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Social Work Crime as an Alternative to Resolving Overcrowding in Correctional Institutions

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Abstract: Overcrowded in correctional facilities results from various factors, including increased inmate numbers due to prevailing prison sentencing policies, judicial inefficiencies in handling detainees, and high recidivism rates. The consequences of overcrowding are severe, impacting the ability to meet inmates' basic needs, leading to poor sanitation and health conditions, and reducing the effectiveness of rehabilitation programs. Social work penalties, adopted in several countries, offer a rehabilitative approach that focuses on social reintegration rather than isolation through prison sentences. These penalties help facilitate inmate recovery by involving them in beneficial community activities such as environmental care or social services. This research employs a normative juridical methodology, utilizing document analysis of relevant legal and literature sources. Data are qualitatively analyzed, considering legislative regulations, legal literature, and related research findings. The study aims to contribute to more effective policy formulation for managing overcrowding in correctional facilities and to consider more humane and rehabilitative sentencing alternatives

INTRODUCTION

The main objective of correctional institutions is to serve as a forum for guidance for correctional inmates based on systems, institutions and methods of guidance as the final part of the punishment system in the criminal justice system¹. In Correctional Institutions (Lapas), inmates undergo a development program that is tailored to their level of education, gender, religion and the type of crime they have committed.

The prison system has two basic functions, namely prison as an effort to prevent criminals from committing other crimes through the mechanical removal of criminals from crime public and the second function is to prevent people from intending to commit crimes or commit violations². The deterrent effect of the prison system hopes that individual criminals can change their behavior in return for the severity of the prison sentence.³ Therefore,

¹ Samosir Djisman, 'Penologi Dan Pemasyarakatan', *Bandung: Nuansa Aulia*, 2016.

² Silvia Coretti, Silvia Fedeli, and Michele Santoni, 'Assessing the Ethics of Prison Policies to Ensure Human Rights Compliance: Suicides and Self-Inflicted Critical Events in Italian Prisons', *European Journal of Political Economy*, 2023, 102428.

³ Paternoster, R. (2019). How much do we really know about criminal deterrence?. In *Deterrence* (pp. 57-115). Routledge.

policymakers often support the preventive role of incarceration as an effective approach to reducing crime. In this case, the rehabilitation function in the final system of criminal justice is often ignored.

The role of prisons as the final agency in developing prisoners must pay attention to their rights and interests. The role of prisons in developing inmates is very strategic and dominant, especially in restoring them to the condition they were in before committing criminal acts.⁴ Based on Law Number 22 of 2022 concerning Corrections, guidance for Correctional Inmates (WBP), which includes prisoners, must of course be carried out based on the principle of protection; non-discrimination; humanity; mutual cooperation; independence; proportionality; loss of freedom as the only suffering; and professionalism.

As a forum for development, prisons must carry out their duties and functions to carry out optimal training for prisoners to shape them into individuals who are spiritually and physically qualified and have the ability of intelligence and legal awareness. As a character-building institution, prisons are tasked with making inmates productive individuals while in the prison environment and when they return to society after completing their criminal term.⁵

Even though it is projected to be a place for coaching, it is a problem of overcrowding. Pages becoming *overcrowded* is a difficult problem to solve in any prison. The occurrence of density and *overcrowded* in prisons resulting in problems such as difficulty in supervising and securing inmates in prisons, worsening psychology of prisoners and correctional officers, insufficient number of correctional officers in prisons, vulnerability to conflict between prison inmates, shortage and damage to sanitation and health facilities, and soaring clothing and food budget for inmates⁶.

Policy efforts to reduce *overcrowding* in prisons have been carried out through Minister of Law and Human Rights regulations regarding remission, assimilation, leave to visit family, conditional release, leave before release, and conditional leave. However, this policy has not fully addressed the problem of overcrowding due to the disproportionate building area and capacity with the number of inmates in and out of prison.

Research related to *overcrowded* in Correctional Institutions was previously studied by Risang Achmad Putra Perkasa with research entitled "Optimizing Prisoner Development in Efforts to Reduce *Overcapacity* Correctional Institutions" in the Journal of the Face of Law, Faculty of Law, Batanghari University, Jambi, Volume 4 (1) published in April 2020. The research concluded that the increase in the number of prison inmates causes problems *over capacity*, hinder development and require government intervention through non-institutional punishment to reduce the population.

⁴ O'Donnell, I. (2020). The aims of imprisonment. In An Introduction to Penology-LJMU Custom Publication (pp. 55-70). Routledge.

