



Strengthening the Role of Community Guidance in Supporting the Effectiveness of Alternative Sentences in the National Criminal Code (An Analysis of Supervision and Community Service Sentences)

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Article Info

Article History

Revised : 2025-05-17

Accepted : 2025-06-25

Published : 2025-07-30

Keywords:

Supervision Sentence;
Community Service
Sentences; Community
Guidance; National
Criminal Code

Abstract

The National Criminal Code brought a paradigm shift in the criminal justice system in Indonesia, especially through two new types of basic punishments, namely supervision sentence and community service sentences. This form of punishment is an effort to reform criminal law that is oriented towards the rehabilitation and social reintegration of criminals, as an alternative to imprisonment which has so far dominated the criminal justice system. In its implementation, the function of community guidance is crucial to ensure the effectiveness of the punishment. The research method used in the discussion and analysis of the problem is normative juridical with a statutory approach and legal concepts. Community guidance plays a role in conducting community research, providing recommendations to prosecutors, and guiding convicts during the supervision or community service sentences period. However, strengthening regulations and institutions for the implementation of this function is still an urgent need because there are no implementing regulations that specifically regulate this matter. Therefore, this study emphasizes the importance of restructuring the role of community guidance in supporting the implementation of supervision and community service sentences so that the goals of correctional and criminal punishment can be achieved optimally.

INTRODUCTION

Reform marked by the enactment of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). Reforms in the substantive field of law are interpreted as efforts to reform and re-evaluate the main problems in criminal law, namely the problem of determining and establishing criminal acts, criminal responsibility, and criminal and criminal punishment problems. ¹This change brings fundamental changes to the Indonesian criminal and criminal punishment system. One of the significant changes to the National Criminal Code is the regulation of two new types of main punishments, namely supervision sentences and community services sentences. This type of punishment is clearly intended as an alternative form of imprisonment.

The existence of supervision in the National Criminal Code is a principal punishment, but its status is an alternative to imprisonment with a maximum prison sentence of 5 (five)

¹ Dwi Oktafia Arianti & Muhammad Ramadhan. (2022). Sentencing Guidelines in the Context of Future Criminal Law Reform, *Journal of Legal Studies*, 7 (01): 93, <https://kajianhukum.janabadra.ac.id/index.php/kh/article/view/7/7>

years.² Likewise, community service is a punishment where the convict is given the opportunity to carry out useful social tasks as an effort to rehabilitate and defend themselves. This type of punishment is considered more effective than imprisonment because it gives the convict the opportunity to improve themselves and improve their social skills so that they can contribute again as a useful society.³ Community service is imposed on defendants with a criminal sentence of less than 5 (five) years and in the case where the judge imposes a maximum prison sentence of 6 (six) months or a maximum fine of category II.

The implementation of these two forms of criminal punishment in its regulations is related and connected with the role of other law enforcement institutions, namely the Prosecutor's Office and Community Guidance. Article 76 Paragraph (5) and Paragraph (6) of the National Criminal Code states the role of these two institutions in terms of supervisory punishment. Regarding social work punishment as regulated in Article 85 Paragraph (8) of the National Criminal Code, supervision is carried out by the prosecutor's office and guidance is carried out by community guidance. Thus it can be seen that the effectiveness of the implementation of these two forms of punishment is still connected to the assessment of other institutions.

The introduction of these two types of punishment is a form of paradigm shift in punishment from a retributive nature to a more *restorative* and *rehabilitative approach*. In this context, the role of community counselors becomes very important because they are responsible for implementing guidance for convicts so that the goals of correctional namely rehabilitation, social reintegration, and community protection can be achieved. Then the problem until now is that the implementation of criminal supervision and social work still faces various challenges. especially related to institutional readiness and the less than optimal technical regulations governing the role of community counselors in the National Criminal Code and of course in the Criminal Procedure Code. This unpreparedness is feared to hamper the effectiveness of the implementation of alternative punishment and reduce the effectiveness of criminal law reform itself. Therefore, it is important to study in depth the strengthening of the function of community guidance in the implementation of supervision and social work as an integral part of a more humanistic and progressive criminal justice system.

