

IMPLEMENTATION OF SOCIAL WORK SANCTIONS AS A SUBSTITUTE TO PUNISHMENT UNDER ONE YEAR PRISON AGAINST THE CRIMINAL ACTION OF IT

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ABSTRACT

The social work crime contains elements of rehabilitation, re-education and resocialization. During the execution of the crime, prisoners will be fostered and guided in terms of the formation of attitudes and behavior. The development of the convict's work and personality is always monitored and monitored by community officials. Prisoners will be guided to be able to behave well and actively participate in development. The problem is how is the sentence below one year in prison for the perpetrators of the ITE crime in Decision Number 1636/Pid.Sus/2020/PN.Jkt.Br? The method used is normative juridical. The conclusion is that they do not agree with the Judge's Decision in Decision Number 1636/Pid.Sus/2020/PN.Jkt.Br., because the Defendant may be subject to social work sanctions as a substitute for a sentence of less than one years in prison. In principle, social work crime is an alternative to short-term deprivation of liberty. Social work crime is a type of crime that will be imposed on perpetrators of crimes that are not too serious. Starting from the various privileges of the social work crime, it is clear that even though it is a crime, this social work crime is not forced labor. Social work crime is a form of crime that is loaded with the content of protecting human rights.

Keywords: Social Work Sanctions, Crime, ITE

INTRODUCTION

The presence of law in the midst of society has the aim of ensuring and creating security and order in every community interaction, the sense of security felt by the community is a sense of security from all kinds of threats, terror and also all other actions that harm the rights and interests of every human being. However, as a differentiator with civil law, the context of criminal law in this case is to maintain the rights and security of the body and soul of the community. The definition of criminal law must be interpreted according to the point of view that is the reference. In principle, there are generally two definitions of criminal law, namely *ius poenale* and *ius puniend*. *Ius poenale* is an objective definition of criminal law. Mezger defines criminal law as "

Wirjono Projodikoro stated that the term criminal law has been used since the Japanese occupation in Indonesia, by using the term *Strafrecht* from the Dutch language, namely *Straf* = Criminal and *recht* = Law, this is to distinguish it from the term civil law, namely *Burgelijkrecht* or *Privatrecht* which is taken from the Dutch language. On the other hand, Simons argues that objective criminal law is "actions that are allowed (*gebod*) as well as those that are prohibited (*verbod*) are made by the state or other authorities, for which the violators will be given consequences in the form of special suffering, namely criminal, as well as every regulation. -the existing regulations have set the conditions for the legal consequences that will occur.

Soedarto also gave an understanding relating to criminal law, as law is a law that contains rules with the nature of binding to every act that meets certain requirements and from these actions give consequences in the form of a crime. In addition, Pompe formulated objective criminal law as every legal rule that contains any actions that should be imposed and the appropriate form of punishment.

Meanwhile, *ius puniendi*, or the notion of subjective criminal law according to Sudarto has two meanings, namely:

- a. Broad definition, namely the relationship with the right of the state/equipment to impose or determine criminal threats against an act;
- b. Narrow definition, namely the right of the state to prosecute criminal cases, impose and carry out crimes against people who commit criminal acts.

Related to criminal sanctions, it is a punitive measure imposed by a certain state or group due to a violation committed by a person or group. The criminal law system has two types of sanctions that have the same position, namely criminal sanctions and action sanctions. Criminal sanctions are the type of sanctions that are most widely used in imposing penalties on someone who is found guilty of committing a criminal act. Sanctions are defined as dependents, actions, punishments to force people to keep agreements or obey the provisions of the law.

Criminal sanctions are sorrow or suffering inflicted on someone who is guilty of committing an act that is prohibited by criminal law, with this sanction it is hoped that people will not commit a crime. Henry Campbell Black's *Black's Law Dictionary* provides an understanding of criminal sanctions as punishment attached to convictions at crimes such as fines, probation and sentences (a crime imposed to punish a criminal (crime) such as with a fine, criminal supervision and imprisonment).

One of the criminal sanctions is the social work crime which contains elements of community protection because there has been a real criminal act from the government, in accordance with the cultural values of the Indonesian nation, namely doing actions that have social value because they are carried out in a society that does not prioritize profit. The social work crime contains elements of rehabilitation, re-education and re-socialization. During the execution of the crime, prisoners will be fostered and guided in terms of the formation of attitudes and behavior. The development of the convict's work and personality is always monitored and monitored by community officials. Prisoners will be guided to be able to behave well and actively participate in development.

