

## Formulation of Social Work Criminal Sanctions for Perpetrators of Minor Corruption Crimes Based on Justice

Nur Sari Baktiana, Fauzie Yusuf Hasibuan, Lilik Mulyadi

Universitas Jayabaya Jakarta, Indonesia

E-mail: [nursari.baktiana@gmail.com](mailto:nursari.baktiana@gmail.com), [adv\\_fauzi@yahoo.com](mailto:adv_fauzi@yahoo.com), [mulyadi\\_lilik734@gmail.com](mailto:mulyadi_lilik734@gmail.com)

Correspondence: [nursari.baktiana@gmail.com](mailto:nursari.baktiana@gmail.com)\*

### KEYWORDS

Criminal Sanctions;  
Restorative Justice; Social  
Work

### ABSTRACT

In Indonesia, the formulation of criminal sanctions in the Indonesian Criminal Code has progressed, namely the adaptation of the mindset that criminal sanctions do not always have to be punitive. The benchmark of the provisions of Article 85 of the Criminal Code refers to the criteria, measures, and conditions for the imposition of criminal sanctions against social work sanctions for general criminal offenses, while specifically regulating special criminal offenses outside the Criminal Code, for example, Corruption which is regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption. This type of research is normative juridical research with analytical descriptive specifications using the statute approach, case approach, and comparative approach. The data sources in this research are secondary data sources in the form of primary, secondary, and tertiary legal materials. Research data was collected through a literature study using qualitative data analysis techniques. The results showed that there has been a paradigm shift in Law Number 23 Year 2023, which has regulated the existence of social work punishment as one of the main punishments, which previously did not exist in Law Number 1 Year 1946. The ideal formulation so that the application of social work can be applied is by looking at Law Number 31 of 1999 in conjunction with Law Number 21 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption Crimes and must also be able to see the existence of Law Number 1 of 1946, Article 10 of the Criminal Code does not regulate social work.

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



## 1. Introduction

Punishment is intended to improve the attitude or behavior of the convicted person and prevent others from the possibility of committing similar acts that are forward-looking and have a preventive nature (Zulfa, 2011); (Efendi, 2018). Sociologically, criminal law reform in Indonesia is a fairly dominating reason because the legal products produced by each country are a reflection of the country's culture (Ash-Shiddiqi & Alhusni, 2021). Many countries have implemented alternative forms of crime in the form of social work crimes (other than prison) as a form of paradigm shift from deterrence to rehabilitation (Husin, 2023), as an alternative to crime, sanctions, and in the framework of clemency (Arief, 1992).

In Indonesia, the formulation of criminal sanctions in the Indonesian Criminal Code has progressed, namely the adaptation of the mindset that criminal sanctions do not always have to be suffering. The philosophy of restorative justice (Manan, 2006) (M. Hatta Ali, 2012); (D. R. M. Hatta Ali & SH, 2022); (Rizky, 2008) affects the types of criminal sanctions in the Criminal Code. In Article 65 Paragraph (1) letter e of the Criminal Code, it is stated that one of the main types of crime is social work. The placement of this type of principal crime is last after imprisonment, cover-up, supervision, and fines. Based on Article 65 Paragraph (2) letter e of the Criminal Code, the order determines the severity of the crime. In addition, Article 85 Paragraph (1) states that social work crimes can be imposed on defendants who commit crimes that are threatened with imprisonment of less than 5 (five) years and the judge imposes a maximum prison sentence of 6 (6) months or a maximum fine of Category II.

The benchmark for the provisions of Article 85 of the Criminal Code refers to the criteria, size, and requirements for criminal punishment of social work sanctions for general crimes, while specifically the regulation for special crimes outside the Criminal Code, for example, Corruption crimes regulated in Law Number 31 of 1999 juncto Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption, where perpetrators commit minor corruption crimes with state financial losses not exceeding Rp. 50,000.00, 00 (fifty million light) so that to these perpetrators, there is no need for severe punishment in the form of imprisonment, and has an impact on stigmatization by the community.

