



Challenging Custodial Dominance: Community Service as a Transformative Penal Model in National Criminal Law Modernization

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Abstract

Overcrowding in correctional institutions significantly affects Indonesia's correctional system. This leads to problems like decreased effectiveness, inefficient budgeting, social impacts, and human rights violations. We must urgently assess the penal system by adopting a broader view of punishment objectives. This paper evaluates the penal system's effectiveness, focusing on short-term deprivation of liberty, and examines community service as an alternative to imprisonment under criminal law reform. We use a normative juridical approach to analyze legal issues related to short-term deprivation of liberty from the viewpoint of punishment objectives. The results show that community service aligns well with punishment objectives; it provides a more effective and efficient alternative to short-term imprisonment, which often fails to deliver optimal rehabilitative and preventive effects. The novelty of community service orders lies in its role as an instrument to address the limitations of short-term imprisonment, broadening the punishment paradigm toward a more humanistic, productive, and reintegration-oriented approach.

Keywords: Criminal; Community Service; Criminal Offenses

INTRODUCTION

The criminal justice system in Indonesia shows a dominant tendency to impose prison sentences, especially for minor to moderate cases. Judges tend to use short prison sentences as a solution for legal violations, regardless of their effectiveness in achieving the objectives of punishment. (Manting & Pamulang, 2022) Until now, prisons or correctional institutions have been seen as a means of moral education, namely as a place for moral and spiritual reflection and for atoning for mistakes. However, given the negative consequences of short-term imprisonment, correctional institutions face limitations in fulfilling this moral education function. Short-term prisons are ineffective at changing prisoners' behavior. This is because the very limited rehabilitation period is insufficient to achieve the goal of resocialization. In addition, the tendency to reoffend (recidivism) is also quite high for offenders who have served short prison terms. This type of punishment ultimately raises doubts about the principle of "corrections" that underpins Indonesia's correctional institutions. Therefore, it is important to review the application of short-term prison sentences in the context of national criminal law. (Yolanda, 2016)

One of the most acute problems with current sentencing practices is prison overcrowding. This situation is very concerning because it not only reduces the quality of rehabilitation but also indicates that the application of prison sentences does not optimally achieve the established sentencing objectives. (Erasmus A.T. Napitupulu, Genoveva Alicia K.S. Maya & Pramuditya, 2019) Overcrowding in correctional institutions is a serious problem faced by the Indonesian correctional system. Based on data from the Directorate General of Corrections in 2023, the number of prisoners in correctional institutions reached 264,000, while the ideal capacity is only 146,000. The majority of prisoners, or around 60 percent, are drug offenders, 80 percent of whom are users. (Anggraini, 2023) Based on data on the number of inmates in correctional institutions (lapas) recorded on the Directorate General of Corrections (Ditjenpas) website as of July 31, 2024, the total number of prisoners and detainees throughout Indonesia was 273,392, while the maximum capacity of correctional institutions was only 142,811. (Akbar & Falah, 2025)

The inefficiency of short-term imprisonment also complicates budget allocation. Every prisoner serving a prison sentence requires a budget for basic needs such as food, health care, security, and rehabilitation activities. If prisoners serve only 3 to 6 months, the costs incurred by the state are not proportional to the rehabilitation outcomes achieved. Studies show that the majority of prisoners convicted of minor offenses who serve short sentences do not experience significant behavioral changes, so the effectiveness of their rehabilitation is still questionable. (B. J. Supeno, 2016)

The government must spend billions of rupiah each year on the operation of correctional institutions, and ironically, most of this is used to rehabilitate perpetrators

of minor crimes. From a criminological perspective, short prison sentences are often insufficient to change behavior because there is not enough time for the internalization of legal values. Resocialization requires a long process, consistent guidance, and a supportive environment. Unfortunately, prison conditions in Indonesia do not allow for this, especially if the punishment is only a few months.

Therefore, it is necessary to conduct an in-depth evaluation of the categories of crimes warranting imprisonment, as well as to expand the application of alternative punishments. (Hersyanda & Lubis, 2024) The penal system should be designed with consideration for cost efficiency and the relevance of the type of punishment to its impact. The new Criminal Code has actually provided space for the application of a non-punitive approach that is more cost-effective and humane. However, its realization is still hampered by law enforcement officials' adherence to the tradition of imprisonment. Therefore, a comprehensive evaluation of the budgetary burden and the effectiveness of short-term punishment is urgently needed to support more rational criminal law reform.

In the context of criminal law reform, the introduction of the new Criminal Code (KUHP) through Law Number 1 of 2023 is an important milestone in reforming Indonesia's criminal justice system. This Criminal Code brings a new paradigm by introducing several alternative penalties to address these issues. One crucial aspect of this reform is the review and optimization of the objectives of punishment. The objectives of modern criminal punishment are no longer solely retributive, but also emphasize deterrence, offender rehabilitation, protection of society, and compensation for victims. Imprisonment itself refers to the process of negative socialization in correctional institutions, where prisoners tend to absorb the criminal subculture of their fellow prisoners. (Jamilah & Disemadi, 2020) The ineffectiveness of short-term imprisonment is also caused by the lack of differentiation in the correctional system based on the level or type of crime within correctional institutions. (Badilla, 2022)

With the revision of the Criminal Code, which will certainly also change criminal sanctions, they will better reflect the character and culture of the Indonesian people. The changes to the outdated Criminal Code will certainly usher in a new paradigm for criminal law in Indonesia. The development of the criminal justice system in Indonesia is inseparable from ongoing efforts to reform the system, with the aim of creating a system that is fairer, more effective, and more responsive to the dynamics of crime and the needs of society.