Through social work crime, the convict will not try to repeat the crime as he has done because if he commits another crime, the court will most likely impose a prison sentence and/or a fine and no longer impose a social work sentence for the second time. The social work penalty is also in accordance with the individualization of the sentence because it is imposed on the guilty criminal, and the type of crime can be changed by the judge based on the request of the convict.

In this study, the author examines Decision Number 1636/Pid.Sus/2020/PN.Jkt.Br. with the Defendant Aditya Achmad. In the first indictment, the defendant's actions are as regulated and are subject to criminal penalties in Article 45 paragraph (3) in conjunction with Article 29 of the Republic of Indonesia Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. In the second indictment, the defendant's actions are as regulated and subject to criminal penalties in Article 48 paragraph (2) in conjunction with Article 32 paragraph (2) of the Republic of Indonesia Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. One of the verdicts reads that

the Defendant Aditya Achmad is sentenced to 7 (seven) months in prison and a fine of Rp. 50,000,000, - (fifty million rupiah), if the fine is not paid,

Aditya Achmad is subject to a prison sentence of 7 (seven) months, this is in accordance with Article 12 paragraph (1) of the Criminal Code, which is known as imprisonment with a general minimum system (minimum one day and maximum general (maximum 15 (fifteen) consecutive years)). While the provisions in paragraph (3) in conjunction with paragraph (4), Article 12 of the Criminal Code recognizes imprisonment with a special maximum system (may be imposed for 20 (twenty) consecutive years).

Therefore, a prison sentence of less than one year should be transferred to a social work crime, so that an alternative to imprisonment is a social work crime. It is appropriate that social work crimes can be applied as an alternative to short-term imprisonment and light fines. The convict's consent to this crime is required so that it does not conflict with the Forced Labor Convention (Geneve Convention 1930), The Convention for the Protection of Human Rights and Fundamental Freedoms (Treaty of Rome 1950), The Abolition of Forced Labor Convention (The Geneve Convention 1957), and The Interna Rights (The New York Convention 1966).

Article 48 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions states that any person who fulfills the elements as referred to in Article 32 paragraph (2) shall be sentenced to a maximum imprisonment of 9 (nine) years and/or a maximum fine of IDR 3,000,000,000.00 (three billion rupiah). In Article 32 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, it is stated that every person intentionally and without rights or against the law in any way transfers or transfers Electronic Information and/or Electronic Documents to the Electronic System of another Person who not entitled to.

RESEARCH METHOD

1. Research Form

This research is included in the form of normative juridical research, namely research that emphasizes the use of written legal norms. This study discusses the sentence under one year in prison for the perpetrators of the ITE crime in Decision Number 1636/Pid.Sus/2020/PN.Jkt.Brt.

2. Research Type

This research is descriptive in nature because it describes the applicable laws and regulations and is associated with legal theories in their practical implementation related to problems, as well as describes/describes facts that actually occur as a reflection of the implementation of the laws and regulations and principles. -Legal principles related to legal theories and their implementation practices.

3. Data type

The type of data used is the type of data with a statute approach and a case approach. The statute approach is carried out by reviewing all laws and regulations relating to the legal issues being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study the consistency and conformity between one law and other laws or between laws and the Constitution or between regulations and related laws. punishment of less than one year in prison for perpetrators of ITE crimes. While the Case Approach is carried out by examining cases related to the issues at hand and which have become court decisions that have permanent legal force. The main study in the case approach is the ratio decidendi or reasoning, namely the court's consideration to arrive at a decision, in this writing using the decision Number 1636/Pid.Sus/2020/PN.Jkt.Brt.

4. Types of Legal Materials

a. Primary Legal Material

Namely sources of law that become binding/legal foundations such as: the Criminal Code and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

b. Secondary Legal Material

Namely materials that provide an explanation of primary legal sources such as materials in the form of books, daily/magazines and scientific writings.

5.Data Collection

The data collection method used is library research. In this literature study, what is done is to study and read criminal law books, so that these materials can be related to problems related to this research.

6.Data Analysis Method

In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods were used, because the data obtained were of quality not quantity. After data collection, analysis is then carried out, so that scientifically justifiable conclusions can be drawn.

