



Expansion of Social Work Punishment to Solve Juvenile Delinquency Cases Under the New Criminal Code

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Abstract. The existence of children in a family is a gift that demands a form of responsibility. The form of responsibility in question includes educating children to be responsible for mistakes made. Such a paradigm is important; So that children do not underestimate their mischief. Childcare patterns, especially in the Children's Correctional Institution (LAPAS-ANAK), need to be improved. Children who are carried away in situations of delinquency due to disassociation need to be healed. The healing in question mainly involves Social Work Crime. Social Work Crime as an additional punishment needs to be observed and perfected its enforcement. On the other hand, the latest Criminal Code does separate penalties for children from adults. However, it needs to be studied, on the possibility of expanding the type of criminality in the shape of child social work crimes. This research employs a form of normative juridical analysis enhanced by a conceptual framework for comparing with Singapore's laws governing the practice of social work with children. According to the study's findings, youngsters who are in trouble with the law can consider social work crime as an option. The types of social work that can be administered to juvenile offenders must be established by the government.

Keywords: Social Work, Juvenile Delinquency, New Criminal Code.

1 Introduction

Background of the Development Pattern of Society in Indonesia and the Development Pattern of Punishment within the Criminal Code of Indonesia. Children's legal standing and position have changed as a result of the evolution of law and how it is currently applied in society. The legal protection of children is significantly impacted by changes in status and position in the legal system. The evolution of legal protection can be used to examine changes in how the law is applied to minors who are in legal trouble. The study of legal development cannot be separated from the study of legal philosophy. Philosophy of law is a science that studies the basic notions and systems of law in more depth [1]. One of the issues discussed The goal of the law is discussed in legal philosophy. In addition, the goal of law is separated into multiple schools and schools in the study of law as a science. In the legal domain, in particular, the goal of the legislation is to provide justice and benefit to minors who are in legal trouble. In this paper, we prioritise the legal expediency of protecting the rights of children who are in confrontation with the law. The rights of a child in the examination of criminal cases include the right to undergo a criminal examination process in a special court called

Juvenile Criminal Justice [2]. In addition to regulations, a legal system involving Juvenile Investigators, Juvenile Public Prosecutors, Juvenile Judges, Juvenile Correctional Officers is needed to regulate child protection as a series of systems called the Juvenile Justice System. The system is anticipated to shield kids from the criminal case examination procedure.

Currently, criminal cases involving children are increasing. This then makes children also involved in the examination of criminal cases. Be it as a perpetrator, witness or victim. This phenomenon has made society more sensitive in responding to crimes or offences involving children. Children in violation of Indonesian law continued to increase from January to early July 2019, there were more than 1000 case reports on children in conflict with the law received by Komnas Anak every day reaching 25 to 30 cases. The most prominent forms of delinquency cases are sexual violence, fights, murders, and other criminal cases. The perpetrators are mostly teenagers of various ages, genders, education, and living environments.

The current laws and regulations provide direction so that in the judiciary a child should not lose his/her rights. Children who are in legal trouble have to be granted “privileges” in the legal system. These privileges include the examination process being conducted by a separate section separate from the adult section, investigations by police/prosecutors who are in charge of examining and correcting the testimony of underage witnesses, not wearing uniforms and taking an effective, affective and sympathetic approach, [3]. The child should also be assured that he/she will not be physically or psychologically threatened during the trial process.

Recent cases in public courts obtained from the Bandung District Court and several non-governmental organisations (NGOs) such as the Child Legal Advocacy Institute (LAHA) and the Independent Volunteer Network (JaRI) indicate the involvement of children as victim witnesses. The extent to which Indonesian laws and regulations provide protection to children in their position as victim witnesses in the examination of criminal cases. In practice, a child who is used as a witness in a criminal case examination still experiences trauma and frustration and has a negative effect on their psychological side. Although there is currently an SPA Law to protect children in conflict with the law, it does not seem to be sufficient to protect children as victim witnesses.

