are carried out a maximum of 8 (eight) hours for a day and can be carried out in stages within a maximum period of 6 (six) months while

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<sup>24</sup> Gatot Sugiharto, 'Relevansi Kebijakan Penetapan Pidana Kerja Sosial Dalam Sistem Pemidanaan Di Indonesia' (2016) *Jurnal Ilmu Hukum Novelty* 7.[1].



still supervising the activities / activities of the convicted person in working on his source of livelihood or income and / or other useful activities.

If the convict is unable to fulfill either all or half of the obligation n yes to carry out the criminal work of social work without a valid/justifiable reason, then the convict shall be ordered to: a).repeat all or part of the social work crime; b).carry out all or half of the imprisonments replaced by social work crimes; or c).pay all or half of the fines that are changed to social work crimes or replace unpaid fines by serving imprisonment. The implementation of social work crimes is supervised by the prosecutor and guidance is carried out by community supervisors. The judgment on the crime of social work must also contain: a).the length of imprisonment or the amount of the fine actually decided by the judge; b). the length of the social work crime that must be carried out, by stating the number of hours per day and the period of completion of the social work crime; and c).sanctions/penalties if the social work sentence imposed is not carried out by the convict.

The mechanisms and provisions for the imposition of social work crimes include the following:

1. Social work convicts do not need to live in prison.

This is the fundamental difference between imprisonment. A person whom the judge decides with a criminal penalty of social work remains in their respective residences. They are only required to work at certain hours without being commercialized. Its implementation is carried out under the supervision of the supervisory board. Social work crimes with the inmates staying in their respective residences are very effective in the current post-pandemic period, where each of us as humans still has to comply with health protocols, by staying in their respective residences will be very effective because they do not live in groups which will certainly be much more vulnerable when living in detention centers with many residents.

2. Categories of criminal acts.

In general, in European countries, it is required that social work crimes can only be applied to not very severe criminal offenses. The requirements that may

be set in the application of social work crimes are requirements related to the perpetrator himself, for example the age of the perpetrator and the criminal record of the perpetrator. In the 2017 Criminal Code Bill, related to the requirements for criminal acts that can be rewarded with social work crimes, it is contained in Article 88 paragraph (1) which states, if the prison sentence to be imposed is not more than six months or a fine of not more than a category I fine, then the prison sentence or fine can be replaced with a social work crime.

3. Number of hours of criminal social work In general,

Provisions relating to the regulation on social work crimes also concern the arrangements on the minimum and maximum working hours of social work crimes that in each country vary. Relating to the number of hours of social work, it is explained in Article 88 paragraphs, (4), (5), (6), and (7) of the 2017 Criminal Code Bill which reads as follows:

- 1) (The crime of social work shall be imposed at most: a. two hundred and forty hours for defendants who are 18 (eighteen) years of age and above; and b. one hundred and twenty hours for defendants under the age of 18 (eighteen) years.
- 2) The social work penalty as referred to in paragraph (3) is at least 7 (seven) hours. The implementation of social work crimes can be paid in installments within a maximum of 12 (twelve) months by taking into account the activities of the convicted person in carrying out his livelihood and / or other useful activities.
- 3) If the convict does not fulfill all or part of the obligation to carry out the social work crime without a valid reason then the convict is ordered to: a) repeat all or part of the social work crime; b) serve all or part of the prison sentence replaced by the social work penalty; or c) pay all or part of the fine replaced by a social work penalty or serve imprisonment in lieu of an unpaid fine.

The provisions regarding working hours above have a humanitarian spirit by not forgetting the essence of the criminal, which is to provide benefits for the

community. When compared to some countries that have implemented social work crimes, the time is quite short. For example, in Denmark, it is six to eight months, while in Norway and Luxemburg, it is nine to twelve months, and in the Netherlands and Portugal it is four months.

According to the author, the time given by the 2017 Criminal Code Bill as stipulated in the above articles is relatively humane. The criminal work carried out is not forced labor, especially in the provisions of paragraph (6) it is stated that its implementation can be gradually carried out by looking at the activities of the convict. This provision further emphasizes the humane development of prisoners while upholding their rights and dignity. In addition, the criminal provisions of social work regulated in the 2017 Criminal Code Bill also take into account the age of the perpetrator, namely the existence of a ban on perpetrators who are minors, who under the labor law are prohibited from doing work. Thus, with regard to the age of the offender in the application of the criminal application of social work, its provisions have taken into account the rights of the perpetrator, especially with regard to the perpetrator of children.