⁵ Fitra, R., & Basyarudin, B. (2024). Peran Lembaga Pemasyarakatan Dalam Pembinaan Kemandirian Bagi Narapidana Kasus Narkotika Di Lembaga Pemasyarakatan Kelas Iia Bukittinggi. *Sinergi: Jurnal Riset Ilmiah*, 1(5), 342-353.

⁶ Risang Achmad Putra Perkasa, 'Optimalisasi Pembinaan Narapidana Dalam Upaya Mengurangi Overcapacity Lembaga Pemasyarakatan', *Wajah Hukum*, 4.1 (2020), 108-15.

Apart from that, in December 2022 Ahmad Agung Raharjo and Mitro Subroto in research entitled, "Development and *Overcrowded* In Correctional Institutions" published by Widya Yuridika: Legal Journal Volume 5 (2) concluded in his research that the application of the concept of Environmental Based Development, or *Community Based Correction*, has been implemented through the existence of open prisons in Indonesia in accordance with official decisions, which supports the focus of Indonesian correctional institutions on the social reintegration of prisoners. The impact of this concept is considered positive in coaching prisoners and solving overcrowded problems, by producing a decrease in overcrowded numbers, fulfilling prisoners' rights, reducing security risks, and reducing the state budget.

METHOD

This research is normative juridical research that uses an approach to statutory regulations and related legal documents to analyze causes and impacts over capacity in correctional institutions and identify alternative strategies that can be implemented. The data sources in this research consist of secondary data, including primary legal materials taken from statutory regulations, as well as secondary legal materials which include the Criminal Code (KUHP WvS), Law Number 1 of 2023, journal references, books, and research results. The data collection tool used was library research, and data processing techniques were carried out qualitatively.

DISCUSSION

Causes and Impacts of Increasing Capacity Density in Correctional Institutions

a. Reason

Problem *overcrowded* in correctional institutions has been a long-standing issue. This problem is not only caused by the lack of construction of prison facilities, but also by various other factors such as the increasing crime rate in society, the ease with which someone is detained when suspected of committing a crime, the SOP for suspension of detention which is still unclear, the less optimal use of other types of punishment other than prison and the recidivism rate is still high⁷.

Imprisonment is regulated as a criminal threat in various Indonesian laws and regulations, especially in the Criminal Code (WvS), where imprisonment is mentioned 485 times. The dominance of prison sentences causes overcrowding of prisoners in prisons, hampering the implementation of the correctional system which aims to return criminals to law-abiding society and prevent repeat crimes.

Since the beginning of reform in 1998 to 2016, approximately 536 new laws and regulations were formed, of which 154 among them is a rule that culminates in criminal

⁷ Isl Aldiena Qodar, Supianto Supianto, and Yuli Winiari Wahyuningtyas, 'Dampak Kelebihan Kapasitas Terhadap. Pemenuhan Hak-Hak Warga Binaan Di Lembaga Pemasyarakatan Kelas IIA Jember', *WELFARE STATE Jurnal Hukum*, 1.1 (2022), 81–106.

provisions⁸. The impact of the dominant use of the prison punishment system is one of the factors that causes the density of inmates in prisons to become overcrowded, which causes obstacles to the implementation of the correctional system to return criminals back to a law-abiding society and prevent the possibility of repetition of criminal acts⁹.

Almost all crimes handled in the Criminal Justice System in Indonesia always end in prison, even though prison is not the best solution in resolving crime problems, especially the "damage" crimes caused to victims and society, which can still be restored so that conditions that have been "damaged" can be returned to their original state, as well as being an alternative to reduce the negative impacts of the prison system.

Indonesia has adopted several implementation examples of *restorative justice* from other countries, although in practice, imprisonment remains the easiest option for law enforcement officials in imposing sentences. This condition causes overcrowding in prisons and detention centers. *Restorative justice* in Indonesia is still partial and not comprehensive, spread across various legal and policy instruments that have not been fully integrated into the criminal justice system.

Apart from the two factors above, the problem is the high number of overstaying in prisons is also a factor in overcrowding residents in prison. The high rate of overstaying in prisons, due to inefficient administration of legal justice, is also a factor in overcrowding. *Overstay* occurs when detainees remain detained even though they should have been released or their status has changed to prisoner. Low public legal awareness, increasing crime in quality and intensity, also contribute to this problem.

b. Impact

Research by Meliarsyah and the team at the Bogor Class II A Prison shows that *overcrowding* results in the inability to meet basic needs such as food and clothing, inadequate health services, and inadequate sleeping conditions. This situation hampers spiritual and physical development as well as the use of sports, religious and educational facilities. Officers also have difficulty controlling the activities of inmates, increasing the risk of escape and reducing the effectiveness of coaching¹⁰.

