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RESEARCH ARTICLE

SOCIAL WORK SANCTIONS: THE IDEA OF REFORMING THE CRIMINAL LAW FOR ERADICATION OF CORRUPTION IN INDONESIA

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Abstract

This article examines social work sanctions as the primary punishment for perpetrators of corruption. Various policies on eradicating corruption in Indonesia have yet to create a deterrent effect or prevent acts of corruption. Corruption in Indonesia is systemic and endemic, so it is detrimental to state finances and violates people's social and economic rights. This study uses a normative juridical method with a conceptual approach and a statutory approach. The conceptual process is carried out through a literature study, while the statutory procedure is carried out by analyzing the rules related to eradicating corruption in Indonesia. Applying such severe sanctions does not guarantee a deterrent effect for corruptors. Instead, corrupt convicts receive preferential treatment when serving prison sentences in prison. Social work sanctions are constructed as the primary punishment for corruption perpetrators, which are imposed cumulatively and are applied together with other main penalties such as imprisonment and fines. Concretely, social work sanctions as the primary punishment are that the convict is given a social work project according to his expertise. In carrying out social work, the convict must use unique attributes. The convict will voluntarily carry out social work sanctions by the time determined based on a court decision. If the convict is negligent in carrying out the social work sanctions, he will be given an extension of time, but if the target has not been reached, the convict must replace it with a fine by the number of state losses. The implementation of social work sanctions is supervised by investigators, prosecutors, supervisory judges, and correctional institutions.

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Introduction:-

So far, criminal corruption cases have only been subject to sanctions in the form of imprisonment and fines as stipulated in Law Number 30 of 2002 concerning Amendments to Law Number 31 of 1999 concerning Corruption Eradication (after this referred to as the Corruption Eradication Law). Criminal sanctions in the form of deprivation of liberty and confiscation of wealth imposed on convicted corruption cases are still considered to be less effective in implementation. Heavy sanctions do not provide a deterrent effect for perpetrators of corruption and do not provide lessons for the community (potential perpetrators). More and more perpetrators of corruption are being arrested and punished. This means that severe criminal sanctions do not have any effect/positive impact on reducing or eradicating criminal acts of corruption (Yustia, 2021).

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Indonesia, with a score of 38, is rated 96th out of 180 nations according to statistics from the Transparency International agency's corruption perceptions index for 2021. Additionally, according to the Supreme Court's official website for 2021, there are 2263 rulings included in the database of cases involving corruption in Indonesia.(Indonesia, 2020).Many court decisions have decided on corruption cases, and the sanctions imposed vary (from year to year, tend to increase). On average, all corruption acts are subject to severe criminal sanctions and even life imprisonment(Harefa, 2020).

Corruption, classified as an extraordinary crime(Saragih, 2022), must be treated with an extraordinary law instrument so that the punishment runs optimally, effectively, and efficiently. Social criminal sanctions as the primary punishment can be a solution to eradicating corruption in Indonesia. However, the Corruption Eradication Law does not explain sentences to educate intrapersonally in the form of social work sanctions. The application of social work sanctions as the primary punishment is caused by the ineffective application of criminal sanctions against corruptors, but also because corruption in Indonesia is systemic and endemic, so it not only harms state finances but also violates the social and economic rights of society as a whole. wide(Jaya, 2008).

The application of the idea of social work sanctions as the principal punishment against convicted corruption offenders is an idea that should be considered in efforts to reform criminal law against corruption. The concept of social work as the primary punishment is only regulated in the Criminal Code (KUHP) and has not been regulated in the Corruption Eradication Law. In the Criminal Code, social work sanctions only apply to perpetrators of minor crimes with sentences under 6 (six) months, but social work sanctions in this study are aimed at every perpetrator of corruption as the major crime that applies cumulatively. Therefore, using social work sanctions as a principal punishment is an idea that deserves to be studied and considered and must be included as a new provision in the Corruption Eradication Law.

Research Methods:-

So far, the eradication of corruption which has relied on crimes such as deprivation of liberty and confiscation of assets, has not been effective enough to create a deterrent effect and prevent deterioration. Therefore new ideas are needed.This study uses a normative juridical method with a conceptual approach and a statutory approach. The conceptual process is carried out through a literature study, while the statutory procedure is carried out by analyzing the rules related to eradicating corruption in Indonesia.