Along with the amendments to the Criminal Code in 2020, there are several changes to crucial matters of material and principles of Indonesian criminal law. One of them is changes to the form of basic punishment in Indonesian criminal law. Principal punishment which previously did not recognise the form of social work punishment, now recognises the form of principal punishment in the manner in which social work is done. Undoubtedly, this modification will result in other adjustments and their impact on the community’s application. It is necessary to ascertain the social work punishment pattern, the application of social work techniques that can be utilised as a kind of discipline, as well as the advantages and significance of applying social work discipline to the problem of social work discipline supervision. Social service, which is a form of empowerment, is expected to help offenders reaffirm themselves in society by performing a number of “forced” labour tasks. Therefore, this punishment is one of the forms that can be used to help “accommodate” children or adolescents who are serving

a sentence with a form of “work”. The “work” will allow the juveniles to be fostered and returned to society without losing their position as a legal subject. For this reason, this research is interesting to do. How is social work punishment regulated under Indonesian positive law? How can the pattern of punishment of social work for adolescents in conflict with the law due to sexual crimes be achieved through the principle of justice?

2. Methods

This paper’s goal is to investigate how social work punishment is implemented and what kinds of social work are available to children who are in legal trouble under Indonesian positive law associated with the Principles of Justice.

The benefits obtained from this research are

- a. Theoretically, providing information and understanding in every evolution of juvenile criminal law in particular and legal science in general with regard to the topics covered in this study.
- b. Practically, this research is expected to be useful for all parties involved in Indonesian law enforcement.

In this study, the authors employ normative juridical research. The study presents the law as a set of norms and is a type of legal research. The principles, norms, rules from laws and regulations, agreements, and doctrines make up the normative system [4]. This research is descriptive analytical in nature, meaning it describes legal occurrences ranging from broad issues to more focused ones [5].

The historical, conceptual, and statutory techniques were all employed in this study. The legislative approach examines legal frameworks pertaining to the application of social work sanctions associated with the prevalence of sexual abuse cases committed by child perpetrators. The conceptual approach is used to look at concepts and theories in studying and answering legal problems. The historical approach will be used to complement the data in the previous two approaches.

Legal resources that are primary, secondary, or tertiary in nature are examples of secondary data used in this study. Primary legal materials in this document are legislative legal materials pertaining to the concerns surrounding the implementation of online trials related to the presence of, arranged from the highest to the lowest level suspects in the pandemic era. This paper is also complemented by sources in the form of journals on social work in Indonesia and Singapore. Secondary legal materials consist of books, articles, journals related to the above. Meanwhile, tertiary legal materials consist of dictionaries and encyclopaedias.

In collecting data, this paper uses a literature study conducted through the collection of printed reference materials and e-books. The reference materials are then deduced in order to obtain specific main ideas. The research location will be held in Bandung.

An international human rights treaty is the Universal Declaration of Human Rights. Children are included in the definition of person in Article 7 of the UDHR. in order for a child to have equal access to legal protection from discrimination. It is clear from the explanation of Article 7 of the UDHR that the goal of legislation is to create the same

sense of justice for every human being including children as found in the conception of the Pragmatic Legal Realism school.

In the second principle of Pancasila, which states the Indonesian nation's recognition of the status of humanity, the conception of the Pragmatic Legal Realism school is also contained. The principle reads, "just and civilised humanity". The Indonesian people are entitled to fair treatment and in accordance with the respectful values of a civilised nation. Moreover, Indonesia is determined to be a state of law, one of which is respect for rights of humanity, particularly children's rights.

The 1945 Constitution contains a number of articles that serve as Indonesia's legal foundation for defending children's rights. "Every child shall have the right to survival, growth, and development as well as the right to protection from violence and discrimination," reads Article 28 B of the 1945 Constitution.

"Every person shall have the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law," according to Article 28 D paragraph (1) of the 1945 Constitution

The 1945 Constitution's Article 28 G paragraph (1) further declares: "Every person shall have the right to security and protection from violence, as well as the protection of his or her person, family, honour, dignity, and property under his or her control." threat of fear when it comes to exercising a human right"

The 1945 Constitution's Article 28 I paragraph (1) enumerates human rights that are to be upheld and never violated. These rights are as follows:

"Human rights that cannot be diminished under any circumstances include the right to life, the prohibition against torture, the freedom of conscience and thought, the right to religion, the prohibition against slavery, the recognition of one's identity as an individual before the law, and the prohibition against prosecution on the grounds of laws that go back in time."