A number of alternative punishments, such as community service, probation, or restorative approaches, are considered to be more in line with the principles of corrective and preventive justice. The direction of national criminal law policy should be to optimize non-custodial criminal sanctions to reduce crime rates and strengthen rehabilitative values in the correctional system. The use of alternative sentencing as a

solution to the failure of the prison system to prevent crime and reform offenders. Punishment must take into account the proportionality and relevance of the punishment imposed to the offender's characteristics and the crime committed. In this context, non-custodial punishment can be a more appropriate and effective alternative, especially for first-time offenders, perpetrators of minor crimes, or offenders with certain social backgrounds.

The new Criminal Code is a progressive step that marks a shift from a retributive approach to a restorative approach. (Hafita Mutiara Zaharani, 2025) Thus, this reform opens the door to reducing the number of short-term prison sentences and encouraging punishments more oriented towards rehabilitation and social reintegration. This is a correction to the old model, which placed too much emphasis on prison sentences as the main solution. In the reformed legal system, the principle of punishment is no longer solely focused on retribution, but also prioritizes rehabilitation, restoration, and prevention. The concept of punishment is not solely to punish the perpetrator, but also to correct, educate, and prevent the recurrence of crime. The new Criminal Code adopts this approach by expanding the range of non-custodial sentences. Probation, for example, allows perpetrators to continue serving their sentences while under community-based social control rather than in prison. Community service, as a form of punishment oriented towards contributing to society, is also considered to have greater positive value, both for offenders and for society. Community service can be a rational choice for offenders of minor crimes because it is educational and does not carry the stigma associated with imprisonment. This reform shows that the Indonesian criminal justice system has moved away from the old paradigm that placed imprisonment as the only instrument of punishment.

Based on the above description, it can be asserted that short-term imprisonment for deprivation of liberty raises various issues, including aspects of effectiveness, budget efficiency, social impact, and potential human rights violations. Thus, from the perspective of criminal law reform, the existence of this type of punishment should be critically reviewed. The latest Criminal Code provides guidance for the implementation of a more proportional punishment system grounded in humanitarian principles. The challenge ahead lies in adapting the criminal justice system's practices to the new norms. This paper arises from the urgent need to evaluate the effectiveness of short-term deprivation of liberty by considering broader punishment objectives.

Writing on community service has been done several times before, such as by Gatot Sugiharto in 2016, who focused on the relevance of community service policies in the Indonesian penal system in the draft criminal law. (Gatot Sugiharto, 2016) Furthermore, a 2020 paper by Asiyah Jamilah focused on policies to combat prison overcrowding through community service penalties. (Jamilah & Disemadi, 2020)

Meanwhile, Apri Listiyanto's 2025 writing highlights the challenges and hopes for the realization of restorative justice in Indonesia, given the existence of community service orders under the New Criminal Code. (Listiyanto et al., 2025) Based on the results of previous studies, the author identified differences in the focus of the study to be conducted. This paper examines the extent to which community service orders are relevant and provides an alternative solution to the objectives of punishment, particularly in addressing the problems of effectiveness and efficiency in short-term prison sentences, while accounting for the various weaknesses inherent in the criminal law reform process. The uniqueness and novelty of this study lie in the understanding that community service orders are a form of punishment that can address the limitations of short-term prison sentences. This issue has not been specifically analyzed from the perspective of the objectives of punishment within the framework of the 2023 Criminal Code. Thus, the results of this study are expected to make a real contribution to the discourse on reforming Indonesian criminal law.

METHODS

The methodology employed in this study is the normative legal approach (legal research), which focuses on the analysis of applicable positive legal norms, particularly the Criminal Code (KUHP) and legislation related to sentencing policies in Indonesia. (Ariawan, 2013) The normative focus of this study is the analysis of the legal basis for short-term imprisonment and its relevance to the objectives of criminal punishment within the framework of modernizing national criminal law. The research approaches employed are conceptual and statutory. The conceptual approach examines theories of the purposes of criminal punishment and theories of criminal policy, while the legal approach analyzes provisions of the Criminal Code and other regulations relevant to criminal punishment policy, particularly in the context of the shift from the dominance of imprisonment toward alternative models based on social work. (Widiarty, 2024)

Primary legal sources include legislation, criminal law doctrine, and fundamental theories such as the theory of the purpose of punishment and criminal policy theories relevant to the subject of study. Meanwhile, secondary legal sources include literature that explains or provides information about primary legal sources, such as abstracts, indexes, bibliographies, government publications, and other academic references. The collection of legal materials was conducted through literature reviews in print and digital formats, including online and in digital libraries, to obtain relevant legal data, particularly on sentencing policies, the application of custodial sentences, and the implementation of alternative sanctions such as community service. All collected legal materials are systematically and methodologically analyzed using a descriptive-analytical approach, resulting in logical, measurable, and scientifically accountable conclusions regarding the

effectiveness of community service as a transformative sentencing model for modernizing national criminal law.

DISCUSSION AND RESULT

Effectiveness and Efficiency of Community Service Orders

Short-term prison sentences are generally intended to punish minor crimes and maintain a balance between justice and the efficiency of the penal system. However, in practice, this type of punishment has not been fully effective in achieving the rehabilitation goals idealized in the Correctional Law. The main objectives of punishment, namely the resocialization and rehabilitation of offenders, are not fully achieved when the prison term is too short.