Discussion:-

The Urgency of Social Work Sanctions in Eradicating Corruption

The impact caused by criminal acts of corruption is so broad that it crosses various aspects of life, such as social and economic aspects. Therefore, it is not enough for the perpetrators of corruption to be legally responsible by carrying out prison sentences, social responsibility is also needed.The punishment or sanction given should also consider the consequences of social, economic, and environmental damage caused by the corruptor(Ratna et al., 2016).Sociologically, corrupt behavior is contrary to the function of law as social control, which is a normative juridical aspect of people's lives or can be called a definition of deviant behavior and its consequences, such as prohibitions, orders, punishment, and compensation(Hastian, 2017).

The idea of social work sanctions against perpetrators of corruption is in line with the preamble to letter an of the Corruption Eradication Law which states: "that criminal acts of corruption that have been widespread so far have not only harmed state finances but have also been a violation of social and economic rights. In society, corruption must be classified as a crime whose eradication must be carried out extraordinarily.In addition, the application of social work in principle is also in line with the values of social justice in a society in efforts to uphold the law on corruption as contained in the first paragraph of the general elucidation of Law 31 of 1999, which reads: "To create a just, prosperous and prosperous Indonesian society, prevention efforts are needed which continue to be improved in eradicating criminal acts in general and illegal actions of corruption in particular(Kurniawan et al., 2019).Criminal sanctions for corruptors so far have not been a powerful means of preventing corruption(Yasmirah Mandasari, 2021). In addition, implementing social work punishment does not require high costs and is an essential means of overcoming injustice due to differences in social and economic backgrounds.

Another urgency for social work sanctions for perpetrators of corruption is that imprisonment for perpetrators of crime in Indonesian Correctional Institutions has not provided a deterrent effect. Prison sentences only add to the

burden on the state budget and provide comfort for perpetrators of corruption (Ufere et al., 2012). Precisely corrupt convicts get special treatment when serving prison time. This is revealed by several luxury cells for corrupt convicts. The corrupt convicts found to own the luxury cell were Artalyta Suryani alias Ayin, Haryanto Chandra alias Gombak, Freddy Budiman, Agusrin Najamuddin, and Gaius Tambunan (Hariadi, 2018). Based on research conducted by Indonesian Corruption Watch, there is a pattern of special treatment for perpetrators of corruption in Penitentiary Institutions in 6 major cities in Indonesia, consisting of (Hariadi, 2018):

- 1) Corruption convicts will receive different treatment from other convicts by providing special facilities while in detention by paying a sum of money to unscrupulous officers. Special facilities can also be provided, for example, separate cells from other convicts, nutritious food and drinks, television sets, refrigerators, air conditioners, cellphones, and so on. If agreed, even the cell room can be transformed into a temporary office for convicts who incidentally are businessmen.
- 2) Provision of security services because, generally, the condition of prisons in Indonesia is unsafe due to the disproportionate number of wardens and convicts. Several unscrupulous officers exploited this condition in prison to ask for money for security services.
- 3) Fees when family or guests want to visit the convict. For one visit, you will be charged between Rp. 10,000 to Rp. 50,000. Correctional officers often requested not only money but the food. By paying an enormous bribe, guests can visit convicts without being limited by visiting hours.

Various challenges in eradicating corruption make social work sanctions something that must be applied to corruption convicts. The philosophical foundation or fundamental principle of implementing social work as a sanction in Indonesia is based on the 5th precept of Pancasila, namely social justice for all Indonesian people (Muryani & Rosyida, 2020). Sila 5 means that every Indonesian citizen must be treated fairly in law, politics, society, economy, and culture (Dimiyati et al., 2021). The adoption of social work punishment as the primary punishment for perpetrators of corruption cannot be separated from the determination to make Indonesian criminal law-oriented to actions and perpetrators (*daaddaaderstrafrecht*). Apart from that, adopting social work punishment is also an effort to make criminal law more functional and humane to prevent criminal acts of corruption. In addition, it is also very relevant to the penal philosophy that is now adhered to, namely the philosophy of coaching (treatment philosophy) (Arief, 2002).