Legal breakthroughs regarding the application of social work crimes for perpetrators of minor corruption crimes must be based on policies that have been regulated in Law Number 1 of 2023 (KUHP) and circulars issued by the Attorney General's Office or the Supreme Court that are the basis for solving minor corruption crimes. Therefore, the existence of alternative sanctions in the form of social work crimes will have a lot of influence on changing the penal system in Indonesia.

## 2. Materials and Methods

This research utilizes a normative juridical research design with analytical descriptive specifications. The research approach integrates statute analysis, case studies, and comparative analysis to comprehensively examine the application of social work crimes as alternative sanctions for minor corruption offenses (Nasution, 2016). Data for this research primarily derive from secondary legal materials, including primary legal documents, secondary legal analyses, and tertiary legal commentaries. The primary legal documents include the Constitution of the Republic of Indonesia Year 1945, Law Number 1 Year 1946 concerning Criminal Law Regulations (Criminal Code), Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, and Law

Number 20 Year 2001 concerning Amendments to Law Number 31 Year 1999 concerning the Eradication of Criminal Corruption. Additionally, publications on legal matters and materials providing elucidation on primary and secondary legal sources are utilized. Research data are analyzed through qualitative techniques, primarily literature studies. Qualitative data analysis involves systematic examination and interpretation of legal documents, scholarly articles, and legal commentaries related to the subject matter. This analytical approach allows for a comprehensive understanding of the legal framework surrounding the application of social work crimes as alternative sanctions for minor corruption offenses. By implementing a rigorous research design and utilizing qualitative data analysis techniques, this research aims to provide valuable insights into the legal framework governing alternative sanctions for minor corruption offenses in Indonesia (Muhaimin, 2020); (Ishaq, 2017)..

### **3. Result and Discussion**

#### **The Concept of Social Work Crime in Criminal Law Reform to Support the Concept of Restorative Justice in the Future**

In Indonesia, social work crimes specifically regulated in Law Number 1 of 2023 are types of crimes that must be carried out by convicts outside the Penitentiary, by doing social work, such as cleaning the environment and several activities that have been determined by the Chairman of LAPAS. This type of social work crime is a type of crime that has never previously been regulated in Indonesian positive law, both in the Criminal Code and outside the Criminal Code.

The discourse about social work crime as a type of crime has been discussed for a long time. Therefore, research is still needed on the essential nature of the development of (new) criminal acts in a society that is undergoing modernization. Only by knowing the true nature of a criminal act to be eradicated, it be hoped that an appropriate type of criminal sanctions strategy can be prepared.

The purpose of punishment in the criminal law system in Indonesia has not been formally formulated in law (only contained in Article 55 of the Criminal Code), so the benchmark that can be used to assess the relevance of social work as an alternative to punishment in criminal law reform is more theoretical.

Criminal law as a penal means in efforts to overcome crime must be functionalized by judicial bodies or criminal justice systems, namely the Police, Prosecutors, Courts, and Prisons as sub-systems which are essentially the same as the definition of criminal law enforcement (Gunakaya, 2021) (Muladi, Diah Sulistyani, & SH, 2021). Important components in law enforcement and enforceability are law, law enforcement and legal awareness (Gunakarya, 2002), legal facilities, society, and culture.

The current regulation regarding social work crime in Indonesia is in Article 85 of the Criminal Code Number 1 of 2023. Social work crimes can only be applied or imposed with certain conditions that can be related to the imposition (decision by the court), so it must also be considered how best to implement it or this is part of restorative justice.

The correlation of the restorative justice aspect with the sentencing paradigm was decided by the judge using the *legis ratio* benchmark where imprisonment is used as a punishment for corruption crimes other than minor corruption crimes with the criteria of small loss value (objective aspects of deeds) and low reprehensible nature of actions (subjective aspects of perpetrators). The judge's consideration as a *ratio decidendi* verdict considers restorative justice by concocting juridical, sociological, philosophical,

and economic aspects. Strictly speaking, judges in the aspect of criminal punishment have considered the dimensions of legal justice, social justice, and moral justice.