METHOD

Research methods are guidelines on how a scientist studies, analyzes, and understands the environments faced.⁴ This paper is an analysis of the urgency of community guidance on criminal supervision and social work in the National Criminal Code. This research is a normative legal research and is carried out by collecting and analyzing secondary data.⁵ As a research with a normative legal research method, this research uses a statute approach *and* a conceptual legal approach. The statute approach is carried out by examining all laws and regulations or regulations related to the issue being handled/researched.⁶ In this research, the author examines community guidance as a correctional function in the correctional system as well as criminal supervision and social work in the National Criminal Code. The conceptual

² Fazal Akmal Musyarri & Gina Sabrina. (2023). Urgency of Implementing Supervisory Criminal Procedure in Law Number 1 of 2023 Concerning the Criminal Code, Judicial Journal, 16 (1) : 74 <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/586/416>

³ Jody Imam Rafsanjani, Rizki Bagus Prasetyo, Zaihan Harmaen Anggayudha. (2023). The Existence of Criminal Social Work in the Perspective of Progressive Law, De Jure Legal Research Journal, 23 (2) : 226 <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/3495>

⁴ Mr. Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI Press, 1984), 2

⁵ Soerjono Soekanto. *Normative Legal Research: A Brief Review, 1st Ed. 12th Printing*, (Jakarta: PT. Raja Grafindo Persada, 2010), 13

⁶ Peter Mahmud Marzuki. *Legal Research*, (Jakarta: Kencana, 2005), 93

approach starts from the views and doctrines in legal science. Researchers study and examine theories of the correctional system and theories of the purpose of punishment.

FINDINGS AND DISCUSSION

The National Criminal Code brought many substantial changes. This is no exception concerning criminal and sentencing. Many changes are related to criminal, including in the type of main punishment, which no longer places the death penalty, and adds several other types or kinds of punishment. Supervision sentences and community service sentences are new types of punishment in Indonesian criminal law. The National Criminal Code places supervision punishment and social work punishment as the main punishment in the types or kinds of punishment. When compared to the current Criminal Code, these two types of punishment are part of the alternative punishment formulation policy from imprisonment. The alternative punishment formulation policy replacing imprisonment in the renewal of criminal law is in the form of supervision punishment, a combination of imprisonment and supervision punishment and social work punishment.⁷

The inclusion of the types of supervision and community service sentences is a consequence of the acceptance of criminal law that is "*daad daderstrafrech*" which as far as possible tries to develop alternatives to freedom sentences. Through the imposition of this type of sentence, convicts can be free from guilt and society can play an active role in socializing convicts by doing useful things.⁸

The above shows the legal basis that supports the shift in the criminal justice system in the National Criminal Code. Normatively, the principle of *daad daderstrafrecht* has changed the orientation of criminal justice which originally only focused on the act (*actus reus*) to also consider the condition of the perpetrator (*mens rea* and the perpetrator's personal background). This is in line with the development of modern criminal law which is no longer solely aimed at repression, but also rehabilitative. Therefore, the existence of supervision and social work in the National Criminal Code has a strong normative basis as a concrete form of the application of this principle.

In the context of the Indonesian criminal law system, the existence of supervision and community service sentences has been legally recognized as a type of principal punishment that is normatively equivalent to imprisonment. This is an important shift because previously social work was not explicitly recognized as a principal punishment in the old Criminal Code. Thus, punishment is not only directed at punishing, but also provides space for perpetrators to improve themselves without having to experience the punishment of deprivation of liberty. This shows that the state recognizes the rights of convicts to undergo punishment with a more humane approach and oriented towards social rehabilitation.

Basically, criminal punishment remains a form of legal responsibility that is inherent due to the unlawful actions of the perpetrator. Thus, guilt as a moral and legal consequence remains within the framework of criminal responsibility. Supervision sentence and community service sentences do not free the perpetrator from legal responsibility, but provide a different form of implementation with a more constructive purpose. Therefore, release from guilt in this context must be understood not as an elimination of responsibility but as part of the social recovery process that is accommodated through guidance and supervision mechanisms.

