

Community Service Order: Challenges and Expectations as a New Type of Sanction in the Criminal Code Draft (RKUHP)

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Abstract. The community service order is an alternative to avoid imprisonment in the Draft Criminal Code (RKUHP). However, the community service order is less well known to the public because it is a new type of sanction compared to imprisonment. After all, the judges impose the most. Therefore, it is necessary to study the challenges and expectations of community service order as an alternative to imprisonment in the RKUHP because it has become the prima donna in law enforcement. This research is normative legal research, and the results show that the challenges of community service order as an alternative to imprisonment come from the community and law enforcement officers because detention has become the Primadonna. Meanwhile, community service order crimes provide good hope to reduce the overcapacity of Correctional Institutions, help the community and the state, and are cheaper than the application of imprisonment. Therefore, to ratify the RKUHP, there is no rejection; it needs to spread to the public.

Keywords: Community service order; challenges and expectations; sanction

1 Introduction

The phenomenon of crime is always present and accompanies the development of social life [1]. Criminal sanctions are known to be the harshest and most cruel to the perpetrators. Types of criminal sanctions range from the heaviest such as the death penalty, unlawful deprivation of independence (imprisonment and confinement), and criminal fines. Interestingly, among these types of sanction, the crime of deprivation of liberty, especially imprisonment, is more widely formulated in various illegal regulations so that it is pretty popular in the community. Based on positive law currently in force in Indonesia, imprisonment is the most critical criminal deprivation of liberty. Were reducing or avoiding imprisonment due to the impact of this type of crime [2].

Imprisonment arranges in Article 10, a number (2) of the Criminal Code (KUHP Indonesia), and Article 12, paragraph (1) explains that imprisonment is for life or a specific time [3]. Based on Article 12, paragraph (2), and paragraph (3) of the Criminal Code (KUHP Indonesia), it is that the Punishment for a certain period is a minimum of one day and a maximum of fifteen consecutive years. Imprisonment for a certain period can be applied for a maximum of twenty straight years if there is a weighting in the crime. Conditional Punishment, on the other hand, regulates attempts to escape incarceration. Namely, in some instances, the perpetrator does not have to be in prison unless certain conditions.

Conditional Punishment is regulated in Article 14 letter a to Article 14 letter f of the Criminal Code. Imprisonment aims to carry out crimes within the institution (custodial), while

conditional Punishment seeks to carry out crimes outside the institution (non-custodial)¹. As a result, both an offense of incarceration (imprisonment) and a crime of non-imprisonment (non-imprisonment) may result in criminal execution. In line with the development of thinking in criminal law reform, the Protection of human rights and the development of public interests encourage the realization of criminal sanctions outside the institution or (custodial) to avoid illegal deprivation of liberty, especially imprisonment.

These criticisms are, for example, from the International Conference on Penal Abolition (ICOPA)². Initially, ICOPA only pioneered abolishing the crime of deprivation of liberty, but in its development, it wanted to abolish all forms of Punishment (penal abolition). Therefore, ICOPA is considered a group that is too extreme because of its idea of abolishing criminal sanctions. Interestingly, long before the birth of the ICOPA, there was an idea to abolish imprisonment in Indonesia. For example, Hazairin wrote in his article *The State Without Prisons* on May 1, 1972. He stated that no one feels happy or relieved, and he thinks he gets peace and tranquillity of mind by staying for a while in prison. Therefore, prisons must eliminate. Globally, there are many criticisms and new ideas to soften or find alternatives other than imprisonment, for example, in the United Nations Standard Minimum Rules for Non-custodial Measures or Tokyo Rules. Based on the disposition of the Punishment in provision 8.2 of the Tokyo Rules, several alternatives to avoid the application of imprisonment in The Tokyo Rules include, for example, suspended or deferred sentences (conditional Punishment), probation and judicial supervision (supervision), and community service orders (social work crimes).

There is no prison. Even though several ideas have emerged to look for alternatives to avoid the application of imprisonment, most countries in the world still maintain imprisonment for repeating crimes. In addition, some countries do not recognize incarceration; for example, confinement uses a little as a form of criminal sanction in Greenland. Greenlanders psychologically did not accept imprisonment. At first, forced labor was to familiarize the convict with regular work, but it has recently been for criminal purposes. Thus, a new criminal model was born, which is called the community service order.

The community service order is one of the efforts to avoid the negative impact of imprisonment in the custodial institution. Currently, community service orders do not exist in the RKUHP, which is different from the RKUHP. However, the purpose of formulating a community service order in the RKUHP is almost the same: to prevent the Perpetrators from serving prison in a custodial institution. It is evident in the RKUHP, which essentially states that imprisonment is not imposed as far as possible in certain circumstances. This situation, for example, sees rational considerations such as human values.