Child Law Regulations in Indonesia at this time are still scattered in various forms of regulation. Thus, it makes its own difficulties for understanding and implementing the Child Law itself. In the scattered legal arrangements, there is pluralism regarding the criteria for kids. This is so because every law establishes unique requirements for minors.

3. Result and Discussion

3.1 Legal Arrangements on Children in Indonesia

A child is any individual who is not yet eighteen (age), including unborn children. Every married couple should cherish their children since they are the future of their family, their country, and the world. In order to safeguard and encourage children to develop to their full potential, the government, society, and parents all play crucial roles. In actuality, though, not every child in the country is able to exercise their constitutional rights in the legal system.

According to Singapore's regulations, an adult who is at least 18 years old is considered a child. Kids are allowed to work in light work and work that is not prohibited by laws and regulations as follows:

- a. In Article 68 of the Employment Act (Chapter 91), explains that children who can work at a minimum age of 13 (thirteen) years or more with balanced abilities and work.
- b. In the Protection of Children In Singapore, explains that it prohibits children under 12 (twelve) years of age to work. While children or young people are allowed to work under the rule of law. The Labour Law also limits the jobs that children or young people can start and the maximum working hours for them.
- c. In the book *Teens and The Laws from SAWL* (Singapore Association of WomenLawyer), it states that children can work at a minimum of 13 (thirteen) years or older. For ages 13-15 (thirteen to fifteen) years old can work on the condition that it is part of the school curriculum and light work such as shop assistants.
- d. In *Restrictions On The Deployment Of A Child*, that a child is allowed to work at the age of 12 (twelve) years but under 14 (fourteen) years can become a worker but under the following conditions not working at night, working not exceeding 3 (three) hours without or not more than 6 (six) hours per day.

Based on the above description of ILO Convention No. 138 with Indonesia's legal system and Singapore, it can be concluded that Indonesia has regulated the minimum age of children allowed to work in light work and work that is not prohibited by laws and regulations is appropriate because it regulates the minimum age of 13 (thirteen) years or more with applicable provisions. Whereas in Singapore, that there are exceptions in the *Restriction On The Deployment Of A Child*, as explained above at the age of 12 (twelve) years old has been allowed to work by fulfilling the applicable provisions. As it is known that Indonesia and Singapore have ratified ILO Convention No. 138, so Singapore has not fully provided legal protection because the age of children who are allowed to work is 12 (twelve) years so that there is no harmonisation between the Convention and the applicable laws and regulations.

The rules referred to above, provide guarantees regarding child protection but it is often seen that the rights that should be obtained by children are neglected, especially youngsters who are in legal trouble in order to remove the assurance and safeguard of the child's future. As a consequence, the law's expectations are not met. This does not adhere to the fundamental principles of the law or the purpose of law that according to Gustav Radbruch, namely justice, utility and legal certainty [6]. So that the law should have three goals where each goal is equal, where legal justice must be balanced with legal certainty and mutual benefit for law enforcers and society, but this is not achieved. With this, justice for children cannot be expected anymore, this is contrary to John Rawls, in his book entitled *A Theory of Justice*. There are several theories of justice, namely:

1. Optimising liberty. This limitation of freedom serves just two purposes:
2. Equality for all, including equality in social life and equality in the use of natural resources (also known as "social goods"). Only in cases where there is a chance of larger benefits can restrictions in this area be approved;
3. Elimination of disparities based on money and place of birth, as well as equality of opportunity for honesty

To provide answers to this, Rows gave birth to There are three (three) justice principles that are frequently mentioned by various specialists, specifically:

1. The principle of equal liberty;
2. The principle of differences;
3. The principle of equal opportunity

According to Rawls, in the event of a conflict, the equal liberty principle ought to take precedence over the other principles. Furthermore, the equal opportunity principle need to take precedence over the principle of distinctions.