Prisoners serving less than one year generally do not have time for holistic guidance programs, so behavioral changes and legal awareness are not significantly affected. Temporary isolation is the main result of short-term imprisonment, and its effectiveness in reducing recidivism has not been proven. In fact, former short-term prisoners are more likely to reoffend, demonstrating the weak transformative power of short-term imprisonment on offenders. Therefore, its effectiveness as a tool for social reform is still questionable.

Prison sentences incur structural, fixed, and long-term costs. The state must provide daily meals, health services, clothing, water and electricity, 24-hour security, and the costs of constructing and maintaining correctional facilities. In addition, there are human resource costs, including salaries and allowances, for correctional officers. This system is under the Directorate General of Corrections, which allocates a large annual budget for the operation of prisons and detention centers.

The problem becomes even more complex due to chronic overcapacity. When the number of prisoners exceeds capacity, the state not only incurs higher consumption and operational costs but also faces reduced guidance quality, increased security risks, and administrative pressure. This means that every additional person imprisoned automatically increases the state's fiscal burden.

In contrast, community service has a much lighter financing structure. Under this scheme, the state does not bear the costs of food, housing, or full-time security. State expenditures are more focused on administrative and supervisory functions, such as monitoring by community counselors and coordination with the agencies where community service is delivered. Even within the framework of positive law, community service has been accommodated in Law Number 1 of 2023, thereby creating greater space for the application of non-custodial sentencing alternatives.

From a public economic perspective, community service results in efficiency in two forms. First, direct budget efficiency because the state does not need to finance the living needs of convicts. Second, social efficiency because the perpetrator remains in the community, remains productive, and does not completely lose their source of

income. This also reduces the economic burden on the convicted person's family, which is often severely affected when the family's head is imprisoned. Thus, narratively, it can be asserted that for perpetrators of minor or low-risk crimes, community service orders are more fiscally rational than imprisonment. The state still achieves the objectives of punishment particularly those of rehabilitation and accountability, but at a much lower cost. In the context of modern criminal policy, this choice reinforces the argument that efficiency does not mean weakening the function of criminal law, but rather optimizing the use of state resources to be more proportional and fair.

Short-term imprisonment has the potential to cause incarceration and the formation of criminal subcultures. These prisoners are not given special guidance; instead, they are exposed to violence, gang hierarchies, and other negative values. This reinforces the idea that short-term sentences do not encourage rehabilitation and can exacerbate the social burden after sentencing. The domino effect of short-term sentences can extend to the social environment of former prisoners, who may face difficulties reintegrating due to stigma, trauma, and broken social ties. This creates a vicious cycle of crime. (Rafsanjani et al., 2023)

Sociologically, short-term imprisonment affects offenders' social status and relationships. Offenders of minor crimes who are imprisoned for a short period of time are still stigmatized, as if they had committed a serious crime. Short-term imprisonment also places a significant economic burden on the state. Every prisoner requires daily expenditure on food, security, and basic services, regardless of the length of their sentence. The accumulation of a large number of short-term prisoners causes state expenditure to increase without producing any real rehabilitation outcomes. In addition, juvenile prisoners, who should still be productive members of society, become a burden on the state budget. In other words, short-term sentences have a very low cost-benefit ratio. Fiscal efficiency in the correctional system will only be achieved if the sentences imposed have a truly positive impact. (Firman Wijaya, 2022)

Community service is a form of criminal punishment that serves as an alternative to imprisonment by involving offenders in social activities aimed at changing their behavior. In legal practice across various countries, including Indonesia, community service has gained normative legitimacy through legislation as an alternative to imprisonment. Community service is intended to achieve the goals of rehabilitation, reintegration, and resocialization of offenders into society. This approach emphasizes the urgency of shifting the paradigm from a prison-based punitive orientation to a more humanistic rehabilitative model. In addition, community service is seen as a strategic instrument in reducing the problem of overcapacity in correctional institutions and minimizing the negative impact of short-term detention on offenders. This study is expected to provide a more comprehensive

understanding of the potential and limitations of community service orders as an alternative form of punishment, thereby contributing to addressing the complex issues that arise in the process of criminal law reform. (Rafsanjani et al., 2023) In Indonesia, the implementation of community service orders is very important, given the urgency of reforming the criminal justice system as explained above.

Community service orders have undergone modernization, eliminating their character as forced labor and changing their nature to an “avoluntarily undertaken obligation” involving deprivation of liberty. They can be an independent punishment or an alternative to short-term imprisonment in suspended sentences. Community service orders, as an alternative to imprisonment, are seen as a way to reduce the negative impact of life in prison. This mechanism not only reduces the adverse effects of prison life but also has a psychological effect in the form of shame on the convicted person due to their direct involvement in social activities that can be witnessed by the community. In addition, community service also provides direct benefits to the community. (Mahyudin Igo, Amiruddin, 2022) Community service can be carried out in various institutions, such as hospitals, orphanages, nursing homes, schools, and other social institutions, with placements that are as closely matched as possible to the convict's profession, expertise, and skills. The implementation of this punishment also serves as an effort to reduce the overcrowding of correctional institutions, which has been hampering the effectiveness of the rehabilitation process for prisoners.

