

# Alternative Criminal Punishments for Completion of Misdemeanor Crimes with Social Justice

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## *Abstract*

The vision of the development of national law is "the realization of a just and democratic rule of law through the development of a national legal system that serves the interests of the people and the nation to protect all people and the nation, as well as the blood of Indonesia, promotes public welfare, develops the life of the nation and participates in carrying out peace a world based on independence, eternal peace and social justice based on the Pancasila and the 1945 Constitution. Enforcement of criminal law and punishment should no longer be seen as the only hope of being able to resolve or overcome crime completely, because in essence crime is a "problem humanity "and" social problems ", which cannot be solved solely by criminal law. As a social problem, crime is a dynamic social phenomenon that is always growing and is related to other very complex phenomena and social structures. One way to realize social order is by applying alternative criminal penalties for minor crimes.

**Keywords:** Alternative; Criminal Punishment; Minor Crimes; Social Justice

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## INTRODUCTION

A nation is formed from a collection of social groups that bind themselves to each other in order to obtain benefits and fulfill common interests. In general, these common interests are in the form of protection from threats from social groups or groups of other social groups (nations), obtaining supplies of material needs and resources, material gains and social status, social welfare and better individual life, having similarities and similarities in terms of language. linguistics), historical (historical) similarities, cultural (cultural) linkages, shared territorial similarities, strong enemies that must be faced together, and various other reasons related to other social interests. Therefore we can conclude that a nation is formed from a set of social groups, each of which has different interests and with a vision that is packaged within the framework of common interests or national interests (national interests).

From the description above, the interests of social groups are the basis for the formation of a nation. These interests are a reason that binds and motivates the unity of a nation, therefore these interests are accommodated and formulated in such a way into an agreement which is generally known as the "general will/volonte generale" and is determined to be the goal of the state. However, apart from being a binder and motivation for unifying the nation, the interests of social groups and individuals within a nation can also be potential problems and causes of chaos caused by "conflicts of interest" between the interests of social groups and conflicts of interest between individuals. To prevent conflicts of interest from occurring, the state must be able to establish a norm or rule of law that can be obeyed by the public.

Law is the basis for the development of other fields which means the actualization of the function of law as a tool of social engineering/development (law as a tool of social engineering), a problem solving instrument (dispute resolution), and a regulator of social behavior (social control). In the post-amendment reform era of the 1945 Constitution (UUD 1945), the national law development strategy was guided by what is known as the "National Law Development Vision and Mission". (Syaputra, 2016)

The vision of developing national law is "the realization of a just and democratic rule of law through the development of a national legal system that serves the interests of the people and the nation within the framework of the Unitary State of the Republic of Indonesia (NKRI) to protect all people and nation, as well as Indonesia's bloodshed, promote general welfare, educating the life of the nation and participating in implementing world peace based on independence, eternal peace and social justice based on Pancasila and the 1945 Constitution (Syamsuddin, 2013)

This vision is then implemented in the national law development mission namely (Syamsuddin, 2013):

1. Realizing legal material in all fields in the framework of replacing colonial heritage laws and regulations and national laws that are no longer in accordance with the development of society which contains certainty, justice and truth, taking into account the legal values that live in society;
2. Creating a legal culture and a society that is aware of the law;
3. Creating legal apparatus with high quality, professionalism, morality and integrity; as well as
4. Creating strong, integrated and authoritative legal institutions.

The law that is formed must be able to prevent conflicts of interest in society. This is because the conflict of interest can result in disputes and even social conflict. From these social disputes and conflicts there will be legal consequences, both private (civil) and public (criminal) legal consequences. From these two legal consequences, the actions of an individual or a social group that violate criminal norms is an urgency that is a separate focus in the wider community. This is generally due to the views of the public who think that a criminal offense is a crime that can have a direct impact and disrupt the entire social order of society, nation and state.

According to Moeljatno, criminal law is a set of rules governing actions that constitute a crime, rules governing liability or legal consequences of a crime, and the verbal process of law enforcement against a crime. This element shows the link between material criminal law and formal criminal law, which means that violations of material criminal law will have no meaning



without the enforcement of formal criminal law (criminal procedure law). Likewise, on the other hand, formal criminal law cannot function without violating material criminal law norms (Sofyan and Azisa, 2016).