In Indonesia's positive provisions, the enactment of Law Number 8 of 1981 (KUHAP) to replace the HIR is no longer in accordance with Indonesia's national ideals. This change brought fundamental changes to the procedure for resolving criminal cases in Indonesia conceptually and implementally. KUHAP lays the foundation of humanism in it so that the main objective to be achieved is not legal order and certainty but the protection of the human rights of a suspect or defendant. The protection of the human rights of a suspect or defendant is expected to be implemented at every level of examination of a criminal case, namely from the time a suspect is arrested, detained, prosecuted and tried in court. Law No. 8 of 1981 also contains the hope to provide free and responsible judicial power in examining and deciding a criminal case.

Herbert L. Packert in his book *According to The Limits of The Criminal Sanction*, there are two models used in the criminal justice system: the due process model (which protects rights) and the crime control model [7]. The due process model examines the criminal as a subject in the case examination, in contrast to the crime control model, which sees the offender as an object. The protection of the accused's rights and the requirement that a person's guilt be determined by a fair and impartial trial are features of the due process model, whereas the efficient operation of the case examination process, including quick arrest, quick trial, and the use of the presumption of guilt, are characteristics of the crime control model.

Natural Rights: Human Rights Human rights are those that belong to people just by virtue of their humanity. Humans possess them exclusively because of their inherent worth as human beings, not because they are bestowed upon them by society or the law. As was previously noted, the natural rights theory is where the concept of human rights originated. The natural law theory is the foundation of the natural rights philosophy. A movement known as the Renaissance arose in opposition to authority, calling for a return to individualistic Greek and Roman culture.

The school of natural law, founded by Thomas Aquinas and Grotius, carried on the renewal movement by claiming that everyone is subject to God's power and that God determines every individual's course in life. This implies that all people are endowed with a distinct individual identity that is distinct from the state in which they live and has a natural right that declares that each person is an autonomous being, in addition to the King's power being constrained by divine laws.

John Locke, a natural law advocate, on the other hand, maintained that every person is born with intrinsic natural rights to life, liberty, and property, which are part of society and cannot be taken away by the government. A social compact gives the sovereign authority over the community's inalienable rights. If the sovereign violates an

individual's natural rights, the people have the power to remove him from office and install a new leader who will uphold these rights.

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"The 1945 Constitution then states in Article 28 D, paragraph (1), that "Every person shall have the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law."The 1945 Constitution's"

"Article 28 G paragraph (1) adds, "Every person shall have the right to security and protection from threats of fear to do or not do something which is a human right, as well as the protection of his or her person, family, honour, dignity, and property under his or her control."

Human rights are specified below in Article 28 I paragraph (1) of the 1945 Constitution, which states that they must be upheld and cannot be disregarded for any reason:

"Human rights that cannot be diminished under any circumstances include the right to life, the prohibition against torture, the freedom of conscience and thought, the right to religion, the prohibition against slavery, the recognition of one's identity as an individual before the law, and the prohibition against prosecution on the grounds of a law that goes into effect retroactively."

The KUHAP has recognised several fundamental rights regarding people undergoing criminal investigation. These rights include:

1. If the child is examined as a perpetrator

A person/child who undergoes a criminal investigation and is suspected and prosecuted for his/her actions. Under the provisions of Chapter IV Articles 50–68 of the Criminal Procedure Code grant the individual or minor the right to :

- a. Examination by detectives who will be handed over to the Public Prosecutor;
- b. Submission of the criminal case to the court by the Public Prosecutor;
- c. immediate trial;
- d. to prepare a defence (to be told of the charges in a language that he understands at the hearing, and to be informed of the charges in a language that he understands at the hearing);
- e. to freely provide testimony to the judge or investigator, to have an interpreter present during the trial;
- f. In compliance with the guidelines of the Criminal Procedure Code, obtain legal support from one or more legal specialists at every stage of the criminal case investigation and be free to select his own legal representation;
- g. To have legal counsel on a Pordeo basis for suspects/defendants who are charged with the maximum penalty (imprisonment above 15 years or death penalty) and for those who cannot afford it;
- h. visit a personal doctor during the detention period;
- i. contact and receive his/her family
- j. correspondence with legal counsel and family;
- k. visits from clergy;
- l. request an appeal

3.2 Principles and Patterns of the Social Work Sentencing System

One of the elements influencing how quickly a country develops is the calibre of its human resource base. It is impossible to isolate attempts at human resource development from the influences of health, education, the environment, and society culture. A nation's people lacking sufficient education might pose a threat to its security. 1945 Republic of Indonesia Constitution (henceforth referred to as the constitution). The Constitution's Article 1(3) makes it clear that the State of Indonesia is a State of Law. According to this clause, the assurance of everyone's equality before the law is one of the most crucial tenets of the rule of law (Equality Before The Law). Consequently, everyone has a right to equal treatment under the law as well as recognition, assurances, protection, and certainty of a just law.