Not much different from research by Utomo Bimantoro and the team at Cipinang Prison which revealed that *overcrowding* disturbing the rights of inmates, such as the right to health and the right to submit complaints, due to poor sanitation and limited staff. The health of the inmates is threatened due to overcrowded rooms, and supervision becomes ineffective due to an insufficient number of officers. Excess capacity also hinders self-reliance development programs and triggers conflicts between inmates, which can lead

⁸ Raden Muhammad Rizki Hidayatullah, 'Faktor Penyebab Dan Upaya Penyelesaian Permasalahan Kepadatan Penghuni Lembaga Pemasyarakatan Di Indonesia', *Borneo Law Review*, 4.1 (2020), 1–20.

⁹ Erasmus A T Napitupulu and AKSM Genoveva, 'Hukuman Tanpa Penjara: Pengaturan, Pelaksanaan, Dan Proyeksi Alternatif Pemidanaan Non Pemenjaraan Di Indonesia', *Institute for Criminal Justice Reform (ICJR)*, 2019.

¹⁰ Rachmat Trijono and Muhamad Aminuloh, 'Dampak Over Kapasitas Terhadap Warga Binaan Di Lembaga Pemasyarakatan Kelas Ila Bogor', *Karimah Tauhid*, 3.4 (2024), 4857–72.

to crimes ¹¹.

Likewise, Isl Aldiena Qodar's research in Jember Prison found that overcrowding made it difficult for inmates to rest and carry out activities, as well as disrupting their health rights due to the inadequate number of medical personnel. The right to submit complaints is hampered by the large number of prisoners and the lack of officers. Poor sanitation and overcrowding trigger conflict between inmates, increasing the risk of fighting and disease. Prison officers have difficulty controlling and supervising the activities of inmates, which has the potential to lead to smuggling of prohibited goods. *Overcrowded* It also hampers the independence development program because of the limited space and number of instructors¹².

Social Work Crime is an Alternative Strategy to Reduce Overcrowding in Correctional Institutions

Barda Nawawi Arief provided moderate criticisms of prison sentences, which he categorized into three main areas. First, the criticism of punishment mode examines the implementation of prison sentences from the perspective of the correctional system and institutional development. This critique led to the establishment of the Standard Minimum Rules for the Treatment of Prisoners, adopted at the 1st UN Congress in 1995. Second, the penalty criticism focuses on limiting or reducing the use of short-term prison sentences, arguing that they may not effectively serve their intended purpose. Lastly, the criticism of punishment types calls for a reconsideration of the variety of punishments used, advocating for reducing and limiting the imposition of prison sentences in favor of alternative forms of punishment.¹³

In his book, Barda Nawawi Arief states that *overcrowding* in prisons can be overcome by building new prisons or reducing the number of inmates. However, building new prisons is not a long-term solution. Several countries in Europe that have expanded prison construction programs have actually experienced an increase in the number of prisoners as prison capacity increases. In addition, building and maintaining new prisons is expensive and strains existing resources. International instruments recommend the rationalization of sentencing policies, including the use of alternatives to prison to reduce the number of prisoners serving long-term prison sentences¹⁴.

Overcrowded and understaffed prisons require urgent attention as well as policies that are more humane and focused on rehabilitation. Policies that address the needs of inmates and create healthier and safer prison environments can help reduce the problem *of overcrowding*¹⁵.

¹¹ Utomo Bimantoro, 'Dampak Over Kapasitas Di Lembaga Pemasyarakatan Kelas I Cipinang Bagi Narapidana' (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020).

¹² Qodar, Supianto, and Wahyuningtyas.

¹³ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Citra Aditya Bakti, 2003).

¹⁴ Arief.

¹⁵ Coretti, Fedeli, and Santoni.

Alternative punishment is a sanction that replaces imprisonment which aims to achieve alternative goals that cannot be achieved through imprisonment¹⁶. This type of punishment aims to reduce the guilt of the convicts and involve the community in the convict's correctional process by carrying out useful tasks¹⁷.

Social work criminal sanctions are one type of non-prison action recognized in the United Nations (UN) General Assembly Resolution Number 45/110 dated 14 December 1990 concerning *Standard Minimum Rules for the Non-custodial Measures (Tokyo Rules)*. Inside *Tokyo Rules* It is emphasized that imprisonment is a last resort because it is preferred to use non-prison measures which balance the rights of the perpetrator, the rights of the victim and the concern of the community¹⁸. Social work crimes have been adopted in various countries with provisions that can also be found in the criminal codes of these countries, such as in the Netherlands which regulates social work crimes as regulated in *Dutch Penal Code (criminal law)*, especially in Book II on Crime. In addition, the UK recognizes social work crime as "*Community Service Order*" or "*Unpaid Work Requirement*" which is set in *Sentencing Act 2020*, part 4 about *Community Orders*.