The purpose of criminal law reform is to bring about individualization of penalties that support the goals of general prevention punishment, correction, conflict resolution or guilt acquittal of convicts, and the tendency of restorative and alternative justice arrangements towards imprisonment. So it can be said that the spirit of drafting the Criminal Code as stipulated in Law Number 1 of 2023 is intended to support the application of a restorative justice approach in solving minor corruption crimes using social work.

The successful formation of convicted individuals on the one hand will protect the individuals concerned not to return to commit criminal acts. On the other hand, the successful formation of convicted individuals also protects them from the threat of becoming victims of crime. By looking at these two aspects of protection and their relevance to social work crimes, it can be said that social work crimes as criminal alternatives formulated in Law Number 1 of 2023 concerning the Criminal Code are very relevant. The choice of social work crime is also to current international trends and also does not conflict with the values that exist in Indonesian society

The criminal model of sausage work must be adapted to the *ius constituent*. As a comparison material for social work criminal sanctions to be more perfect, it is necessary to emulate the practice of social work criminal sanctions in other countries. In the Netherlands it places social work as the main criminal sanction, Poland places social work crime as the main type of crime. The concept itself places social work crime as one type of principal criminal sanction. So the main criminal sanctions in the concept itself as an alternative to short-term imprisonment are not types of action or additional sanctions. Social work criminal sanctions are classified as light or moderate types of crime. Things that need to be considered are the definition of social work crimes, the purpose of imposing social work criminal sanctions, guidelines for judges to impose social work criminal sanctions, and certain conditions for imposing social work crimes need to be explained in more detail so as not to provide differences in perception for law enforcement and the perpetrators of these sanctions.

The concept of penal sanctions in the form of social work crimes is a criminal concept with a restorative justice approach. Restorative justice provides a different response to the criminal justice process, namely by adopting the original conception of justice of the community through alternative offers for recovery, for example through mediation and recovery techniques (Muladi, 1995) so that there are 2 (two) key concepts in restorative justice, namely harm and repair (Spohn & Hemmens, 2011) or recovery of victims and society (Schmallegger & Smykla, 2004). The concept does not recognize the method of retaliation but rather the concept of recovery as an effort to make everything recover, by presenting perpetrators, victims, and related parties.

The basis for consideration of the author's recommendations for the imposition of social work crimes against perpetrators of minor corruption crimes in Indonesia is as follows:

First, the basis of philosophical considerations. Social work crime is in line with the fifth precept of Pancasila, namely social justice for all Indonesian people, which contains the value of working hard. In carrying out social work crimes, convicts are required to work hard in serving sentences. Hard work is one of the main means of social justice (community justice). In addition, according to the author, social work crime is also by the values of the 2nd precept, namely just and civilized humanity. In the 2nd precept contained the values of recognition of human dignity, because Indonesian people are part and citizens of the world community who have the same dignity and dignity as servants of God.

Humans are required to act fairly and respect other human rights and the value of respect for human rights and obligations. This suitability is seen in the criminal implementation process, where the convict is placed in a workplace that is by the skills and talents of the prisoner, does not deprive the prisoner of independence, is integrated with noncriminal groups, and is guided to the right path by competent officers. In social work crime, there is also the value of protection, namely protecting prisoners and associating with other criminal groups that can cause prisoners to become more evil, protecting prisoners so that they can live a decent life in the future, and protecting prisoners and revenge of society or victims of crime.

Second, the basis for theoretical considerations. According to the Combined Theory (vernengings theory), in sentencing there is a need for sorting and differentiating between the stages of convict punishment, and the severity of the crime because this theory combines the element of retaliation with the element of purpose (prevention). The theory is divided into 3 (three) conceptions of thought. According to Made Sadhi Astuti, the 3rd (three) thought in the Combined Theory, states that the crime imposed can meet the imperative of retaliation and the necessity of protecting society, giving the same emphasis between retaliation and community protection. Regarding the purpose of punishment, Van Dijk emphasized that the purpose of the crime is closely related to the type of crime committed and the cultural values of the nation concerned (Santoso, 2020).