⁷ Hajairin, Syamsuddin, Kasmar, Gufran Sanusi. (2022). Supervisory Criminal Policy in the Reform of Indonesian Criminal Law, *Iblam Law Review*, 2 (02) : 170
<https://ejurnal.iblam.ac.id/IRL/index.php/ILR/article/view/81>

⁸ Joko Sriwidodo. *Criminal Law Politics in the Approach to Law No. 1 of 2023 Concerning the Criminal Code*, (Yogyakarta: Kepel Press, 2023), 159

Furthermore, the role of society in " *socializing convicts* " reflects the principles of correctional law as regulated in Law Number 22 of 2022 concerning Corrections. The law emphasises that the implementation of criminal penalties must involve community participation as part of an integral system. This provision emphasizes that criminal penalties are not only a state tool for punishment but also a means of development that has social legitimacy.

Supervision sentences are essentially similar to conditional sentences in the current Criminal Code, where convicts in prison may not serve their sentences if they meet certain requirements.⁹ This is in line with the explanation of Article 75 of the National Criminal Code which explains that supervision sentences are one type of principal sentence, but are actually a method of implementing imprisonment so that they are not specifically threatened in the formulation of a Criminal Act. Supervision sentences are coaching outside the institution or outside the prison, which is the same as conditional imprisonment contained in *the Wetboek uan Strafrech* . Likewise, Muladi said that supervision sentences are different from conditional sentences, where one of the differences is that supervision sentences are stand-alone principal sentences while conditional sentences are the application of punishment.¹⁰

According to Muladi, the term probation *in* the modern sense means a system that attempts to rehabilitate a person who is proven to have committed a crime by returning him to society for a period of supervision.¹¹ Probation is regulated in Articles 75 to 77 of the National Criminal Code. This punishment can be imposed by a judge on a defendant who has committed a crime that is punishable by a maximum of 5 (five) years in prison. In imposing this punishment, general and special conditions must be met. The general condition is that the convict will not commit another crime. While the special conditions are as follows:

- a. Convicts within a certain period of time which is shorter than the supervision period must replace all or part of the losses arising from the Criminal Act committed; and/or
- b. The convict must do or not do something without reducing religious freedom, freedom to adhere to beliefs, and/or political freedom.

Community service involves social activities aimed at changing the behavior of criminals. In some countries, including Indonesia, community service is regulated as an alternative to imprisonment. The purpose of implementing community service is to rehabilitate, reintegrate, and resocialize criminals into society. Community service is an attractive alternative to overcome *the overcapacity* of Correctional Institutions due to the dominance of imprisonment.

Community service orders, or in foreign terms often referred to as *community service orders*, is a form of punishment where the punishment is carried out by the convict by doing the specified community service.¹² So that this community service is an alternative punishment from short-term deprivation of liberty which is carried out based on a certain hourly calculation and is carried out without pay.

The concept of community service itself is often found in countries that adopt the *common law legal system* . This can be seen from the fact that at the end of the 19th century, community service began to be formulated in criminal legislation in several European countries

⁹ Eva Achjani Zulfa, Anugrah Rizki Akbari, & Zakki Ikhsan Samad. *Development of the Criminal and Correctional Systems* , (Jakarta: Rajawali Pers, 2017), 53

¹⁰ Muladi. *Conditional Penal Institution* , 4th Edition , (Bandung: PT.Alumni, 2004), 70

¹¹ I Putu Suwarsa. (2013). Criminal Supervision of Children in Conflict with the Law in the Criminal Justice System in Indonesia, Udayana Master of Law Journal, 2 (3) : 2
<https://doi.org/10.24843/JMHU.2013.v02.i03.p07>

¹² Tongat. *Criminal Social Work in the Reform of Indonesian Criminal Law* , (Jakarta: Djambatan, 2001), 7

as an alternative to deprivation of liberty.¹³ This community service is a new form in the Criminal Code which is an alternative type of sanction that is considered better than imprisonment.

The existence of two new types of criminal penalties in the Criminal Code is an effort towards criminal law reform. Supervision and social work penalties do not aim to retaliate against the perpetrator as in the penalty of deprivation of liberty. This new type of penalty is oriented towards the act and the perpetrator, meaning that the penalty imposed aims not only to punish the perpetrator for his actions but also to improve the perpetrator.¹⁴ The existence of supervision and social work penalties is a policy formulation step to provide alternatives or choices for judges other than imposing a penalty of liberty. So judges do not always impose a penalty in the form of deprivation of liberty.