It is also the implementation of criminal individualization as reflected in the RKUHP, namely, that Punishment direction towards people and not just actions. Therefore, tackling crime is not the only thing with imprisonment, namely forcing the convict to serve in the institution, but there are still other forms of crime, such as community service orders in the RKUHP. This RKUHP is only a draft and has not been, so there will also be Pros and Cons. From there, the research question asked was, "How are the barriers to community service order in the RKUHP as an alternative to imprisonment?".

¹ The terms custodial and non-custodial can be seen in the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) December 14, 1990 in Tokyo, Japan. Custodial means imprisonment/detention within the institution, and non-custodial is outside the institution.

² The first International Conference on Prison Abolition was in May 1983 in Toronto, Canada but the 3rd conference in 1987 in Montreal, Canada, the term "prison abolition" changed to "penal abolition" so it was known as the International Conference on Penal Abolition.

2 Literature Review

2.1 Community service order as a community

The community service order is an exciting type of crime to study because, in addition to being a type of Punishment, a community service order is also an action (treatment). This community service order can be by the community and is not like implementing a prison sentence. For example, the Punishment imposed is three years in prison. In practice, a community service order is carried out outside the institution so that the position of the community service order is an alternative to imprisonment.

Individual interests). The decision pronounced by the judge stated that the defendant's actions were proven guilty and sentenced to prison as shock therapy or deterrent effect (aspects of public interest). Still, in some instances/conditions, it is impossible to serve imprisonment; the judge may order to work in the public interest (as an aspect of the public interest). Thus, working for the public interest is a characteristic of the community service order.

Community-based criminal justice has evolved in recent decades, with most laws now providing judges with alternatives to imprisonment for adults and juveniles. Julian V. Roberts suggests that community-based sentences have increased in recent decades; most jurisdictions now provide judges with a wide array of alternatives to imprisonment at the adult and juvenile levels [4]. Working for the public interest is part of a community-based crime because it brings in the community, and this criminal model is relatively developed, especially in avoiding imprisonment.

Punishment for working well is what constitutes a "reward/wages," which is known as a "good time allowance" (GA). Community-based crimes can occur as crimes in the community (not institutions), such as community service orders. In addition to community service orders, there are many other forms of community-based criminal sanctions to avoid imprisonment. For example, Julian V. Roberts states that this volume explores a form of imprisonment served in the community. Such a sanction exists in many nations and goes under different names: community custody, community control; a suspended sentence of imprisonment; conditional sentences of imprisonment; home detention. Such sanctions exist in other countries and go by different names: community detention, community surveillance, suspended imprisonment, parole, and house arrest.

Some phrases above suggest a near-identical core concept: criminal acting for the public good. Still, literature has many uses for social work or community service orders (abbreviated-CSO). For example, according to Miranda Boone, in the Netherlands, this Punishment is called (the provision of services), a term defined in the law as "unpaid labor to benefit the community [5]. The Netherlands calls this Dienstverlening (providing services), defined in law as "unpaid labor for the benefit of the public good."

It can be understood because this form of Punishment is relatively new. It is Article 8, paragraph 3, the letter (a) and (b) of the International Covenant on Civil and Political Rights (ICCPR) of the Covenant dated December 16, 1966. In the Netherlands, community service orders finally admitted it in the first half of the 1980s as implementing imprisonment. Interestingly, to impose this community service order, the defendant's approval must be obtained because it is related to the defendant's civil rights, whether he is willing or not. Therefore, the state cannot immediately force the accused to work, even under criminal sanctions.

How far can Pancasila be used as a reference parameter for applying the Margin of Appreciation Doctrine³. in this research? Especially the balance values contained in Pancasila, namely the balance of community protection (social ideas) and Personal Protection (humanitarian ideas), the balance between actions and people, and the balance of crime (Straf) with action (Maatregel). Based on this, the imposition of imprisonment and fostering outside the institution with social work punishment is the implementation of the idea of balance, especially the father-dader Strafrecht and the dual-track system. The concept of balance in Punishment can also be by imposing criminal sanctions on the Perpetrators, which is related to social defense problems.