Community service orders are one of the instruments in the punishment system, and their implementation involves various elements of the criminal justice system, including the prosecutor's office, judicial institutions, correctional institutions, and legal advisors, each with different roles and responsibilities in accordance with its institutional functions. Community service orders have significant potential in realizing social recovery through a restorative justice approach in Indonesia. Through this mechanism, offenders have the opportunity to make amends for their mistakes while contributing positively to society, thereby supporting social reintegration and reducing the likelihood of recidivism. Through community service, offenders can learn new skills, increase their sense of responsibility, and build positive social relationships. (Leonard, 2016) With the establishment of community service orders as a sentencing option under Article 46, paragraph (1), of the New Criminal Code, this paper seeks to provide an overview of their role in efforts to achieve restorative justice.

Community service orders originated in Europe, in which offenders are sentenced to perform useful work to avoid imprisonment. (Wibawa, 2017) In Indonesia, the concept of community service was only explicitly mentioned in the New Criminal Code, which states in Article 65, paragraph 1, that the main penalties consist of:

1. imprisonment;

2. detention;
3. supervision;
4. fines; and
5. community service orders.

And paragraph (2) states that: "The order of punishment as referred to in paragraph (1) determines the severity or leniency of the punishment." This indicates that "community service" is the last in the order of penalties, meaning it is imposed for criminal acts that carry a lower penalty than those punishable by imprisonment.

Not all criminal offenses are subject to community service penalties. In the New Criminal Code, the criteria for imposing community service penalties can be found in Article 70, namely:

- a) The defendant is a minor.
- b) The defendant is over 75 (seventy-five) years of age;
- c) The defendant is a first-time offender.
- d) The harm and suffering caused to the victim are not severe.
- e) The defendant has paid compensation to the victim.
- f) The defendant was unaware that his criminal act could cause significant harm.
- g) The criminal act occurred as a result of strong incitement from another party.
- h) The victim of the crime encouraged or provoked the criminal act;
- i) The criminal act was the consequence of circumstances that are unlikely to be repeated.
- j) The defendant's personality and behavior indicate a belief that he or she will not repeat the criminal act in the future;
- k) A prison sentence is likely to cause severe suffering to the defendant and his or her family.
- l) Rehabilitation efforts outside of prison are considered to have a good chance of success for the defendant.
- m) Imposing a lighter sentence will not diminish the serious nature of the crime committed by the defendant;
- n) The crime occurred within the family, and/or
- o) The crime occurred due to negligence.

In principle, community service cannot be imposed on perpetrators of serious crimes, namely criminal acts punishable by imprisonment of five years or more and attacks on physical integrity, including severe abuse, child pornography, and sexual crimes against children. However, community service orders may still be imposed on perpetrators of such crimes, provided a custodial sentence (imprisonment) is also imposed at the same time or combined with community service. (Erasmus A.T. Napatipulu, Genoveva Alicia K.S. Maya & Pramuditya, 2019)

Transformation of the Implementation of Community Service

Community service can be seen as an alternative form of punishment in the current criminal justice system, aimed at rehabilitating offenders through productive community activities. In Indonesia, community service has begun to be adopted and is part of efforts to reform the justice system to be more humane and restorative. Despite its great potential, implementing community service in Indonesia faces several challenges. First, the lack of clear, comprehensive regulations on community service leads to inconsistent implementation. Second, society's legal culture still tends to prioritize imprisonment as the primary form of punishment. Third, the infrastructure and monitoring mechanisms are inadequate to ensure the effective implementation of community service. The ideal model for transforming the application of community service in Indonesia should be understood not merely as a replacement for short-term imprisonment, but as a process of restructuring the entire penal system within the framework of modernizing national criminal law. This transformation stems from the realization that short-term imprisonment has been ineffective in achieving the objectives of punishment, and often has negative consequences such as overcrowding, prisonization, and high recidivism rates. Therefore, the inclusion of community service in the Criminal Code must be positioned as an instrument of systemic change, not merely an optional alternative.

Normatively, this transformation model requires the repositioning of community service as the preferred sanction for crimes punishable by short-term imprisonment. This means that judges no longer place imprisonment as the first choice; instead, they first consider the suitability of community service based on objective factors such as the level of guilt, the risk of recidivism, the harm to the victim, and the social conditions of the perpetrator. Thus, there is a shift from the dominance of custodial sentences to more proportional and corrective community-based sanctions.

However, the transformation cannot stop at the normative level. Institutionally, the ideal model requires strengthening the Correctional Center's role as the primary assessment and supervisory agency. The Correctional Center must be given adequate authority and capacity to conduct risk assessments, recommend appropriate forms of community service, and monitor their professional implementation. In addition, integration with local governments and community social institutions as implementing partners is necessary so that community service is truly rooted in public needs and is not merely symbolic.

At the operational level, the ideal transformation model requires national standards for implementing community service. The process begins with an initial assessment, a court decision, placement of the work location, periodic supervision, and an evaluation of compliance. The supervision system must be accountable and

measurable, including the regulation of the conversion of community service hours in proportion to the criminal threat. With a clear operational design, community service orders are no longer seen as a mere punishment but as a genuine responsibility to society.

Philosophically, this transformation model reflects a shift in the orientation of punishment from a retributive-custodial approach to a corrective and reintegrative approach. Community service is positioned as a means of rebuilding the relationship between the perpetrator and the community, as well as a mechanism for social learning that prevents the recurrence of criminal acts. In the Indonesian context, this approach aligns with the balance between protecting society and rehabilitating offenders, a hallmark of the national penal system.