Criminalisation or the imposition of punishment on someone who is proven to have committed a criminal offence is not solely aimed at retaliation for the act committed, to deter the perpetrator or to scare others from doing the same thing. A more important goal is the endeavour to help convicts recognise the consequences of their crimes, repent of them, and return to society as law-abiding, law-abiding individuals who respect moral, social, and religious principles in order to promote a secure, harmonious, and orderly communal life, so that they can return to society and become good and useful members of society, so that they can be accepted in social life.

Guidance in the State Detention Centre (hereinafter abbreviated as RUTAN) and in the Correctional Institution (hereinafter abbreviated as LAPAS) is a system of imprisonment which initially emphasised the elements of revenge and deterrence, but a system of imprisonment that emphasises the components of deterrence and retaliation. The concepts of rehabilitation and social reintegration, which seek to make prisoners acceptable members of society and prevent them from repeating their past transgressions, are now seen as being incompatible with the elements of retaliation and deterrence. Law Number 12 Year 1995 on Corrections, Article 2 (henceforth referred to as the Corrections Law) states that:

"The Correctional System is a set of guidelines based on Pancasila that govern the direction, parameters, and methods of fostering correctional inmates. It is implemented in a way that involves the community, the fosterer, and the fostered inmates in order to enhance the quality of the inmates in order for them to learn from their mistakes, better themselves, and refrain from committing crimes again in order to be reintegrated into society, take an active role in its development, and lead reasonable lives as law-abiding citizens."

Punishment has more purposes than only discouraging inmates under the current Indonesian legal system. Punishment is an integrated approach that involves coaches, inmates, and society at large in order to rehabilitate and socially reintegrate incarcerated individuals. The goal is to raise the standard of correctional inmates so they can learn from their mistakes, better themselves, and refrain from committing crimes again in the future. Fundamentally, corrections are a manifestation of how formal society's response to crime has been institutionalised. At first, the community's response focused solely on the aspect of causing pain to those who disobey the law.

But as society develops, the element of causing misery must also be tempered with humane treatment by considering the human rights of criminals as both social and individual individuals. As a result, the correctional facility must serve as a location for inmate rehabilitation through a variety of coaching activities. Human rights must be taken into consideration while sentencing criminals in correctional facilities.

In Singapore, social work is awarded with some conditional criteria. Article 345 of the Singapore Penal Code which regulates Molesty has several arrangements. Among them are :

Outrage of Modesty (colloquially referred to as “molest”) is criminalised under Section 354 of the Penal Code, the relevant portion of which reads as follows:

Anyone who assaults or uses criminal force against another person with the intent to offend or knowing that doing so will likely cause the other person to lose respect for themselves faces up to three years in prison, a fine, caning, or any combination of these penalties.”

Although most would think that an act of molest is a sexual offence, Section 354 is actually classified under the “Criminal Force and assault” category of the Penal Code. Thus, an offence of “molest” is founded upon the non-sexual offences of “criminal force” and “assault”, both of which are respectively defined in Section 350 and 351 Penal Code:

Criminal Force:

“Anyone who knowingly uses force against another person, without that person’s consent, with the intent to cause an offence, or knowing that using force will likely result in an offence, injury, fear, or annoyance to that other person, is said to use criminal force against that other person’s person.”

Assault

“any gesture or preparation made with the intent or knowledge that it is likely to cause any person present to suspect that the person making the gesture or preparation is about to use criminal force against that person.”

Importantly, because an outrage of modesty offence is founded on the use of Criminal Force and/or Assault, one cannot be guilty of an offence of molest simply by staring at someone. It should also be noted that the offence of outrage of modesty is gender-neutral.