Still, on the other hand, it is also necessary to pay attention to the Protection or development of individuals as part of society related to social welfare issues. Therefore, social work Punishment as an alternative to imprisonment contains aspects of colonial defense and social welfare. The community service order is also related to criticism to avoid, soften, and even abolish imprisonment. For example, critics who want to cancel imprisonment in the International Conference on Prison Abolition (ICOPA) with the term "prison abolition" have changed to penal abolition [6]. Incarceration should be for minor crimes and serious crimes. The application of imprisonment for serious crimes is also meticulous and not arbitrary. Herbert L. Packer stated that criminal sanction is the prime guarantor and threat to human freedom. Used providently and humanely, it is a guarantor; used indiscriminately and coercively, it is a threat. Criminal sanctions can be the primary guarantor and a significant threat to human freedom.

3 Result and Discussion

3.1 The challenge of social work criminals in the RKUHP as an alternative to prison

Each type of crime in the current law has advantages and disadvantages that can look from various perspectives. For example, since its inception, the death penalty has been pro and contra until now; while the crime of deprivation of liberty, some groups want to be abolished and still defend it. Although the death penalty and the corruption of denial of freedom are well known to the broader community and apply in the current law, there are pros and cons, especially the birth of a new type of crime in the RKUHP as a community service order. As a new type of crime and not yet widely known in Indonesian society, the community service order can occur the Pros and Cons as an effort to tackle corruption. The formulation of community service order is regulated in Article 85 of the 2019 RKUHP as follows:

- 1) Social work punishment may be on a defendant who commits a crime punishable by imprisonment of less than 5 (five) years. The judge imposes maximum imprisonment of 6 (six) months or a maximum fine of category II.
- 2) In imposing a community service order, as referred to in paragraph (1), the judge is obliged to consider: The confession of the defendant to the crime committed, The ability of the defendant to work, The defendant's approval after explaining the objectives and all matters relating to the community service order, The social history of the accused, Protection of the defendant's work safety, The defendant's religious and political beliefs and The defendant's ability to pay the fine.

³ The Margin of Appreciation Doctrine" was once stated by Muladi in Pancasila. Within the framework of the "Margin of Appreciation Doctrine", delivered at the alumni meeting of the UNDIP Doctoral Law Program, Jakarta, September 4, 2004, p. 10

- 3) The implementation of community service orders should not be commercialized
- 4) Social work Punishment for a minimum of 8 (eight) hours and a maximum of 240 (two hundred and forty) hours
- 5) Social work Punishment for a maximum of 8 (eight) hours in one day can be paid in installments within a maximum of 6 (six) months by taking into account the activities of the convict in carrying out his livelihood and other valuable activities.
- 6) The implementation of the community service order, as referred to in paragraph (5), is contained in a court decision.
- 7) The court decision, as referred to in paragraph (6), also contains an order that if the convict, without valid reasons, does not carry out all or part of the community service order, the convict is obliged to:
 - a. repeat all or part of the said community service order;
 - b. serving all or part of the prison sentence, which with the said social work sentence; and
- 8) Prosecutors supervise the implementation of community service orders, and community advisors provide guidance.
- 9) Court decisions regarding community service orders must also contain the following:
 - a. The length of imprisonment or the amount of fine imposed by the judge;
 - b. the length of time the social work sentence must be served by stating the number of hours per day and the period of completion of the community service order; and
 - c. sanctions if the convict does not fit the imposed social work sentence.

Based on the formulation of the article above, only the threat of imprisonment for less than 5 (five) years can be with a community service order, provided that the judge imposes a maximum sentence of 6 (six) months. Moreover, even then, it must meet strict criteria in Article 85, paragraph (2) of the RKUHP. Interestingly, this type of crime in the community and the length of social work punishment is determined based on working hours, namely a minimum of 8 hours and a maximum of 240 hours. Therefore, this community service order is for a maximum of 8 hours a day, and its implementation can be in installments within 6 (six) months.

The formulation of the community service order is only a draft and has not yet as an applicable provision; therefore, before it as UU, it is necessary to disseminate information to provide understanding to law enforcement officers and the public to know more about the provisions of community service order. Introducing a Community service order to the community is a challenging activity that can be an obstacle to ratification into law because there are many questions or responses from the public regarding several things contained in the RKUHP. For example, activists and students in the DPR carried out demonstrations to delay the ratification of the RKUHP into law. Including several academics who criticized several things related to the articles in this RKUHP [7].