Finally, this transformation must be carried out gradually through a clear policy roadmap. In the initial stage, community service can be applied as a limited substitute. In the next stage, it becomes a preferred sanction for certain short-term crimes. In the long term, short-term prison sentences can be significantly reduced and replaced by a community-based penal system. Thus, this transformation model not only offers alternative sanctions but also designs structural changes in Indonesia's criminal justice system towards a more humane, effective, and modern system.

One of the biggest challenges is the lack of understanding and awareness of the concept and objectives of community service among law enforcement officials, the public, and even the offenders themselves. This can lead to resistance and doubts about the effectiveness of community service as an alternative to imprisonment. In addition, the absence of clear, integrated standard operating procedures for implementing community service is a significant obstacle. The absence of comprehensive SOPs can lead to differences in interpretation and practice in the field, thereby reducing the effectiveness and consistency of community service order implementation across regions in Indonesia. (Listiyanto et al., 2025)

In the theory of legal reform, it is only natural to develop an ideal concept of punishment oriented towards the rehabilitation (improvement) of criminals' behavior. The idea underlying the formulation of community service orders in Law Number 1 of 2023 concerning the Criminal Code is inseparable from the purpose of punishing criminals. Article 51 of Law Number 1 of 2023 concerning the Criminal Code clearly states the objectives of punishment, which are oriented towards the rehabilitation of criminals. The rehabilitation pattern, as set out in the objectives of punishment regulated by Law Number 1 of 2023 concerning the Criminal Code, aims to make legal norms a means of protecting society from crime. In addition, offenders who have completed their prison terms can live as members of society as before and be accepted by their community with improved behavior. Finally, it aims to restore the balance of social norms from past conflicts, enabling the community to enjoy peace in its social life. It also aims to foster a sense of guilt in offenders. Moving away from the goal of

punishment towards the rehabilitation of criminals rather than retribution, society can be protected. In principle, the formulated goal of punishment is not retribution against the perpetrator, as sanctions are intended to prevent people from committing crimes. (Ni Komang Sutrisni & I Nengah Susrama, 2023)

The success of individual rehabilitation of convicts will, on the one hand, protect the individuals concerned from reoffending. On the other hand, the success of rehabilitation of convicts also protects the community from the threat of becoming victims of crime. Considering the two aspects of protection above and their relevance to community service orders, it can generally be concluded that community service orders, as an alternative punishment offered in Law Number 1 of 2023, are highly relevant. The selection of community service orders is also in line with current international trends and does not conflict with Indonesian society's values. Based on this explanation, it can be concluded that, in theory, community service orders fulfill the objectives of punishment as stipulated. Conceptually and theoretically, community service orders provide integrated protection for both society and individuals, which is in line with the objectives of punishment as formulated in Law Number 1 of 2023. (Setyo Amirullah, 2024)

Several prerequisites enable the effective implementation of community service sentences, namely those related to illegal activities. In general, European countries require community service sanctions to be limited to very minor offenses. Certain restrictions related to the offender, such as their age and prior convictions, may be considered when determining whether to apply community service. In addition, the number of hours of community service must generally be specified to set minimum and maximum hours that may be performed by the offender, and the consent of the convicted person is required for community service to be imposed. This is necessary to prevent conflicts with the constitution and other agreements that prohibit forced labor. Furthermore, it allows the court to ensure that the defendant truly intends to commit a crime related to community service. (Hasianna Maria D.K Turnip Parera, 2024)

Community service is not typically accompanied by financial compensation, given its nature as a form of criminal punishment (work as a penalty). Thus, any form of work carried out within the framework of community service should not have commercial implications. This indicates that the work is not ordinary work, but part of the punishment. (Gatot Sugiharto, 2016) Community service is an alternative punishment that helps protect against potential violence in correctional institutions and aligns with Indonesian culture, which emphasizes voluntary service to the community for the public good. Through this punishment, prisoners are guided to develop characters in accordance with prevailing social values, thereby reducing the likelihood of recidivism. Furthermore, community service orders can be imposed only

once, and if the convict commits another crime, the penalty will be imprisonment or a fine. (Widyastuti et al., 2020)

The implementation of community service in the Indonesian legal system has several structural and operational limitations that could cause serious problems if not systematically anticipated. These limitations are evident in at least three main dimensions: the potential for abuse of authority in determining the type of work, weak monitoring mechanisms, and disparities in implementation across regions due to differences in institutional capacity.

First, in terms of determining the type and location of work, there is considerable discretion for law enforcement officials and technical implementers. Without detailed national guidelines and measurable operational standards, this discretion can lead to inconsistencies and even the abuse of authority. The type of work assigned may be disproportionate to the level of offense, irrelevant to the purpose of rehabilitation, or even demeaning to the convicted person. In certain situations, there is also a risk that community service placements will not be based on objective considerations, but rather on personal connections, administrative interests, or the need for cheap labor. If not strictly regulated, community service can shift from being an instrument of rehabilitation to an instrument of exploitation.

Second, weaknesses in the monitoring mechanism pose a crucial challenge in the implementation of community service. Conceptually, supervision falls within the scope of the Correctional Center's duties. However, in practice, human resource capacity, the workload of social counselors, and budget constraints are often insufficient to support the number of cases that must be supervised. This condition can lead to supervision that is merely administrative and formal, without substantive monitoring of the quality of community service implementation. Weak reporting and evaluation systems can also open the door to manipulation of attendance, fictitious implementation, or violations of obligations without adequate follow-up. If supervision is ineffective, the credibility of community service orders as a form of criminal accountability will be called into question.