Starting from this coaching philosophy, social work punishment is expected to be effective without eliminating the essence of the crime itself but still making people afraid of committing corruption. With social work punishment, the negative impacts of the implementation of the crime of deprivation of liberty, such as stigmatization, dehumanization, and other adverse effects, can be avoided.

The direction of Policy for Implementation of Social Work Sanctions as Principal Crimes for Corruption Offenders

Social work punishment for perpetrators of corruption is ideally positioned as the primary punishment that is imposed cumulatively together with other basic crimes. As a principal crime, social work sanctions are imperative, meaning that if a crime is proven to have been committed by a person who is blamed for being the perpetrator, social work sanctions as a principal crime must be imposed by what is threatened with the crime committed by the perpetrator. Social work sanctions as the primary punishment add to the other main punishments imposed, meaning that the social work sanctions as the direct punishment are applied concurrently with other main punishments such as imprisonment and fines (Hamzah, 2017).

Based on the analysis of the implementation of social work sanctions in other countries as described above, the model for implementing social work sanctions in other countries can be a reference for the formulation of social work sanctions implementation in Indonesia. Several countries already have specific social work sanctions laws, such as Ireland, the United States, Kenya, and Scotland. However, several other countries such as Hong Kong, the UK, Uganda, and New Zealand stipulate social work sanctions in their country's Criminal Code or other laws such as the Community Service Act (Wanjugu, 2012). Meanwhile, regarding the model of implementing social work sanctions, each country has its model, which involves certain institutions as supervisors in the implementation of social work sanctions, such as Correctional Institutions (LAPAS), Community Service Institutions, or Courts.

The ideal form of social work punishment to be implemented in Indonesia is consistent with the socio-cultural values of Indonesian society. As a developing country, Indonesia requires accelerated infrastructure development in all fields. Infrastructure is a supporting foundation to become a developed country (Wibawa et al., 2021). The project

must be supported by qualified Human Resources (HR). This can be an opportunity to formulate an ideal format for implementing social work punishment. Remember that social work criminal sanctions must be proportional, meaning that they are by the level of education, skills, and expertise. The policy directions for implementing social work sanctions as the principal punishment for corruptors in Indonesia are:

1) Forms of social work sanctions

The form or embodiment of social work sanctions as the primary punishment in corruption crimes is ideally in line with the criminal objectives of the social work criminal approach, which is a form of social work where one of the main characteristics is that the perpetrator must suffer and is a statement of reproach. First, to achieve effectiveness in its implementation, what can be formulated for social work punishment is that social work must be severe (unpleasant for the convict) but must still consider the human aspect. The convict is given specific attributes as an identity so that the public knows that the person concerned is a corrupt convict carrying out the sentencing process. With this, it will not only lead to unique prevention or prevention of the individual from repeating the crime committed but also cause general prevention to have a deterrent effect on society at large so that people will think again about committing corruption.

Second, regarding efficiency, the benefits of social work must be measured from an economic point of view, whether the benefits obtained by social work are comparable to the costs borne by the state to take the needs of the convict while undergoing the sentencing process. For example, a nuclear expert who incidentally is a state official was involved in a corruption case, then the judge sentenced him to imprisonment and social work. The social work punishment is that the convict is ordered to research his expertise in the nuclear field to develop Nuclear Power Plants (PLTN). To be able to guarantee the implementation of social work punishment, it means that there must be an essential role for state supervision. Through Correctional Institutions that have competence and authority, intensive care will be carried out on convicts so that the development and development of the results of work punishment will be well controlled.

Based on effectiveness and efficiency considerations, social work sanctions are carried out using unique attributes with striking colors and the words "convicted of corruption" as a form of moral development. This attribute is also equipped with a fugitive detection bracelet which strengthens punishment and makes it easier to monitor the movements of corrupt convicts.