Section 352 of the Penal Code stipulates the penalty for the offence of Criminal Force and Assault. This penalty consists of a maximum 3-month jail sentence, a maximum \$1,500 fine, or both. Therefore, considering that the stipulated sentence for the offence of “molest” is longer—up to three years—it may be argued that it is an enhanced type of assault or criminal force.

There is no apparent answer as to what constitutes as an outrage of “modesty”. The Penal Code has no provision which addresses this question. However, in practice, this has presented little difficulty. The following are some examples where the Courts have found an offender guilty of committing an offence under Section 354 of the Penal Code:

- a. Hugging;
- b. Touching the breast(s) of a woman;
- c. Squeezing/slapping the buttocks

As is apparent from the forecited examples, what constitutes as “molest” can often be instinctive.

In the realm of criminal law, the intention – or what legally practitioners refer to as “mens rea” – of the alleged perpetrator must also be considered. What then is the fault element of this crime? The law is clear on this:

The alleged perpetrator must have intended to offend the person’s modesty or was aware that his actions would probably offend that person’s modesty.

The logic of a requirement of such an intention is apparent.

Clearly, in instances where a husband hugs his wife, he cannot be said to have intended to molest his wife, nor would he have thought that by hugging his wife, her modesty would be outraged.

Sentences Guidelines :

The Court would calibrate the sentence based on the following non-exhaustive factors:

- a. The extent of sexual abuse. This takes into account the area of the victim’s body that the accused touched, the manner in which the accused touched the victim, and the length of the immodest outburst.
- b. The offense’s conditions. Considerations such as (i) premeditation; (ii) using force or aggression; (iii) abusing a position of trust; (iv) using deception; (v) the existence of other aggravating acts in addition to the outrage of modesty; and (vi) taking advantage of a vulnerable victim are among them.
- c. The victim’s bodily or psychological injuries (which are typically detailed in a victim impact statement).

The Court would classify the offence in one of the following three bands after analysing the previously indicated factors:

- a. Less than five months in jail is the first band;
- b. five to fifteen months is the second;
- c. and fifteen to twenty-four months is the third.

It is important to note, however, that the forecited “Bands” were fashioned by the Courts before Parliament increased the maximum imprisonment for molest in 2022 (from 2 years to 3 years). Thus, the imprisonment terms for Band 1 to 3 will, in light of this increase, likely be recalibrated accordingly. *bebeas, berarti dalam K*

When freely translated by the author, it can be categorised that for the punishment of minor sex offenders, social work can be imposed. The things that are considered in giving social work punishment are:

1. The punishment must not exceed 14 days;
2. The type of sexual offence committed (the more serious the offence, the possibility of community service is unlikely);
3. The judgement of the judge,
4. and the ability to pay the fine or the offender’s ability to work.

Human rights in the sense that each person in a community institution is still entitled to their rights under the law and is treated humanely while incarcerated. This humane treatment can be seen in whether or not the cell is inhabited because of the large capacity of the person occupying in 1 cell. The number of people who exceed the capacity in 1 cell becomes a separate problem for residents of correctional institutions.

Prisoners who are isolated from the outside world; with placement conditions that are sometimes inappropriate. These conditions make prisoners emotionally vulnerable. So that the purpose of punishment in correctional institutions is not one of the solutions to the problem of crime, but instead creates new problems. Prisoners are vulnerable as a result of being in conditions that should reflect their guilt but the opposite, being together in 1 cell with a number that exceeds capacity.

Punishment for the perpetrator must still Be mindful of the prisoner's human rights. Proper guidance in correctional institutions needs to be carried out through a process of preparing oneself to be ready to return to society. This focal point should be of common concern to society. So that people who are in correctional institutions can become better people when they finish serving the sentence process. Prisoners do not commit crimes again. This is also part of the rights of prisoners in the sense of their right to be able to plunge and return to society by not repeating their actions.