RESULTS AND DISCUSSION

The Imposition of Social Work Sanctions as a Substitute for Sentences Below One Year in Prison Against ITE Criminal Acts (Study Decision Number 1636/Pid.Sus/2020/PN.Jkt.Br.) The imposition of social work criminal sanctions is in line with the fifth principle of Pancasila, namely Social Justice For all Indonesian people, it contains the value of working hard in serving a sentence. Hard work is one of the main means towards social justice. Social work crimes are also in accordance with the values of the second precept, namely Just and Civilized Humanity. The second principle contains values of recognition of human dignity, because Indonesian people are part of the world community who have the same dignity and worth as servants of God. Humans are required to act fairly and respect other human rights, and views the value of respect for human rights and obligations. This conformity can be seen in the criminal implementation process, namely the convict is placed in a workplace that is in accordance with the skills and talents of the inmate, does not deprive the prisoners of independence, is integrated with non-criminal groups, and is guided to the right path by the authorized officer.

Social work crimes also contain the value of protection, namely protecting inmates from the association of other criminal groups that can cause prisoners to become more evil, protecting prisoners so that they can live decently in the future, and protecting prisoners from public revenge or victims of crime. The values of Pancasila must be seen from a unanimity, because even though these values can be distinguished, in essence they cannot be separated. The value of God Almighty is the basis of all values, including the value of justice. Social work crime is the original culture of the Indonesian people, because in Indonesian customary law there are no criminal acts of deprivation of liberty, namely imprisonment and confinement.

Indonesian people are accustomed to social work, especially in rural communities, both in the form of mutual cooperation and community service. Social work as a positive crime to re-establish relations between offenders and the community. Communities who receive services from this social work crime should be people who suffer as a result of crime or communities in places where social work has the following objectives:

1. Punishment. Criminal social work is a legal action for a probationary period. Criminal social work limits their free time.
2. Repair. Criminal social work allows constructive means.
3. Restitution. Social work crime is seen as a substitute for monetary compensation for individual victims or the community.
4. Rehabilitation. Social work crimes instill a sense of responsibility in perpetrators by allowing them to improve their image through work in society.

Criminal social work also instills a work culture and helps perpetrators to develop their interests and skills. Social work crimes can be used as a means of achieving the goals of punishment as planned in the 2006 Criminal Code Bill.

The purposes of sentencing are as follows:

- a. prevent the commission of criminal acts by enforcing legal norms for the protection of society;
- b. socialize convicts by conducting coaching so that they become good and right people.
- c. resolve conflicts caused by criminal acts, restore balance and bring a sense of peace in society
- d. release the guilt of the convict

According to Muladi, social work crimes can provide benefits for perpetrators, which can give perpetrators a good opportunity to rehabilitate themselves in society, can allow perpetrators to continue their lives such as working, meeting family, recreation and hobbies that connect them with the community. Imprisonment can stop all of this value and make it twice as difficult for the perpetrator to restart after the sentence has been served, social work crimes can prevent the stigma of imprisonment. The shame associated with imprisonment is evident, and often innocent family members experience it more than the perpetrator. And social work crimes can prevent the process of imprisonment, the benefits for society,

This includes participation in economically useful work in the form of a contribution to people's lives which is valuable as a substitute for accountability. And from an economic point of view, these alternative social work criminal sanctions are not expensive compared to nursing institutions. The benefits for the government, government officials can provide facilities for rehabilitation.

In Decision 1363/Pid.Sus/2020/PN.Jkt.Br., the defendant has been charged with an alternative charge of First Article 45 paragraph (3) in conjunction with Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE or Second Article 48 paragraph (2) in conjunction with Article 32 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE. The defendant by the Public Prosecutor is brought to trial with indictments prepared in an alternative manner, so in this case the Panel of Judges is given the freedom

to choose which charges according to the facts revealed at trial are closer to the actions allegedly committed by the Defendant. In this case, the Panel of Judges is more inclined to choose the first alternative indictment, violating Article 45 paragraph (3) in conjunction with Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE,

1. Elements of each person;
2. The element intentionally and without rights sends Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at personally;

Ad. 1. About the elements of each person. That what is meant by Everyone here is a legal subject, namely a human being, based on the results of the examination in court, the identity of the Defendant has been identified and information is also obtained from witnesses and the Defendant's own statement, where the Defendant is a physically and mentally healthy person and is able to provide information at trial, so that there is a truth that the Defendant Dimitar Iliev Als Bachiyiski Als David is someone who as stated in the indictment of the Public Prosecutor and can be held legally responsible for his actions. Thus the element of each person has been fulfilled.