At the 12th ICOPA Congress, states were mandated to adopt alternatives to imprisonment in their Criminal Code. This mandate was followed by a UN Resolution in December 1990 which stipulated "*Tokyo Rules*," which includes "Minimum Standards for Non-Custodial Actions" (*SMR for non-custodial*). Non-custodial measures are actions that do not place criminal perpetrators in detention institutions, so that there is no deprivation of liberty, and can be applied at every stage of justice, including investigation and prosecution, as well as post-conviction¹⁹.

The concept of social work punishment first appeared in England and the United States, where at that time, people in the British justice system were looking for new alternatives to prison sentences and fines in dealing with criminals. The concept of social work crime then became a response to criminal policies at that time so that it experienced wider development and use in the legal system *Common Law*.

Social work crime initially aimed to provide a solution to the problem of overpopulation of prisoners in prisons. These findings are the first step in developing sentences that focus more on rehabilitation rather than retributive punishment²⁰. In the system *Common Law* the habits of society that develop through decision The court is the highest source of law. Although criminal social work does not have a long history, the

¹⁶ Muladi, *Kapita Selektta Sistem Peradilan Pidana* (Badan Penerbit Universitas Diponegoro, 1995).

¹⁷ Khaidarulloh Khaidarulloh, 'Akomodasi Common Law System Dalam KUHP Baru: Konsep Hukuman Kerja Sosial Sebagai Alternatif Pidana', *El-Dusturie*, 2.2 (2023).

¹⁸ Anthony Aust, *Handbook of International Law* (Cambridge University Press, 2010).

¹⁹ Iskandar Wibawa, 'Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia', *Jurnal Media Hukum*, 24.2 (2017), 105–14.

²⁰ Ahmad Fajri, 'Pidana Kerja Sosial Dalam Membatasi Kelebihan Penghuni Di Lembaga Masyarakatan', *Lex Renaissance*, 4.1 (2019), 46–64.

approach *Common Law* Dynamic law allows the development of laws that adapt to society's habits. Social work criminal punishment in this system is adaptive, follows changes in society, promotes a restorative approach, and prioritizes the recovery of criminals²¹.

The main aim of criminal social work is to support the rehabilitation and restoration of criminal offenders by involving them in activities that are beneficial to society or individuals in need with the aim of increasing their self-confidence, self-esteem, developing their sense of social responsibility, and changing their views and roles. in society²².

Social work crime, in the context of restoration, acts as a means to facilitate the process of restoring the conditions of all parties involved or affected by a crime, including victims, perpetrators, society and the government. The aim of rehabilitation and restoration strengthens the concept of social work as an alternative form of punishment, especially as an alternative to imprisonment. Social work punishment is considered to be an acceptable alternative if it is able to achieve the same goals and benefits as imprisonment, which is considered ineffective²³.

Providing criminal sanctions for social work is an effective alternative to overcome problems *over crowded* in prison which has been crucial. Types of social work such as cleaning public facilities, ditches or waterways, sweeping streets, or helping in nursing homes, are concrete examples of this sanction. This can be carried out routinely during the sentence period which is usually determined by the judge within a period of several months. Through this alternative, convicts become more aware of the consequences of their actions, in the hope that they will not repeat the same crime or offense and avoid harsher penalties such as prison or fines²⁴.

The presence of the National Criminal Code, which was ratified in Law Number 1 of 2023, has contained new regulations regarding what is included in the main crimes, which originally included the death penalty, imprisonment, imprisonment, fines and cover-up sentences. Article 65 paragraph (1) of the National Criminal Code states that the main crimes included are imprisonment, cover-up, supervision, fine and social work.

It can be said that the existence of social work criminal punishment options has a significant impact in reducing pressure in the prison system²⁵ and offer inmates the opportunity for more effective rehabilitation. Social work penalties in the National Criminal Code can be imposed on defendants who commit crimes that carry a sentence of less than

²¹ Andi Muhammad Sofyan and M H Sh, *Hukum Acara Pidana* (Prenada Media, 2020).

²² Asiyah Jamilah and Hari Sutra Disemadi, 'Pidana Kerja Sosial: Kebijakan Penanggulangan Overcrowding Penjara', *Jurnal IUS Kajian Hukum Dan Keadilan*, 8.1 (2020), 26–38.

²³ Sani Siti Aisyah, 'Pengembangan Ide Kerja Sosial Sebagai Bentuk Pidana Alternatif Di Indonesia', *Jurnal Kriminologi Indonesia*, 14.1 (2018), 25.