4. Consent of the convict.

With regard to the consent of the convict, in Article 88 paragraph (2) of the Criminal Code Bill 2017, it is stipulated that in the criminal conviction of social work, it must be considered the following matters: a. the confession of the accused to the criminal act committed; b. the appropriate age of employment of the defendant in accordance with the provisions of the laws and regulations; c. the consent of the defendant after being explained regarding the purpose and all matters relating to the criminal work of social work; d. the defendant's social history; e. protection of the defendant's occupational safety; f. the defendant's religious and political beliefs; and g. the defendant's ability to pay a penalty of fine.

5. The criminal content of social work.

The judge who imposed the social work penalty in court only stipulated the number of hours and the period of waku that must be met. While the implementation is technically, which relates to the place where the social work

crime must be lived, how many hours the social work crime must be carried out each day, and so on, is carried out by the probation service. In the implementation of social work or social criminals, the offender is ideally engaged in activities that interact directly with society. This is in line with the main purpose of community service which encourages actors to socialize and get to know issues about the community. The ultimate goal of this social work crime is that it is hoped that the perpetrator will experience a process of "humanization" that can increase his trust and personality, increase intelligence, regain public trust in him, and convey a message to society that he and other perpetrators are only ordinary people who can make mistakes and can also change to better human beings. Social work crimes also restrict the movement of perpetrators through community service orders, thereby simultaneously preventing them from committing acts that lead to repeating criminal acts.

The bad influence of prisons is getting worse with the presence of overcrowding conditions in almost all prisons in Indonesia. Some research results show that overcrowding conditions are not accompanied by an increase in adequate facilities and infrastructure. Limited facilities and infrastructure for prisons and detention centers affect the problem of rehabilitation and placement of prisoners. Prisons have not been able to classify inmates based on the age and length of sentences imposed. Overcrowding also affects the state budget as residents' meal costs become increasing. Facilities and infrastructure that were already very minimal to carry out rehabilitation became increasingly minimal, because funds were concentrated to cope with the eating of prisoners. The conditions adversely affect short-term convicted inmates with long-term convicted inmates and novice inmates with recidivist inmates.

Since the last few years, overcrowding prisons/detention centers in Indonesia is a problem that is still difficult to overcome. So far, the increase in the number of residents has not been followed by the addition of space and residential capacity in prisons/detention centers. The following is an overview of the growth in the number of residents (prisoners and prisoners) compared to the number of detention centers and prisons in Indonesia from 2015 to 2019.

The problems that occur in prisons and detention centers are not as simple as imagined, nor is it just by adding or building new prisons, the problem will be resolved. The problem of overcrowding will not be solved casually by adding or building prisons to accommodate the large number of prisoners or inmates, obviously this is neither a solution nor a way out of this problem. If prisons are built or added, this is precisely part of the form of resignation on the part of the government by allowing the crime rate to increase every year, what should be thought about and considered is the problem of how to change the criminal system to be in line with the purpose of punishment so that the rehabilitation function will be truly applicable and a remorse arises in each prisoner so that he will no longer commit crimes or recidivist.

### **Conclusion**

Based on the description of the explanation above, it can be concluded *First*, the social work crime in the Netherlands began to be applied since 2001 which is in the first year after the social work crime is imposed, the rate of recidivism is reduced by 67% lower for property crimes, 60% lower for crimes categorized as violent. Overall, up to the first eight years of the implementation of social work crimes, the rate of recidivism was reduced by 50%. Meanwhile, in Portugal With the implementation of social work crimes the Portuguese government has succeeded in tackling the *overcrowding* of prisons in its country with a reduction in the prison population with the average percentage is about 44% annually. So that the criminal work of social work in the Netherlands and Portugal is effective as an alternative to the criminal deprivation of independence in the two countries. *Second*, the rules for the implementation of social work crimes in the 2019 RKUHP as a whole are complete, but there are several things that need to be underlined by the framers legislation. As it must be explained that the execution of social work by inmates is not paid for because it is a form of suffering or suffering.

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