Some of these challenges include forming community service orders that are relatively new from the types of sanctions that have existed before. Looking more closely, we can see that Indonesia already has this kind of order to do community service. For example, Article 71, Paragraph 1, of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). The crime of social work and community service is essentially the same, namely doing specific jobs and for a particular time without being paid as a form of Punishment. However, community services are only limited to the Juvenile Criminal Justice System (SPPA), not yet for adults. There are several challenges to the existing community service order in the RKUHP, which as an alternative to imprisonment, can be as follows:

Imprisonment is the Primadonna

Every time there is a crime in society. Generally, it is a prison sentence, even though in Article 10 of the Criminal Code, the type of crime is not only imprisonment. Namely, there is a death penalty, imprisonment, and a fine. Indonesian people are generally more familiar with the death penalty and imprisonment than other crimes, especially the relatively new community service order. Imprisonment seems to

According to Muladi, the sentence for independence does not always have to be as a Primadonna, peine unique, Ultimum refugium, especially a short-term custodial sentence [8]. This perception of imprisonment can be an obstacle because there will be rejection or distrust of law enforcement institutions because of the perpetrators to social work, not imprisonment. Moreover, community service orders are very different from prison sentences, where prisons must be limited or deprived of their freedom in a correctional institution, while the convict's social work Punishment outside the correctional institution. Thus, a community service order exists as an alternative to imprisonment, and imprisonment should not be the Primadonna in tackling crime.

How willing the judge is to give a community service order.

The judge's consideration will determine the severity of the sentence. The judge knows better by the facts revealed in court and concludes the seriousness of the defendant's guilt so that he decides which type of crime is the defendant's guilty. Still, review alone is not enough, for it is also necessary to have the willingness to look for criminal alternatives that are more profitable for both the perpetrator and the victim/society in a balanced way. Alternative criminals include social crimes, where this type of crime has 2 (two) essential aspects, namely seeing the interests of the victim by punishing the perpetrator by working without being paid, and looking at the interests of the perpetrator, namely even though he was sentenced to prison, but was not served in a correctional institution because he with work, in the public interest.

Thus, a judge should not only choose imprisonment or conditional Punishment but also be willing to choose other types of Punishment, even though the law has given authority and a choice of which kind of criminal to choose. This concern is reasonable because community service orders in the RKUHP for offenses; include only imprisonment and fines. Therefore, the judge can impose no other alternative than imprisonment and penalties.

In addition, some law enforcement officers are still action-oriented, so if someone commits a crime, the formulation of the crime has. For example, he can, and the Punishment is imprisonment. Some law enforcement officers also do not understand the development of a person/perpetrator-oriented criminal. For instance, he is proven to have committed a crime but can be forgiven or sentenced to prison, but he does not need to because it is with a community service order.

We are pampering the perpetrator or the convict.

As previously stated, if a prisoner is serving a prison sentence in a correctional institution, his independence is deprived of a certain amount of time. Therefore, it could be too indulgent for a convict. However, at the same time, community service orders are carried out in the community, and the community can see its implementation. Thus, it is necessary to understand that social work criminal sanctions only work at certain times, namely at the hours set by the judge, while at other times, they can work or rest at home like ordinary people.

Only for minor crimes

The community service order in the 2019 RKUHP is the lightest type of crime so it can replace a category II fine and maximum imprisonment of 6 months. If we look at the order of the kinds of sanction, based on Article 65 paragraph (1) of the RKUHP, as follows:

- a. imprisonment,
- b. cover crime,
- c. surveillance crime,
- d. fines, and
- e. community service orders.

Because of its location and the fact that it is both a type of crime (transport) and a criminal act, it does not register in the RKUHP as a crime or an illegal act of the kind of community service order (Strafmodus). The order of types of sanction in the RKUHP shows that community service orders are the lightest types of sanction, and even then, they are in the formulation of offenses. Thus, social work Punishment is an alternative to light imprisonment and light fines.

3.2 Hope for social work criminals as an alternative to imprisonment in the future

Starting from the various challenges and negative impacts of the application of imprisonment, national and global criticism arose because of the adverse effects of incarceration. Interestingly, behind these challenges, there is a great hope that this community service order will become an ideal type of crime to deal with today's crimes. The birth of a perfect kind of crime cannot result from the recognition of human rights and the development of the interests of a civilized society. Judging from the history and development of the modern criminal law sanction system, this type of Community service order is not a foreign thing but already exists in several developed countries and is generally an alternative to light imprisonment.