Social work crime can prevent criminal acts because the implementation includes aspects of coaching, education, supervision, and evaluation of prisoners and the results of their work. Social work crime has several advantages compared to imprisonment, so it will be more effective in achieving goals (Wayne R. Laf Ave, 2010). In social work crime, there are also aspects of protection for both the community and prisoners so that convicts can be better, and the community feels safe from the recurrence of criminal acts. Social work crime is carried out in the community so that the community knows that the perpetrators of crimes have been convicted and fostered. Through social work crimes, convicts can feel suffering and at the same time coached by the community and special officers. Based on the author's idea of the stages of implementation and implementation of social work crime in Indonesia above, it appears that social work crime does not bring excessive suffering and does not degrade human dignity.

### **Formulation of Social Work Criminal Sanctions for Minor Corruption Crimes in the Future**

In principle, laws are formulated solely to regulate public life and provide a sense of justice. Truth and justice are an inseparable unity (Pogge, 2006). Thus, the law has a universal side regarding matters that are fully inherent in human beings and a particular side concerning how the law is enforced procedurally and substantively that cannot be separated from local culture and culture.

As many scholars say, the legal system is a reflection of the political ideology of a nation in which law develops and the entire legal edifice rests on sound and consistent political views. Like the Indonesian nation, putting Pancasila as the nation's philosophy and ideology, then in legal policy and then formulated in positive law that applies guided by and reflects the five precepts of Pancasila

The author emphasizes that the ideal formulation in the application of the law to minor corruption crimes is by making a breakthrough in terms of changes to Law Number 31 of 1999 concerning Criminal Acts of Corruption so that in its implementation it can be adjusted to the existence of Law Number 1 of 2023 concerning the Criminal Code.

Especially in Article 85 of the Criminal Code which in its explanation states that:

Paragraph (1): "Social work penalties may be applied as an alternative to short-term imprisonment and light fines. The criminal execution of social work can be carried out in hospitals, orphanages, nursing homes, schools, or other social institutions, with as much as possible adapted to the profession of the convict".

Paragraph (2) "In this provision is intended as a guideline for judges to impose criminal forms of social work" Letter A and letter b are quite clear"

Letter c: "One of the considerations that must be considered in the criminal conviction of social work is that there must be the consent of the defendant by the provisions of The Convention for the Protection of Human Rights and Fundamental Freedom (Treaty of Rome 1950), and the International Covenant on Civil and Political Rights (the New York Convention, 1966).

Letter d: "The social history of the accused is necessary to assess the background of the defendant as well as the readiness of the person concerned both physically and mentally in undergoing social work crimes."

The letter e, the letter f, and the letter g are said to be self-explanatory

Paragraph (3): "This social work crime is not paid because of its criminal nature, therefore the execution of this crime must not contain things of a commercial nature."

Paragraphs (4), paragraph (5), paragraph (6), and paragraph (7) are said to be self-explanatory.

Paragraph (8): "In conducting guidance, community advisors may cooperate with government agencies in charge of social work"

Paragraph (9) is self-explanatory.

Aristotle has given the meaning of justice that, "Justicia est constans et perpetua voluntas ius sum cuique tribuendi". Justice is nothing but a fixed and settled will to give each of its parts. Thus justice should not be viewed with equalization, because justice does not mean that everyone gets an equal share. Aristotle's opinion also gave rise to two kinds of justice, namely distributive justice and commutative justice. Distributive justice is justice that gives each person a ration according to his merits. He does not demand that everyone get an equal share, not equality but comparability. Commutative justice is justice that gives everyone as much as not remembering individual merits (Nugroho & Prananingrum, 2017); (Taufiq, 2014).

Giving to each of its parts is indeed on the one hand giving to each the same rights which otherwise take into account the diverse differences in reality. Giving each of the same parts must be interpreted as giving to each of the same with consciousness and taking into account the differences that exist in reality. About Aristotle's statement, according to the author, if it is connected with the dissertation that the author is compiling, substantial justice is very appropriate to answer the need for real justice. Substantial justice knows no taste as Aristotle's theory of justice. Substantial justice prioritizes balance between the parties. This balance is expected to be formed between the parties to restore social conditions as before the crime occurred. In substantial justice, there is no sense of balance.