Third, there is the possibility of disparities in implementation between regions due to differences in institutional capacity and supporting infrastructure. Regions with adequate resources, extensive social institution networks, and good coordination between law enforcement and local government may be able to implement community service effectively. Conversely, regions with budget constraints, a lack of partner institutions, and poor inter-agency coordination may have difficulty providing suitable community service locations and adequate monitoring systems. As a result, there are disparities in implementation that not only affect the effectiveness of punishment but also raise fairness concerns, as perpetrators with the same criminal characteristics may receive different-quality sanctions depending on the region where the verdict is carried out.

These limitations show that the success of community service orders is not solely determined by their regulation in the Criminal Code, but rather depends heavily on institutional design, operational standards, and the readiness of the implementing structure at the central and regional levels. Without strengthening technical regulations, an accountable monitoring system, and equitable institutional capacity, community service risks losing its legitimacy as a more humane alternative and instead creating new problems in criminal justice practice.

Although not mandatory, the consent of the convicted person is often sought before imposing community service to ensure the convicted person is ready and willing to serve. This consent is one of the requirements that must be met as stipulated in various international legal instruments, including the 1930 Geneva Convention on Forced Labor, the 1950 Treaty of Rome on the Convention for the Protection of Human Rights and Fundamental Freedoms, the 1957 Geneva Convention on the Abolition of Forced Labor, and the 1966 New York Convention on the International Covenant on Civil and Political Rights. (Wibawa, 2017) Another thing that is often requested is social history. The defendant's social history must be considered in order to assess their background and physical and mental readiness to undergo community service.

The position of community service in Indonesia is now strengthened as one of the main penalties in the New Criminal Code, as stipulated in Article 65, thereby theoretically fulfilling the elements of modern criminalization: providing comprehensive protection for society and offenders. Community service is imposed for a maximum period. In general, community service orders may not exceed 240 hours, with a minimum duration of 8 hours, and must be completed within 12 months. The public prosecutor may extend this period for 12 months. Community service orders can only be imposed for certain criminal acts, namely, criminal acts punishable by imprisonment of less than 5 years, and where the judge imposes a prison sentence not exceeding 6 months or a fine not exceeding Category II of Rp. 10,000,000.00. Community service supervision is carried out by prosecutors, and guidance is provided by community counselors. (Jamilah & Disemadi, 2020).

The problem with the execution of community service in the context of national criminal law reform lies in the tension between the normative design and the readiness of its implementing structure. Conceptually, community service is intended as a corrective and reintegrative instrument that serves as a substitute for short-term imprisonment. However, in practice, the success of this sanction is largely determined by the clarity of the implementing actors, the monitoring mechanisms, and the patterns of coordination between institutions. This is where several fundamental problems arise.

The first problem concerns the ambiguity of supervisory authority. In the criminal procedure system, prosecutors act as executors of court decisions. This means

that prosecutors are responsible for ensuring that court decisions are carried out. However, community service orders are not merely administrative in nature but require ongoing social guidance and evaluation. Institutionally, this function falls within the scope of the Correctional Center. When this division of roles is not clearly defined, there is a risk of overlap or even a vacuum of responsibility. Prosecutors may focus on the formal aspects of implementation, while substantive oversight of the quality of community service is not carried out optimally. Conversely, if the entire oversight burden is handed over to Bapas without strong coordination with prosecutors, the legal certainty of execution may be compromised.

The second problem concerns the weak coordination mechanism between the executing prosecutor, Bapas, and social agencies or local governments where community service is carried out. Community service orders require cross-sector collaboration, because they are not carried out in correctional institutions, but in public spaces. Without standard procedures for communication, reporting, and evaluation, the risk of authority fragmentation is high. For example, there are no standards regarding who is responsible if a convict is absent, who assesses the quality of work performance, and how sanctions are converted in the event of a violation. This ambiguity can lead to legal uncertainty and reduce the credibility of sanctions.

The third problem is limitations in institutional capacity. Not all regions have adequate human resources, social infrastructure, and partner institutional networks to accommodate the implementation of community service. In large urban areas, there may be many options for community service locations with relatively good supervision systems. However, in areas with limited administrative capacity, implementation can become a mere formality or even ineffective. This condition has the potential to create disparities between regions, so that offenders with the same criminal characteristics experience different qualities of sanction implementation depending on their region. From a justice perspective, this situation is problematic.

The next problem is the risk of abuse of discretion. In the absence of detailed technical guidelines, the determination of the type of work, the location of implementation, and the supervision mechanisms can be highly dependent on local policies or officials' preferences. This opens the door to disproportionate, degrading, and even unethical treatment. Without clear national standards, community service orders can lose their rehabilitative orientation and become disguised forced labor.

Overall, these issues show that the main challenge lies not in the normative legitimacy of community service orders in the Criminal Code, but in the design of its governance. True legal reform requires not only changes in norms but also institutional engineering that can ensure a clear division of authority, effective coordination, and accountable oversight. Without improvements in execution, the transformation of community service penalties risks becoming a symbolic reform incapable of substantively replacing the dominance of short-term prison sentences.