The current Indonesian Criminal Code (KUHP) consists of three books, namely (Sofyan and Azisa, 2016):

1. The First Book of General Regulations (starting from Article 1 to Article 103 of the Criminal Code);
2. The Second Book of Crimes (starting from Article 104 to Article 488 of the Criminal Code);
3. Book Three Offenses (starting from Article 489 to Article 559 of the Criminal Code).

The three books contained in the Criminal Code, there are two types of classification of criminal acts, namely "crime" and "offence". There are no articles in the Criminal Code that specifically regulate or explain the meaning or difference between "crimes" and "offences", however, if we look through a comparison of the articles contained in the second book (crime) and the -The articles in the third book (offenses), in simple terms, the difference between crimes and violations in the Criminal Code lies in the sanctions/punishments contained in the crime articles and the violation articles.

In the second book (crime) contains sanctions/punishments in the form of:

1. Death penalty (as in Article 104 and Article 340 of the Criminal Code);
2. Imprisonment (as in Article 351 and Article 378 of the Criminal Code);
3. Imprisonment (as in Article 232 paragraph (3) of the Criminal Code);
4. Fines; And
5. Additional Punishments (revocation of certain rights, confiscation of goods, and announcement of a judge's decision).

The third book (violations) contains sanctions/punishments in the form of:

1. Imprisonment;
2. Fines; And
3. Additional Punishment (confiscation of goods).

Prison sentences as stated in Article 12 paragraph (1) of the Criminal Code, are divided into two types, namely life imprisonment and temporary imprisonment. The length of execution of a temporary prison sentence is regulated in Article 12 paragraph (2), paragraph (3) and paragraph (4) with a minimum sentence length of one day and a maximum term of execution not exceeding twenty years. Convicts serving prison sentences are also required to carry out work ordered by them in accordance with the provisions of Article 14 of the Criminal Code.

For imprisonment, the minimum duration of the sentence is one day and the maximum sentence is one year, as stipulated in Article 18 paragraph (1) of the Criminal Code. In certain circumstances, the maximum length of execution of the sentence can be increased to one year and four months as stipulated in Article 18 paragraph (2) and paragraph (3) of the Criminal Code. In the case of work while serving a sentence, the convict is obliged to carry out the work ordered, but the work ordered is lighter than the work carried out by a prison convict, this is regulated in Article 19 paragraph (1) and paragraph (2) of the Criminal Code.

From the two descriptions above, crimes have heavier sanctions/punishments than violations, this is because actions or actions that are prohibited in the second book (crimes) are actions or actions that are considered wrong and may not be carried out based on morality and the rational thinking of a civilized society. . In other words, according to human morality and common sense these actions are not justified to be carried out and the prohibition against these actions applies universally (actions or actions that are prohibited to be carried out by all nations and countries in the world) such as the crime of murder (Article 338 of the Criminal Code) and the crime of rape (Article 285 of the Criminal Code). In criminal law, this is known as *mala in se*.

Whereas the sanctions for violations are lighter because actions or actions that are prohibited in the third book (violations) are actions or actions that may not be carried out because the action is prohibited by law or what is known as *mala prohibita*, such as imprisonment for six weeks given to people who beg in public places (Article 504 paragraph (1) of the Criminal Code).

Begging in public places is not something that is considered wrong in the morality and rational thinking of a civilized society so that the prohibition against such actions or actions does not apply universally. However, legislators see from an aesthetic point of view, the convenience of the community and public order so that legislators consider it necessary to prohibit these actions or actions.

In traditional criminal law theory, *mala in se* is an act or deed that is considered evil by itself, and *mala prohibita* is an act or deed that is considered evil only because the act or deed is prohibited by a positive social order. Hans Kelsen argues that patterns of "certain human actions" are, by their very nature, delicts. However, whether "certain actions" constituted an offense cannot be answered by analyzing these actions, this can only be answered based on a certain legal order (Sofyan and Azisa, 2016).