If it is related to John Rawls' theory of justice which is a Grand Theory, then the application of crime to perpetrators of minor corruption crimes to do social work by what they do, can also allow the convict to be able to adapt to his actions, besides that social work can also provide lessons to adapt after the person concerned has finished carrying out the sentence.

Similarly, when related to Middle Range Theory with the Criminal Justice System, it not only regulates the actions of citizens in general but also regulates the actions (authority/power) of the



ruler/law enforcement officer. The most strategic stage of crime prevention and control efforts is the formulation stage, therefore legislative policy errors/weaknesses are strategic mistakes that can be an obstacle to crime prevention and control efforts at the application and execution stages.

As Abraham Lincoln famously described democracy as the government of the people, by the people, and for the people. But on closer inspection, the essence of democracy is government "by the people." All governments, whatever their form, must come from the people (no one among them rules who does not come from the people), and because an authoritarian government can also do good for the benefit of the people (usually called benevolent authorities regime). So, only government by the people reflects pure democracy. Thus only the law in favor of the people deserves to be called the law.

Looking at what became this study, the author argues that what has been decided to be carried out by social work convicts is what is regulated in the Criminal Justice System in Indonesia. The convict carries out the punishment according to the deeds committed.

When associated with the Applied Theory of "restorative justice" it is assumed to be the most recent shift from the various models and mechanisms that work in the criminal justice system in handling criminal cases today, although this movement began in the era of 1970 in North America and Europe which was marked by the presence of the Victim Offender Reconciliation Program in Ontario, then discovery in Indiana and England, even 21 centuries ago since Jesus or Jesus Christ spread the New Testament (Injil) and 14 centuries ago with the presence of Islam, Restorative Justice principles have been introduced, each of which is the principle of "Love" and "Qisos" which is replaced with "Diyat" which is to forgive and forgive.

Restorative justice is the process of involving, using all possibilities, all relevant parties, and specific violations and identifying and explaining threats, needs, and obligations to heal and put them wherever possible in their place (Satria, 2018).

Restorative justice is a process in which all parties fighting a particular offense come together to collectively solve the problem of how to agree on the (bad) consequences of an offense and its implications in the future.

Restorative justice is a criminal justice concept that views criminal acts as crimes against society rather than crimes against the state and therefore creates an obligation for victims and society to correct them. This concept focuses on the dangers of crime rather than the violation of a provision and describes the relationship between victims and society to violations related to punishments applied by the state. The restorative justice model provides appropriate dialogue, directly or indirectly, between victims and perpetrators of crimes in the form of mediation between victims and perpetrators.

The concept of Restorative justice according to the author can be applied to minor corruption perpetrators by imposing crimes in the form of social work crimes. This concept is considered fairer than the sentence of conditional probation to perpetrators of minor corruption crimes.

Social work crime is more beneficial for both the convict and the community than probation parole which is often unclear about the benefits for the convict, even the convict feels more unpunishable even though he has been found guilty of a criminal offense because there are almost no concrete obligations that must be carried out by the convict.

In the future, if Law Number 1 of 2020 has begun to be enacted, judges should prefer to apply social work crimes as the main crime because it will be more effective and effective than imposing conditional sentences in the form of probation. Because at least the purpose of restorative punishment that is

educational, correct, and reparatory for criminal offenders can be realized while also reducing overcapacity in prisons.

#### **4. Conclusion**

There has been a paradigm shift in Law Number 23 of 2023, which regulates the existence of social work crime as one of the principal crimes, which was not previously contained in Law Number 1 of 1946. The government's steps in seeking social work to become a principal crime, correlate with the author's discussion material to link the existence of Law Number 1 of 2023, with several verdicts on minor corruption cases. Regarding the paradigm shift in punishment that is more sanctions-oriented to provide learning for perpetrators and benefits for the Community or State, the application of social work criminal sanctions with the concept of restorative punishment, is considered more effective because it can optimize the competencies possessed by corruption actors rising scientifically, socially, economically and politically.