Legally, the responsibility for enforcing community service is part of the authority of the Attorney General's Office. This authority includes: (i) collecting data and information regarding the implementation of community service orders from correctional institutions; (ii) changing or adjusting the form of community service being carried out; and (iii) issuing instructions for convicts to serve prison sentences if they do not carry out community service orders. If convicts do not carry out community service as required, the court has the authority to replace it with a prison sentence of a minimum of one day and a maximum of four months, with the conversion rule that every two hours of community service is equivalent to one day of imprisonment. (Erasmus A.T. Napitupulu, Genoveva Alicia K.S. Maya & Pramuditya, 2019) The replacement of the sentence begins with the public prosecutor submitting an official report to the Attorney General's Office regarding the convicted person's failure to carry out community service. (Islamy et al., 2022) However, the convicted person may file an objection with the judge to review the validity of the reasons for the substitution, and the court has the authority to change the prosecutor's decision if the reasons put forward by the convicted person are proven to be legally justifiable. (Erasmus A.T. Napitupulu, Genoveva Alicia K.S. Maya & Pramuditya, 2019)

The Correctional Agency's responsibility is to ensure that prisoners carry out appropriate forms of community service, as far as possible, related to the crimes they have committed. Correctional Agency officers are obliged to submit reports on the results of community service carried out by convicts. If a convict is negligent, the system will automatically send a reminder to the Correctional Agency's head office. If the central office reports that the community service has not been fully carried out, a request will be submitted to the court to replace the community service sentence with a prison sentence. (Erasmus A.T. Napitupulu, Genoveva Alicia K.S. Maya & Pramuditya, 2019)

Normatively, the existence of community service in the Criminal Code requires reinforcement through the establishment of a Government Regulation as an implementing regulation. The Government Regulation must include detailed technical provisions on the eligibility criteria for perpetrators, the conversion of community service hours, the types of work permitted and prohibited, the monitoring mechanism, and the procedures for handling violations of obligations. Without comprehensive operational regulations, excessive discretion can lead to disparities and inconsistent implementation.

In addition, a Supreme Court Regulation is needed as a technical guideline for judges in imposing community service penalties. This regulation is important to ensure objective and proportional judicial standards, so that community service is truly prioritized for certain types of crimes and not merely a residual option. The

guidelines also need to regulate the format of court decisions, the risk assessment parameters, and the integration of recommendations from community counselors, so that decisions are not only legal and formal but also based on measurable social evaluations.

Furthermore, the proposed transformation requires uniform national standard procedures for all law enforcement officials, including prosecutors and community supervisors at correctional facilities. This standardization includes initial assessment procedures, placement of community service locations, reporting and monitoring systems, and mechanisms for compliance evaluation. Without integrated national standards, the implementation of community service sentences risks fragmentation between regions due to differences in institutional capacity and resources. Thus, community service sentences are intended to be an alternative to short-term prison sentences and light fines, with a focus on community development and protection. (Villar Wibawa Wicaksana, 2025).

CONCLUSION

The use of short-term prison sentences in Indonesia's criminal justice system has proven ineffective in achieving the goals of social reintegration, rehabilitation, and resocialization. Sentences that are generally less than one year in length hinder comprehensive rehabilitation programs, resulting in counterproductive effects such as increased recidivism, exposure to criminal subcultures, post-release social stigma, and a high fiscal burden on the state without any tangible rehabilitative outcomes.

This paper explicitly highlights community service as a transformative, humanistic, and restorative justice-oriented alternative to punishment. In addition to reducing negative impacts and prison overcrowding, community service-based punishment actively encourages offenders to rehabilitate and make positive contributions to society through productive activities tailored to each offender's skills. Thus, community service orders reflect the modernization of criminal law, which has shifted from a punitive approach to rehabilitation, as reflected in the objectives of punishment in the New Criminal Code. The implementation of community service orders is still hampered by the absence of adequate technical regulations, the dominance of the prison-based sentencing paradigm, and limited understanding and socialization among officials and the community. The effectiveness of community service orders as an instrument of justice in Indonesia requires serious attention to structural and cultural obstacles to achieve consistency and the restorative goals of the justice system.

REFERENCES

- Akbar, T., & Falah, A. (2025). Analisis Pidana Kerja Sosial Sebagai Alternatif Pidana Jangka Pendek : Perspektif KUHP Baru Indonesia. *Mahkamah: Jurnal Riset Ilmu Hukum*, 3(1), 151-160.
- Anggraini, D. (2023). Penerapan pidana kerja sosial sebagai alternatif pidana jangka pendek dalam sistem pemasyarakatan Indonesia. *Jurnal Kriminologi Kontemporer*, 15(2), 85-99.
- Ariawan, I. G. K. (2013). Metode Penelitian Hukum Normatif. *Kertha Widya*, 1(1).
- B. J. Supeno. (2016). Efektivitas kebijakan kriminal dalam penanggulangan tindak pidana narkoba (dalam kerangka pembaruan hukum nasional). *Jurnal Hukum Dan Dinamika Masyarakat*, 14(1), 1-15.
- Badilla, N. W. Y. (2022). Efektivitas Pidana Penjara Bagi Pecandu Narkoba di Lapas Kelas IIA Jayapura. *Jurnal Komunikasi Yustisia*, 5(2), 703-710.
- Erasmus A.T. Napitupulu, Genoveva Alicia K.S. Maya, I., & Pramuditya, M. E. A. (2019). *Hukuman Tanpa Penjara Pengaturan, Pelaksanaan, dan Proyeksi Alternatif Pemidanaan Non Pemenjaraan di Indonesia* (September). Institute for Criminal Justice Reform (ICJR).
- Firman Wijaya. (2022). Implementation Of Social Work Sanctions As A Substitute To Punishment Under One Year Prison Against The Criminal Action Of It. *Awang Long Law Review*, 4(2), 359-366. <https://doi.org/10.56301/awl.v4i2.390>
- Gatot Sugiharto. (2016). Relevansi Kebijakan Penetapan Pidana Kerja Sosial Dalam Sistem Pemidanaan. *Jurnal Ilmu Hukum Novelty*, 7(1), 83-95. <https://doi.org/https://doi.org/10.26555/novelty.v7i3.a3936>
- Hafita Mutiara Zaharani. (2025). Tinjauan Yuridis Pengaturan Pidana Pokok dan Tujuan Pemidanaan dalam KUHP 2023 Indonesia dan Strafgesetzbuch Jerman yang menyeimbangkan aspek baik pelaku maupun korban (Rizki , 2024). Pembaruan ini tidak (social defence) dan kesejahteraan masyarakat (. *Depositi: Jurnal Publikasi Ilmu Hukum*, 3(2), 47-58. <https://doi.org/Depositi: Jurnal Publikasi Ilmu Hukum>
- Hasianna Maria D.K Turnip Parera. (2024). Pidana Kerja Sosial dalam Pembaharuan Hukum Pidana Indonesia Menurut Perspektif Historis dan Perbandingan Hukum Pidana. *INNOVATIVE: Journal Of Social Science Research*, 4(3), 2309-2324. <https://doi.org/https://doi.org/10.31004/innovative.v4i3.10763>
- Hersyanda, M. D., & Lubis, I. S. (2024). Efektivitas Sanksi Pidana Terhadap Pengulangan Kejahatan (Residivisme) di Indonesia. *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 253-265.
- Islamy, Y., Rusmiati, E., & Chandra, E. M. (2022). ANALISIS PELAKSANAAN PIDANA KERJA SOSIAL BERDASARKAN RKUHP 2019. *Jurnal Ilmu Hukum*, 18(1), 1-15.