For example, Albania's social work punishment is a substitute for light imprisonment. Therefore, it regulated the Albanian Criminal Code in Chapter VII on Alternatives to Imprisonment Sentences. Furthermore, based on Article 63 of the Albanian Criminal Code, which governs the suspension of enforcement of imprisonment sentences and compulsion to perform community work, it is explained that citations in the text use consecutive numbers in square brackets:

1. The point is that the sentence can be with a community service order because of the crime's lightness and the judge's imposed maximum imprisonment of 1 (one) year. Due to the minimal threat of the individual and the crime's circumstances, the court suspended the jail term and replaced it with community service.
2. This social work punishment must have the convict's approval and between 40 (forty) to 240 (two hundred and forty) hours. (Community work means the performance of work by the convicted person upon his consent and without reward in the public interest or the interest of the association set out in the court verdict for a period ranging from forty to two hundred and forty hours).

It is not much different from the Indonesian RKUHP that the formulation of community service order is to avoid the application of light or short imprisonment. Based on this, in the context of ratifying the RKUHP to replace the ancient Dutch heritage Criminal Code, it is natural for community service order to be born as a new type of crime following the development and interests of the Indonesian nation. Community service order as an alternative to imprisonment in the RKUHP brings perfect hope to the development of the criminal sanction system in Indonesia, as follows:

To avoid the application of imprisonment.

It is undeniable that there are currently more imprisonment threats than other types of sanctions in the Criminal Code and special laws outside the Criminal Code. By Article 10 of the Criminal Code, an alternative to imprisonment is currently only a fine or a conditional penalty regulated in Article 14 of the KHUP. At the same time, dependent penalties are also rarely imposed because only 1 (one) year of imprisonment can be replaced with conditional Punishment, even if the judge chooses it. Therefore, a community service order in the RKUHP can provide an option to avoid the application of short or short imprisonment.

Jan Rummelink also stated the existence of a community service order as an alternative to short imprisonment [9]. He noted that the prison sentence was short, so it could impose a social work sentence as a substitute or alternative. Thus, if the judge imposes light imprisonment, the judge can replace it with a social work sentence in certain circumstances. The community service order is a type of crime that pays attention to the balance between criminal acts and the perpetrators, known as Daad-Dader Strafrecht. According to Nyoman United Putra Jaya, the character of the Daad-Dader Strafrecht systematically characterizes the RKUHP to maintain balance.

Overcapacity of Correctional Institutions.

Therefore, the existence of a community service order in the RKUHP can be the judge's choice to avoid the application of imprisonment and thus reduce the overcapacity of the Correctional Institution.

It can be seen and controlled by the community.

It knows that the community service order in the community, such as cleaning city parks, public roads, and community gathering places, or it can also be in certain institutions, such as hospitals and other government offices principal to help the state. Based on this, the community can see every work the convict does. At the same time, the community can provide input in implementing the community service order. Moreover, convicts can also show their contribution to society and the state by working earnestly without being paid to serve a community service order. Essentially, the convicted offender makes up for his criminal behavior by doing the public interest and the state without compensation (unpaid work).

Society and the state get results from the work of the convict.

For example, cleaning public roads, playgrounds, places of worship, or government agencies that have been less clean or poorly maintained can be better. It is, of course, to the expertise or ability of the convict to work for the public interest. Thus, the empowerment of convicts sentenced to social work is very useful in helping the community and the state.

The implementation of social work is cheaper.

The application of social work punishment is much cheaper than the implementation of imprisonment and also has fewer negative impacts. As is known, confinement requires many costs for the daily needs of the convict, health workers, and other staff. In contrast to the community service order where the convict lives in his home, he can meet his family or environment and work for his daily needs so that the negative impact of applying the crime than imprisonment.

Based on the description above, the formulation of this community service order has great hope in the Indonesian RKUHP to avoid the application of imprisonment. So far, the alternative to light imprisonment is very limited in the Indonesian Criminal Code. Even then, it is rarely

applied, so it is normal for the overcapacity of the Correctional Institution to occur. In the future, judges can choose community service order as an alternative to imprisonment because the implementation in prison has many negative impacts on the perpetrators, the state, and society.

4 Conclusions

From what has been explained above, we can draw the following conclusions:

- a. In addition, social work punishments as an alternative to imprisonment are only for minor crimes. More severe Punishment can be for serious offenses, such as the death penalty, life, and imprisonment for a specific time.
- b. The birth of community service order as an alternative to imprisonment provides good hope in national criminal law, mainly to avoid the application of imprisonment, as explained that social work punishment is an alternative to avoid or substitute for light confinement. As a criminal sanction, applying for a community service order not only suffers the perpetrators but also benefits the community and the state because they work for the public interest without being paid. The application of social work punishment is also cheaper, and the impact is lighter than the application of imprisonment. It is hoped that implementing a community service order can reduce the overcapacity of the Correctional Institution, which has been very crowded so far.

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