Ad. 2. Regarding the element of intentionally and without rights sending Electronic Information and/or Electronic Documents that contain threats of violence or intimidation aimed at personally. Based on the facts revealed at the trial, which were obtained from the statements of witnesses, instructions and evidence as well as the conformity between the statements of one witness and another, also in accordance with the instructions and according to the testimony of the Defendant himself and the evidence obtained the facts. law as follows:

The defendant has been working since January 16, 2020 at PT. Xinghou Technology, which is located at Coorts Bintaro Building, Sector 9, Kec. Pondok Aren Tangerang Selatan Banten, which is engaged in the online loan business. My letter of appointment by PT. Swapro Internasional as outsourcing, my position as Collection Desk (billing to customers via telephone/message for customers who are late in making payments).

Online loans made by PT. Xinghou technology through SAKU FAST, GO IT, ADA PUNDI, FAST RUPIAH and TINKERBELL applications. Since June 2020, the Defendant has served as the Collection Desk for the FAST SAKU application until now. To carry out his duties, the defendant was provided with equipment in the form of a computer and cellphone branded Xiaomi Redmi and OPPO. There are many telephone numbers that the defendant uses to contact customers, but for this case the phone number that the defendant uses is 0896 0349 0191.

The defendant was given an assignment from Dina Adelia (the defendant's superior) to collect the customer on behalf of Rusdi Yaman Fahrizal who is an online loan customer for the SAKU FAST application.

The defendant contacted the customer Rusdi Yaman Fahrizal by telephone but did not receive a response, then the defendant sent a message via the emergency contact that was listed by the customer when applying for a loan.

When the defendant contacted the emergency contact 0812 2249 9756, the defendant initially ordered the owner of the number to notify Rusdi Yaman Fahrizal's customer immediately to pay his debt to the FAST SAKU application. Furthermore, the defendant sent a message to the emergency contact claiming to be Reynaldi Situmorang who was acquainted with H. Lulung and Hercules with the words "I don't love you seeing your wife's children, you just work there, that's right, look for money for your family, don't worry. messing with the company?" Furthermore, the defendant also sent a message containing threats/threats to Rusdi Yaman Fahrizal on the emergency contact cellphone with the words "Rusdi is no longer cooperative, let me solve it later, someone has a head with my gun".

The threatening words were not meant for the defendant to do so, but only to inform Rusdi Yaman's customer Fahrizal to respond to the defendant's phone call and pay his debts immediately. Thus, the element of intentionally and without rights sending Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at personally is proven legally and convincingly.

Because all the elements contained in the second indictment violate Article 45 paragraph (3) in conjunction with Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE, the Defendant must be declared legally and convincingly guilty of committing a crime. the crime of "Intentionally and without rights sending Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at personally". Before the Panel of Judges made a decision, the Defendant had also considered the defense of the Defendant and his Legal Counsel, in which the Defendant basically admitted his actions and regretted his actions and asked for a lighter sentence.

From the facts obtained during the trial in this case, the Panel of Judges did not find anything that could release the Defendant from criminal responsibility, either as a justification or excuse for forgiveness,

therefore the Panel of Judges concluded that the actions committed by the Defendant must be held accountable to him.

Because the Defendant is proven guilty of committing a criminal act as stated in the indictment, the Defendant must be given a punishment commensurate with his actions in the form of imprisonment. As stipulated in Article 22 paragraph 4 of the Criminal Code, the length of time the Defendant is arrested and detained in the State Detention Center must be deducted entirely from the sentence imposed. Because the detention of the Defendant is still necessary and there are no reasons to release the Defendant from detention, therefore the Defendant must be determined to remain in custody. According to the provisions of the Law of the Republic of Indonesia No. 19 of 2016 concerning amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions which are the basis for imposing criminal charges against the Defendant, In addition to being sentenced to imprisonment, they must also be sentenced to a fine. Accordingly, the Defendant should also be sentenced to a fine. If the Defendant does not carry out the fine, it is determined that the fine must be replaced with imprisonment. Regarding the evidence submitted by the Public Prosecutor in court, it will be determined in the decision below. The defendant was sentenced and the Defendant had not previously applied for an exemption from paying court fees, then based on article 222 of the Criminal Procedure Code, the Defendant was charged with paying court fees, the amount of which would be determined in this ruling. it is determined that the fine must be replaced with imprisonment. Regarding the evidence submitted by the Public Prosecutor in court, it will be determined in the decision below. The defendant was sentenced and the Defendant had not previously applied for an exemption from paying court fees, then based on article 222 of the Criminal Procedure Code, the Defendant was charged with paying court fees, the amount of which would be determined in this ruling.