It goes without saying that establishing a correctional facility that respects the human rights of criminals is a joint responsibility of the state, society, and correctional institutions. When it comes to the subject of prisoner rights, the issues surrounding education and training that these inmates get in correctional facilities are intrinsically linked. One of the reasons why people commit crimes and wind up in jail or prison is a lack of business and educational prospects. Of course, the government must also consider the realisation of inmates' rights as outlined in Law No. 12 of 1995 concerning Correctional Institutions during this coaching process.

Out of all the rights mentioned above, the right to instruction and education is the one that has the strongest connection to inmates' mental development. This is undoubtedly in line with the 1945 Constitution, which states that educating the populace is one of the nation's values in Indonesia. The government must be observant of this phenomenon, in addition to being able to provide guidance to prisoners so that they can be accepted back into society, this situation should be utilised properly as a very appropriate means of providing education and teaching to prisoners involved in criminal matters. This is very helpful in terms of reducing the number of prisoners who get less education in the community.

The implementation of justice as the goal of law is demonstrated by the various criteria for inmates depending on the type of criminal act committed. Of course, this is intended so that criminals as specified in Government Regulation No. 99/2012 concerning Limitation of Remission are not necessarily given remission and equated with other criminals. However, in its application, the benchmarks for this provision of good behaviour are not regulated limitatively by the Law, nor other subsequent regulations. So that this legal looseness can be used as a tool for law enforcement officials to provide a reduction in detention period to prisoners [8] .

The government and society all need to think of one form of alternative solution for proven criminals to overcome the number of existing correctional institutions with the large capacity of its inhabitants. The expected deterrent effect will not be realised as long as the government and society all still focus on the number / capacity of correctional institutions. Creating solutions for offenders not to re-offend or warnings for people not to commit crimes is one form of overcoming these problems. So that the perpetrators of crime are not only deterred from repeating their actions, but the

perpetrators can also be useful again for the community. One of the solutions to solve the problem of correctional institutions is through social work punishment. Social work punishment is something that has never been touched by the government in Indonesia until now, even though this can be an alternative to help overcome the problems of fostering residents of correctional institutions.

However, inmates have rights that need to be upheld and supported. There are differences in the rights of adults and children. Every citizen must be given priority in this situation. Law No. 12 of 1995 has provisions for the general protection of inmates; nevertheless, Article 20 of Government Regulation No. 32 of 1999 places restrictions on the protection afforded to prisoners. In the jail, inmates are raised and taught to be law-abiding citizens. They also have rights as inmates in the prison, which the prison must uphold before the inmates are released and allowed to return to society.

If the policy on the formulation of imprisonment sanction in the Criminal Code or laws that are not included in the Criminal Code are taken into, it can be said that the policy so far has not supported or embodied the idea of correctional, namely the idea of rehabilitation and the idea of resocialisation. The policy on the formulation of imprisonment sanction law not included in the Criminal Code but nevertheless required to be formulated imperatively (either singularly, alternatively, or cumulatively). Although looking at the current trend, imperative system in legislation seems to have been reduced, as said by Roeslan Saleh most of the current legislation system does not have imperative nature but has changed with primitive nature.

The main weakness of the imperative system is that it is very rigid because it is "mandatory". So the judge is faced with a definite sentence and is very mechanical, because the judge, as if he must determine the punishment automatically. Such characteristics, namely rigid, imperative, definite sentence and mechanical/automatic, clearly show that such a system is evidence of the legacy or influence of the classical school, which seeks to objectify criminal law from the subjective traits of the offender and denies judges the authority to choose the kind and severity of punishment.

This imperative system is the most dominant factor or the main factor that does not support selective and restrictive policies. These two policies not only mean that there must be savings and restrictions on imprisonment formulated, threatened in the legislation, but there must also be opportunities for judges to apply imprisonment selectively and limitatively, this means that there must also be other types of punishment/alternative measures that are non-custodial in nature. The second factor that does not support selective and limitative policies is the absence of statutory provisions as a safety valve (*veiligheidsklep*) that provides guidance and authority for judges to avoid, limit or soften the application of imprisonment that is formulated imperatively. Moreover, a single formulation is clearly not in accordance with the basic idea of imprisonment that wants to be developed in Indonesia with a criminal correctional system. According to Barda Arief Nawawi, there are contemporary criticisms against imprisonment that can be categorised into three groups: criticism from the *strafmodus*, criticism from the *strafmaat*, and criticism from the *strafshort angles* [9]. Criticism from the perspective of *strafmodus* discusses the implementation of imprisonment, which can be seen based on the way of guidance and the institution. Furthermore, criticism from the angle of *strafmaat* discusses the duration of