²⁴ Aisyah.

²⁵ Muhammad Fajar Septiano, 'Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara Jangka Pendek' (Brawijaya University, 2014).

5 years with the judge imposing a maximum prison sentence of 6 months or a maximum fine in category II.

Social work punishment is in line with correctional objectives in terms of improving the quality of personality and independence of prisoners so that they realize their mistakes, improve themselves, and not repeat criminal acts, so that they can be accepted again by society, live normally as good, law-abiding, responsible citizens. and can actively play a role in development.

One country that has implemented social work punishment is Denmark, where someone sentenced to this type of crime is required to provide a report from the body that oversees conditional sentences. This report covers the condition of the convict's family, work history, and educational background. This report is used to determine whether the convict can be sentenced to social work or not. In practice, social work sentences in Denmark are actually intended as a substitute for short-term prison sentences with a duration of 15-18 months. However, in reality, social work sentences are often imposed to replace prison sentences with a duration of 6-8 months ²⁶.

Apart from Denmark, social work penalties are also enforced in the Netherlands. According to criminal law in the Netherlands, social work penalties are referred to by the term *Community Service* which is regulated in Article 9 together with Articles 22c-22k of the Dutch Criminal Code. *Community Service* (social work crime) is defined as a punishment imposed on convicts in the form of social work which must be carried out without receiving wages or payment²⁷. In the implementation provisions of the Dutch Criminal Code, social work crimes can be enforced through a judge's decision which determines the number of working hours and type of work that must be carried out. Although the Dutch Criminal Code does not specifically mention the types of crimes that can be replaced with social work sentences, there are exceptions for repeat offenders, serious violent crimes and sexual crimes²⁸.

In Portugal, social work crime is known as *Work for the Community*. This concept refers to the punishment imposed on convicts in the form of unpaid social work, carried out for the benefit of the state, individuals, public legal entities, or private entities, in accordance with court decisions. Social work punishment is used as a substitute for the threat of a prison sentence not exceeding one year, with the aim of achieving appropriate and adequate punishment. The duration of work usually ranges from 36 to 380 hours, and can be performed on weekdays and weekends, as well as holidays. The execution of the sentence cannot exceed 18 months and can be suspended in certain circumstances. The duration of work per day must not exceed the specified working hours, but can be

²⁶ Wahyu Rasyid Firmansyah, 'SANKSI KERJA SOSIAL, SEBUAH ALTERNATIF PENALISASI TERHADAP PELANGGARAN LALU LINTAS DI KOTA PAREPARE', *Jurnal Madani Legal Review Vol. 2, No2*, 114 (2018).

²⁷ Jamin Ginting, 'Sanksi Kerja Sosial Sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum Di Indonesia', *Law Review*, 19.3 (2020), 247.

²⁸ Napitupulu and Genoveva.

extended if in accordance with applicable overtime regulations.

As in the Netherlands, social work sentences in Portugal's criminal law also require the convict's consent. If the convict fulfills his duties properly, the court may reduce his sentence after two-thirds of the sentence has elapsed, by a total of not less than 72 hours. The Directorate General of Social Reintegration is responsible for submitting reports regarding the implementation of social work crimes to the court. However, if the convict violates or does not fulfill the social work sentence as expected, the court has the authority to revoke the social work criminal decision and replace it with imprisonment if the convict deliberately hinders the implementation of work, refuses to work without reason, or seriously violates his duties, or commits another crime. punishment which shows that the objectives of social work punishment cannot be achieved. The court may also decide to replace the social work sentence with a prison sentence of up to 120 days or postpone the prison sentence for a period of 1 to 3 years, according to the court's decision.

CONCLUSION

In conclusion, this study highlights the potential of social work crime as an effective solution to reduce prison overcrowding. By replacing short-term prison sentences with community-based punishments, such as mandatory social work, correctional institutions can alleviate the strain on resources while promoting rehabilitation and reintegration of offenders into society. This alternative approach not only addresses the issue of overcrowding but also shifts the focus towards restorative justice, emphasizing the importance of contributing positively to society as part of the offender's reform process. Consequently, implementing social work crime can improve the overall effectiveness of the criminal justice system while enhancing societal welfare.

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The implementation of social work punishment can help reduce overcrowding in prisons by providing alternative non-prison sentences for several less serious crimes as a rehabilitation effort for prisoners so that they can be accepted back into society. Through the implementation of social work punishment, it is hoped that it can increase the efficiency of justice administration by reducing recidivism, as well as improving the management of correctional institutions through a coaching approach that is more focused on restorative efforts.

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