1. Declaring that the Defendant Aditya Achmad has been proven guilty of committing the crime of "Intentionally and without rights sending Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at personally".
2. Therefore, the Defendant, Aditya Achmad, was sentenced to 7 (seven) months in prison and a fine of Rp. 50,000,000.- (fifty million rupiahs), if the fine is not paid, it will be replaced with imprisonment for 1 (one) month.
3. Determine the period of arrest and detention that has been served by the Defendant to be deducted entirely from the sentence imposed.
4. Determine that the Defendant remains in custody.
5. Determine evidence in the form of: A set of computers (CPU, monitor, keyboard, mouse and power cable) Returned to PT Xinghou Technology through Dina Adelia; 1 (one) unit of official Xiaomi brand mobile phone 1 black color No. Simcrd 089603490191; Seized for destruction.
4. Charged the Defendant to pay court fees of Rp. 2,000 (two thousand rupiah).

If you look at Article 65 paragraph 1 of the 2006 Draft Criminal Code, the main punishments consist of:

- a. imprisonment;
- b. cover crime;
- c. supervision crime;
- d. fines; and
- e. social work crime.

If the imprisonment to be imposed is not more than 6 (six) months or the fine is not more than a Category I fine¹, then the imprisonment or fine can be replaced with a social work crime²commercial nature (not paid).

In the event that a social work crime is imposed, the judge must consider the following matters:³

- a. confession of the defendant to the crime committed;
- b. the working age of the defendant according to the applicable laws and regulations;
- c. the defendant's approval after explaining the objectives and all matters relating to social work crimes;
- d. social history of the accused;
- e. protection of the defendant's work safety;

³Article 86 paragraph 2 of the 2006 Criminal Code Bill

- f. the defendant's religious and political beliefs; and
- g. the ability of the defendant to pay the criminal fine.

The social work penalty is imposed for a maximum of two hundred and forty hours for a defendant who is 18 (eighteen) years old and over, and one hundred and twenty hours for a defendant who is 18 (eighteen) years old and a minimum of 7 (seven) hours.⁴

The implementation of social work crime can be paid in installments within a maximum of 12 (twelve) months by taking into account the activities of the convict in carrying out his livelihood and or other useful activities.⁵The implementation of social work crimes can be carried out in hospitals, orphanages, elderly homes, schools or other social institutions, with as much as possible adapted to the convict's profession.⁶

This is related to the purpose of punishment, in Indonesia itself positive criminal law has never formulated the purpose of punishment. Regarding the purpose of sentencing, it is still at a theoretical level. However, as a study material, Article 54 paragraphs (1) and (2) in the Draft Criminal Code have described the purpose of sentencing, namely:

a. Purpose of punishment

- 1) Preventing the commission of criminal acts by enforcing legal norms for the protection of society;
- 2) Socializing the convicts by conducting coaching so that they become good and useful people;
- 3) Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society; and
- 4) Release the guilt of the convict.

b. Punishment is not intended to suffer and demean human dignity.

So based on the description of the purpose of punishment, based on the formulation of social work crime in Article 83 of the Criminal Code Bill, it is clear that social work crimes can be imposed with certain conditions. It can be concluded that social work crimes cannot be imposed in every criminal act that occurs. In principle, social work crime is an alternative to short-term deprivation of liberty. This conception starts from the idea that social work crime is a type of crime that will be imposed on perpetrators of crimes that are not too serious. Starting from the various privileges of the social work crime, it is clear that even though it is a crime, this social work crime is not forced labor. Social work crime is a form of crime that is loaded with the content of protecting human rights.

CONCLUSION

Based on the description of the discussion above, do not agree with the Judge's Decision in Decision Number 1636/Pid.Sus/2020/PN.Jkt.Brt., because the Defendant may be subject to social work sanctions as a substitute for a sentence of less than one year in prison. In principle, social work crime is an alternative to short-term deprivation of liberty. Social work crime is a type of crime that will be imposed on perpetrators of crimes that are not too serious. Starting from the various privileges of the social work crime, it is clear that even though it is a crime, this social work crime is not forced labor. Social work crime is a form of crime that is loaded with the content of protecting human rights.

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