- Jamilah, A., & Disemadi, H. S. (2020). Pidana Kerja Sosial : Kebijakan Penanggulangan Overcrowding Penjara. *Jurnal IUS Kajian Hukum Dan Keadilan*, 8(1), 26–38. <https://doi.org/https://doi.org/10.29303/ius.v8i1.726>
- Leonard, T. (2016). Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana Diindonesia. *Yustisia*, 5(2), 468–483. <https://doi.org/https://doi.org/10.20961/yustisia.v5i2.8764>
- Listiyanto, A., Panggabean, M. L., & Siregar, R. A. (2025). Pidana Kerja Sosial dalam KUHP Baru : Tantangan dan Harapan Perwujudan Keadilan Restoratif di Indonesia. *Jurnal Hukum Mimbar Justitia (JHMJ)*, 11(1), 231–250.
- Mahyudin Igo, Amiruddin, U. (2022). Kebijakan formulasi dalam ruu kuhp terhadap pidana kerja sosial sebagai alternatif pidana penjara. *Jurnal Education and Development*, 10(2), 707–713.
- Manting, L., & Pamulang, U. (2022). Pengelola Overcrowding di Penjara Indonesia : Sebuah Kajian Literatur. *Aufklarung : Jurnal Pendidikan , Sosial Dan Humaniora*, 2(4), 504–509.
- Ni Komang Sutrisni & I Nengah Susrama. (2023). Konsep Ideal Penerapan Pidana Kerja Sosial Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Melalui Sistem Kolaborasi. *Jurnal Hukum Saraswati (JHS)*, 5(2), 408–419. <https://doi.org/https://doi.org/10.36733/jhshs.v5i2.8129>
- Rafsanjani, J. I., Prasetio, R. B., Anggayudha, Z. H., & Selatan, J. (2023). The Existence Of Community Service Punishment In A Progressive Legal Perspective. *Jurnal Penelitian Hukum De Jure*, 23(2), 219–230. <https://doi.org/http://dx.doi.org/10.30641/dejure.2023.V23.219-230>
- Setyo Amirullah. (2024). Sanksi Pidana Kerja Sosial Sebagai Alternatif Pidana Terhadap Tindak Pidana Pencurian Ringan Berdasarkan Undang-Undang Nomor 1 Tahun 2023. *Journal Syntax Idea*, 6(11), 6755–6773. <https://doi.org/https://doi.org/10.46799/syntax-idea.v6i11.10066>
- Villar Wibawa Wicaksana, M. P. Z. J. (2025). Kebijakan Pembaruan Hukum Pidana Tentang Pidana Kerja Sosial Dalam KUHP Nasional: Perspektif Tujuan Pidana Policy of Criminal Law Reform Regarding Community Service Sentences In the National Criminal Code: The Perspective of Punishment Objectives. *Jurnal USM Law Review*, 8(2), 6–12. <https://doi.org/https://doi.org/10.26623/julr.v8i2.11092>
- Wibawa, I. (2017). Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia. *Jurnal Media Hukum*, 24(2), 105–114. <https://doi.org/10.18196/jmh.2017.0086.105-114>
- Widiarty, W. S. (2024). *Buku Ajar Metode Penelitian Hukum*. Publika Global Media.
- Widyastuti, B., Ilmu, M., Universitas, H., & Maret, S. (2020). KAJIAN PIDANA KERJA SOSIAL DITINJAU DARI SEGI SOSIOLOGI HUKUM. *Jurnal Hukum Dan*

Pembangunan Ekonomi, 8(2), 56–63.

Yolanda, L. (2016). *EKSISTENSI PIDANA KERJA SOSIAL SEBAGAI SANKSI PIDANA DALAM RANCANGAN UNDANG-UNDANG KUHP INDONESIA*. Universitas Islam Indonesia.