2) Time and place of implementation of social work sanctions

Regarding working hours, Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower can be used to determine working hours for social work punishment (Zulkarnaen, 2018). To achieve effectiveness and efficiency in its implementation, in terms of supervision and coaching, convicts can carry out social work for 8 (eight) hours in one day and five working days per week. Furthermore, regarding the place of implementation of the social work sanction, the convict is placed in the neighborhood where he lived and the institution where he previously worked. For example, if the defendant is subject to social work sanctions for eight weeks, half of the social work sanctions will be carried out in the neighborhood where he lives, and the other half will be carried out in the institution where he works. Social work for corruption convicts should ideally be formulated in a longer form or according to the target of the project being implemented. For example, a corrupt convict who incidentally is a nuclear expert is given a task to complete the nuclear program as an alternative source of electricity generation, then the project is provided for four years and must be completed.

3) Convict Wages and Consent

Social work is carried out voluntarily or receives no payment or reward. This social work punishment is not paid because of its nature as a crime. Therefore the implementation of this crime must not contain things that are commercial in nature. However, the convict's consent in applying social work sanctions is still needed to avoid conflicts or conflicts with various constitutions and treaties that prohibit forced labor. One of the considerations that must be considered in imposing social work punishment is that there must be the consent of the defendant by the provisions in the Convention for the Protection of Human Rights and Fundamental Freedoms (Treaty of Rome 1950) and the International Covenant on Civil and Political Rights (the New York Convention, 1966) (Payne & Abouharb, 2016). Meanwhile, on the other hand, the convict's consent is needed so that the judge can guarantee that the convict is motivated to commit to social work.

4) Duration and sanctions if the convict fails to undergo social work sanctions

According to the provisions of Article 85 paragraph (4) of the RKUHP, social work punishment is imposed for a minimum of 8 (eight) hours and a maximum of 240 (two hundred and forty) hours. However, the RKUHP needs to further determine the range of social work based on the length of the prison sentence that must be served. Special rules regarding calculating social work sanctions for imprisonment in corruption cases need to be added to the Corruption Eradication Law. The formulation for calculating social work sanctions against prison sentences that corruption convicts must serve is half of the prison sentence as follows:

Table 1:- Range of calculation of social work sanctions

Number	Prison Time	Duration of Implementation of Social Work Sanctions
1	5 years	2,5 years
2	4 years	2 years
3	3 years	1,5 years
4	2 years	1 years
5	1 years	6 months
etc		

If the convict without a valid reason does not carry out all or part of the social work punishment, the consequences will be:

- 1) repeat all or part of the social work punishment;
- 2) serve all or part of the prison sentence replaced by the said social work sentence; or
- 3) pay all or part of the fine replaced by a community service sentence, or serve a prison sentence as a substitute for an unpaid fine.

5) Supervision of social work sanctions

Investigators carry out supervision of the implementation of social work punishment, and prosecutors, supervisory judges, correctional institutions, and social counselors carry out guidance. In carrying out mentoring, community counselors can work together with government agencies in charge of social work. The Draft Criminal Code draft of 4 July 2022 only stipulates that prosecutors and social counselors are responsible for implementing social work.

Conclusion:-

Applying such severe sanctions does not guarantee a deterrent effect for corruptors. Instead, corrupt convicts receive preferential treatment when serving prison sentences in prison. Setting criminal sanctions for social work as the primary punishment for perpetrators of corruption in Indonesia is in line with the values of social justice in the efforts to uphold the law on crime. The philosophical foundation or fundamental principle of implementing social work as a sanction in Indonesia is based on the 5th precept of Pancasila, namely social justice for all Indonesian people. The policy directions for implementing social work sanctions as the principal punishment for corruptors in Indonesia are that the convict, after serving a period of detention as a form of personal rehabilitation for the convict, is given a social work project by the convict's expertise. In social work, the convict must use unique attributes that distinguish him from other workers. The convict will voluntarily carry out social work sanctions according to the time determined based on a court decision. If the convict fails to carry out the social work sanction carried out (exceeding the targeted timeframe), an extension period will be given, but if the target has not been reached, the convict must replace it with a fine where the construction is adjusted to the number of state losses. Investigators carry out supervision of the implementation of social work punishment, and prosecutors, supervisory judges, correctional institutions, and social counselors carry out guidance.

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