imprisonment, especially for those who want to reduce the duration or limit the implementation of imprisonment. Criticism from the angle of straitshort discusses the imposition or use of imprisonment based on the type of punishment, which is the hope that judges in imposing imprisonment will be more selective. On the other hand, imprisonment is still needed to sanction certain criminal offences, namely serious criminal offences. The basis of this opinion is based on the consideration of the eighth resolution of the sixth UN congress on "Alternatives to Imprisonment". In the tenth consideration on "Development of measures for the social resettlement to imprisonment" asserts, in general, that while other forms of punishment are necessary, incarceration is the most effective is also still needed in some criminal offences that are considered serious [10] .

In line with the fifth principle of "social justice for all Indonesian people," Indonesian customs are founded on the concept of Pancasila, which serves as the foundation for all Indonesian legal systems." Indonesian society expects criminal punishment based on the ideals of Indonesian society that can be useful for the nation and society of Indonesia. Social labour punishment is appropriate with the culture of Indonesian society because it is an activity that can help in providing public facilities and infrastructure that will be useful for the general public.

Social work punishment holds the value of protection from the cruelty of fellow prisoners in prison who are famous for their criminal acts. Social work punishment furthermore conforms to the Indonesian people's culture, namely doing activities that benefit the general public without pursuing wages or fees for the work they do. Another advantage of social work punishment is that the convicts will be guided and nurtured so that their character is in accordance with the values prevailing in society. With social work punishment, the possibility of the convict committing a criminal offence again will be very unlikely, this is because if the convict has previously carried out social work punishment, then if he/she gets another punishment, the convict will be subject to imprisonment and / or fines and will not re-impose social work punishment.

According to the New Criminal Code 2's Article 85, social work punishment may be applied in the following situations: a. The judge decides to impose a sentence of less than five (five) years in jail. Therefore, should the judge decide to order the incarceration of more than 5 years, then social labour punishment cannot be imposed. This provision is based on the philosophy that social work punishment is indeed an alternative to short-term deprivation of liberty punishment. b. The judge considers imposing a fine that does not exceed category 2.

Meanwhile, Article 88 Paragraph (2) of Draft Criminal Code 2017 states, in the event that the judge will impose social work punishment, various requirements must be considered. These various requirements are intended so that the Punishment in social work is actually possible. Of course, not all crimes are eligible The following conditions must be satisfied for social work sanctions to be applied: Social work punishment is a possibility for defendants who commit crimes that carry a maximum sentence of five years in prison. The court may also choose to impose a fine or a maximum sentence of six months in jail. Category I. b. In imposing social work punishment as referred to above, the following matters must be considered : 1) The confession of the defendant to the criminal offense committed;2) the defendant's age eligibility in compliance with

legal and regulatory requirements;3) the defendant's consent following explanation of the rationale behind and other aspects of social work punishment;4) the defendant's social background;5) safeguarding the defendant's safety at work; and6). etc. Thus, when considering the conditions and cases involving children in conflict with the law, social work punishment is very appropriate to be applied to children who are in juvenile correctional facilities.

4. Conclusion

In Indonesia, prison sanctions are frequently used in the application of criminal law. But as times change, jail sentences are seen as not placing enough emphasis on the humanity of those who commit crimes. Alternative punishments that put humanity first are therefore required. The sixth UN congress's resolution on "Alternatives to Imprisonment" serves as the basis for alternative sanctions.

The ninth thought on "Development of measures for the social resettlement to imprisonment" basically says that while alternative punishments are necessary, incarceration is still required for some significant crimes. Due to this, the Indonesian government assembled a number of alternative sanctions, including a social service sentence, in the Draft Criminal Code Bill 2017. Social work criminal sanctions in terms of sociology of law according to Roscoe Pound's view in its application is considered to have fulfilled the social psychological aspects for the perpetrators.

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