Supervision punishment is one type of principal punishment contained in the National Criminal Code. There is an opinion that says that this supervision punishment is almost the same as the conditional punishment regulated in the current Criminal Code, although the conditional punishment is not a form of the principal punishment itself. In reality, the application of conditional punishment provides less protection to perpetrators of criminal acts because it is not a type of punishment, but rather the application of punishment.¹⁵ This is of course related to the purpose of punishment which does not only focus on victims, but also perpetrators of criminal acts, therefore through the formulation policy, the emergence of alternative criminal sanctions other than imprisonment is encouraged, one of which is this supervision punishment.

In the National Criminal Code, supervision serves as an alternative to imprisonment by emphasizing the monitoring and rehabilitation of criminals outside of prison. This approach allows the perpetrator to continue to interact with the community, but is still accompanied by a supervisory officer who is responsible for his supervision. The main purpose of supervision is to facilitate the rehabilitation process, improve the behavior of the perpetrator, and prevent recurrence of crimes. In addition, this alternative can help reduce prison overcrowding and reduce costs associated with corrections while still providing effective measures in responding to criminal acts. Although it provides relative freedom to the perpetrator, supervision still sets strict conditions that must be adhered to, thus ensuring that the implementation of the sentence still prioritizes community safety and the desired rehabilitation goals. The benefits of supervision in the criminal justice system include important aspects of rehabilitation and social reintegration.¹⁶

The National Criminal Code gives an important role to community counselors in the implementation of criminal supervision. This role is based on the law, including:

- a. Providing considerations to the Prosecutor in cases where the Prosecutor proposes that a prisoner serving a supervised sentence serve a prison sentence or extend the supervision period due to violation of special conditions.
- b. Providing considerations to the Prosecutor regarding the good behavior of prisoners for reducing the supervision period

¹³ Marisa Kurnianingsih & Wiranto Tri Setiawan. (2023). Assessing Community Work Punishment as a New Paradigm for the Concept of Punishment for Corruption Cases Based on Cultural Determinism, *Jurnal Justisi*, 9 (2) : 124 <https://ejournal.um-sorong.ac.id/index.php/js/article/view/2328>

¹⁴ Diah Ratu Sari. (2022). Regulation of Supervisory Criminal Procedure and Social Work Criminal Procedure in the Draft Criminal Code as an Effort to Implement Daad-Dader Starfrecht, *Salam Journal: Sar'i Social and Cultural Journal*, 9 (1): 137 <https://doi.org/10.15408/sjsbs.v9i1.24338>

¹⁵ Hajairin, Syamsuddin, et al. (2022). Supervisory Criminal Policy in the Reform of Indonesian Criminal Law, *IBLAM Law Review Journal*, 2 (2) : 167 <https://doi.org/10.52249/ilr.v2i2.81>

¹⁶ Teriyanti BTR, Arika Palapa, Iksan Saifudin. (2024). Supervisory Crime in the Perspective of Indonesian Criminal Law Reform, *Journal Syntax Idea*, 6 (7) : 3133 <https://doi.org/10.46799/syntax-idea.v6i7.4069>

The considerations given regarding the implementation of the supervision sentence are based on the results of social research conducted on prisoners serving supervision sentences.

As mentioned above, the purpose of supervision is the same as the purpose of punishment in general, which expects convicts to improve themselves and integrate with society. In realizing this, it is also accompanied by certain requirements so that society is also protected while the convict is carrying out the supervision. Regarding the implementation of the requirements as stated in the law, one of the general requirements is not to repeat the crime. To ensure that the convict does not repeat his crime, the role of a community counselor is needed. In addition, the extent to which the rehabilitation and reintegration process carried out by the convict has gone well or not is part of the results of the community research carried out by the community counselor of course.

In addition to supervision, there are other forms of criminal penalties in the National Criminal Code, namely social work. This penalty is also a type of penalty that does not place the convict in prison. The concept of social work as accommodated by the National Criminal Code is one of the alternative forms of imprisonment that is based on the pattern of guidance while maintaining the purpose of the penalty itself. With the threat of social work, it is hoped that it can reduce negative views on the application of imprisonment for prisoners who have completed their sentences. So with this pattern, convicts can still be accepted back well and can interact again as usual in the community, and reduce the fear of the community when interacting with someone who has been convicted.¹⁷ Therefore, in essence, social work can be said to be the closest to the purpose of punishment and the purpose of correctional.