The ideal formulation so that the application of social work can be applied is to look at Law Number 31 of 1999 junction with Law Number 21 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption and must also be able to see the existence of Law Number 1 of 1946, Article 10 of the Criminal Code does not regulate social work. The presence of Law Number 1 of 2023 concerning the Criminal Code as in the provisions of Articles 604 to 616 which regulate corruption with its class level, and Article 85 of the Criminal Code by regulating social work.



## 5. References

- Ali, D. R. M. Hatta, & SH, M. H. (2022). *Peradilan sederhana cepat & biaya ringan menuju keadilan restoratif*. Penerbit Alumni.
- Ali, M. Hatta. (2012). *Peradilan sederhana, cepat, dan biaya ringan menuju keadilan restoratif*. PT Alumni.
- Arief, Barda Nawawi. (1992). *Bunga Rampai Hukum Pidana*.
- Efendi, Jonaedi. (2018). *Rekonstruksi dasar pertimbangan hukum hakim: Berbasis nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat*. Prenada Media.
- Gunakarya, Widiado. (2002). Pendekatan Sistem dan Kebijakan Dalam Penegakan Hukum di Indonesia. *Wawasan Hukum, Bandung*.
- Gunakaya, A. Widiada. (2021). *Pidana "Perspektif Pembaruan Hukum Pidana dalam RKUHP"*. Malang: Setara Press.
- Husin, Umar. (2023). Formulation for Handling Social Work Criminal Sunction Against Corruption Performers Based on Justice. *Jurnal Penelitian Hukum De Jure*, 23(4), 495–506.
- Ishaq, Ishaq. (2017). *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*. Alfabeta.
- Manan, B. (2006). "Restorative Justice (Suatu Perkenalan)". *Majalah Hukum Varia Peradilan, Nomor 247 Juni 2006*. Jakarta: IKAHI.
- Marzuki, Peter Mahmud. (2009). *Penelitian Hukum Empiris*. Jakarta: Kencana Prenada Media Group.
- Muhaimin. (2020). *Metode Penelitian Hukum, Cetakan Pertama*. NTB: Mataram University Press.
- Muladi. (1995). *Kapita Selekta Sistem Peradilan Pidana*. Badan Penerbit Universitas Diponegoro.
- Muladi, S. H., Diah Sulistyani, R. S., & SH, C. N. (2021). *Kompleksitas Perkembangan Tindak Pidana dan Kebijakan Kriminal*. Penerbit Alumni.
- Nasution, Bahder Johan. (2016). *Metode Penelitian Ilmu Hukum, Cetakan Kedua*. Mandar Maju, Bandung.
- Nugroho, Arif, & Prananingrum, Dyah Hapsari. (2017). Ketidakadilan dalam Perjanjian Jual Beli Sayur. *Jurnal Ilmu Hukum*, 10.
- Pogge, Thomas. (2006). Do Rawls's Two Theories of Justice Fit Together? In *Rawls's Law of Peoples: A Realistic Utopia?* Blackwell Publishing Ltd.
- Rizky, Rudi. (2008). *Refleksi Dinamika Hukum (Rangkaian Pemikiran dalam Dekade Terakhir)*. Jakarta: Perum Percetakan Negara Indonesia.
- Santoso, Topo. (2020). *Hukum pidana: Suatu pengantar*.
- Satria, Hariman. (2018). Restorative Justice: Paradigma Baru Peradilan Pidana. *Jurnal Media Hukum*, 25(1), 111–123.
- Soekanto, Soerjono. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.
- Spohn, Cassia, & Hemmens, Craig. (2011). *Courts: A text/reader (Vol. 4)*. Sage.
- Taufiq, Muhammad. (2014). *Keadilan Substansial Memangkas Rantai Birokrasi Hukum*. Pustaka Pelajar bekerja sama dengan MT & P (Muhammad Taufiq & Partners Law Firm).
- Wayne R. Laf Ave. (2010). *Principle of Criminal Law, Second Edition*. USA: West A Thomson Bussines.
- Zulfa, Eva Achjani. (2011). *Pergeseran paradigma pemedanaan*.