Community service for perpetrators of criminal acts who meet the requirements according to the provisions can fulfill the elements of guidance and mentoring and provide protection to the community. The elements of guidance and mentoring are oriented towards the individual perpetrator of the crime himself who with community service can prevent him from negative impacts such as *stigmatization*, loss of self-confidence so that the convict has the self-confidence needed in the integration process. By only carrying out community service in the sense of not being placed in prison/correctional facility, it will provide an opportunity for the convict to continue to carry out his obligations to his family. In addition, the convict can also avoid the process of *dehumanization* and automatically continue to socialize with the community.¹⁸

The social work punishment regulated in Article 85 of the National Criminal Code is a new form of basic punishment that has been applied because there was no similar punishment in the previous Criminal Code. Born from a change in the paradigm of punishment, the regulation and implementation of this social work punishment must be ensured to be in line with the purpose of punishment itself. As imprisonment is carried out in prisons in the form of coaching activities, social work is also carried out in the form of guidance.

As regulated in Article 85 Paragraph (8) of the National Criminal Code, supervision of the implementation of social work is carried out by the Prosecutor and guidance is carried out by the community counselor. Based on the provisions of the National Criminal Code, the role of the community counselor as a guide in the implementation of social work is regulated. The law also regulates that it is possible for government institutions in charge of social work to be involved.

¹⁷ Ni Komang Sutrisni & I Nengah Susrama. (2023). The Ideal Concept of Implementing Social Work Punishment in Law Number 1 of 2023 Concerning the Criminal Code Through a Collaborative System, *Saraswati Law Journal*, 05 (02) : 411 <https://doi.org/10.36733/jhshs.v5i2.8129>

¹⁸ Wafda Vivid Izziyana & Arhan Anom Besar. (2015). Integration of Criminal Social Work in the National Legal System, *Justitia Journal of Law Journal*, 1 (2) : 175-176, <https://doi.org/10.30651/justitia.v1i2.1148>

Considering that so far community service has not been regulated in Indonesian criminal law, it certainly needs to be strengthened through implementing regulations of the provisions of community service. The regulation is related to supervision by the Prosecutor and guidance by community counselors. Talking about guidance by community counselors when referring to Article 56 Paragraph (1) letter b and Paragraph (4) of the Correctional Law, the guidance in question is an activity that provides provisions in improving mental and spiritual quality, intellectual, skills, and independence for clients.

Considering the requirements and the short time of implementing social work, which is a minimum of 8 (*eight*) hours and a maximum of 240 (*two hundred and forty hours*) which can be paid in installments within a maximum of 6 (*six*) months, it is very important for the readiness of the community counselor in implementing the form of guidance carried out on the convict. This is certainly intended so that the purpose of punishment and the purpose of guidance itself can be achieved so that it does not only become an alternative punishment to pass the time.

Based on the explanation above, it can be seen that the regulation of the function of community guidance in the correctional system is very important to support the implementation of the National Criminal Code. In terms of criminal and criminal penalties which are marked by the existence of criminal supervision and social work as an alternative to imprisonment which has been considered less effective, it certainly needs to be supported by strengthening the institutions that implement it. The existence of community guidance which has been regulated in the Correctional Law needs to be strengthened with special implementing regulations related to the implementation of criminal supervision and social work. This is important considering that law enforcement will be strong if supported by a strong subsystem, one of which is through legal substance, namely statutory regulations.

CONCLUSION

The birth of the National Criminal Code marks an important step in the reform of Indonesian criminal law by introducing supervision sentence and community service sentences as new types of basic punishment. These two forms of punishment are concrete manifestations of the change in the orientation of punishment from a retributive approach to a more humane rehabilitative and restorative approach. Community counselors are not only tasked with providing guidance and assistance to convicts, but also play a role in providing legal considerations to other law enforcement officers such as prosecutors and judges. Normatively, the role of community counselors has been recognized in various regulations including the National Criminal Code and the Corrections Law. However, effective implementation requires institutional strengthening and clearer technical arrangements through implementing regulations. This is important so that the main objectives of supervision and community services sentences, namely rehabilitation, social reintegration, and community protection, can be achieved optimally.

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