The concept of delict is defined by legislators, in the process legislators must first assess that a certain type of action is an act that is harmful to society, namely a *malum* before imposing sanctions on the *malum*. Before the Sanctions are determined by the legislators, the magistrate is not a delict. Hans Kelsen firmly rejects the existence of *mala in se*. According to Kelsen, there is only *mala prohibita*, this is because an action or act is only declared a *malum* or delict if the act is *prohibitum* or prohibited. This is a consequence of the noble principle *pona sine lege*, *nullum crimen sine lege* (no sanction without a legal norm providing sanctions, no offense without a legal norm specifying the offense. Human actions or actions can only be seen as offenses if a legal norm is positive establish a sanction as a consequence of the act or deed (Sofyan and Azisa, 2016).

From Hans Kelsen's opinion, if it is related to the systematics of the Indonesian Criminal Code, of course it will raise the question of why there is a separation or classification of a criminal act into crimes and violations in the Criminal Code? The answer is because legislators see that laws or laws develop along with developments in society, technology, politics, economy, and civilization. The development of one aspect of the life of the nation and state society will create gaps in conflict or disorder in society, which generally is not an act that can be classified as *mala in se*, such as for example Article 508 of the Criminal Code which prohibits someone who is not entitled to use attribute of an association or military identification. The act in that article is not an evil act, especially now that the emblem or symbol of a certain organization is a trend in dress (such as young people putting on the army or police symbols on their shirts and jackets). And if in the use of this symbol there is an effort (*actus reus*) and intention (*mens rea*) to commit a crime, then what is charged against the defendant is Article 378 of the Criminal Code, while Article 503 of the Criminal Code is the subsidiary. Simply put, actions that are classified as violations are actions or actions which, if carried out/violated, will not have a damaging impact on the social, national and state order, if these actions are equated with a group of actions or actions that are classified as crimes, the state will be burdened with the cost of handling cases and also the cost of facilities that must be met by the state for convicts in prison.

Therefore in the Criminal Code (KUHP), there are several exceptions to violations as in Article 54 of the Criminal Code which states that attempts for violations are not punishable by law. This is of course different from attempted crimes which are punishable by two-thirds of the length of the sentence for the crimes committed or fifteen years for crimes that carry the death penalty or life imprisonment (Article 53 paragraph (1), paragraph (2), paragraph (3). ), and paragraph (4) of the Criminal Code). Then Article 60 of the Criminal Code states that parties who assist in carrying out violations are not punished, while those who assist in crimes will be subject to criminal sanctions.

Along with the development of information technology in the era of the industrial revolution 4.0 and free trade now, Indonesia is one of the countries that enjoys the development of technology and the benefits of free trade so that it has an impact on the progress of the life of the nation and state. Advances in technology provide unlimited access to all elements of society so that they can easily obtain information that helps the community to improve their standard of living. In addition, this progress also has a direct impact on the development, implementation and development of law in Indonesia.



Currently, with easy access to information through technological advances (internet-based digital technology) and expanding markets, people are directly or indirectly encouraged and motivated to live a consumptive lifestyle. Consumptive behavior is a form of abnormal consumption behavior which must be reduced and even avoided as much as possible, especially by people with mediocre financial capabilities (Meike Kurniawati, 2020). With the emergence of internet-based retail applications, people are given the convenience to be able to buy goods easily. This makes Indonesia the country with the fastest growing e-commerce (Sihombing et.al., 2019).

For example, the revenue of the online retail store "Shopee" increased significantly in the 2019 financial statements of the SEA Group (Shopee's holding company). Shopee's revenue in 2019 was US\$942 million or around Rp. 2018. Then, based on the Fourth Quarter 2019 Indonesia e-Commerce Map report published by "iPrice", "App Annie" and "SimilarWeb", Shopee's monthly visitor numbers have exceeded "Bukalapak" in the first quarter of 2019. In the previous quarter Shopee only has 19% market share, now it has increased to 21%. In the previous quarter, Shopee also experienced an increase in the total number of visitors by 16 million. Throughout 2019, Shopee recorded a total of two billion visits (Maarif, 2020).

This consumptive lifestyle is also further strengthened by the development of online money lending applications without collateral and without surveys so that people are encouraged to buy goods even when they don't have money. OJK noted that around Rp. 95.39 trillion in online loans were disbursed to debtors in February 2020. (Mukaromah, 2020)

PT. Barracuda Fintech Indonesia earns billions of Rupiah in profits for one year doing online lending business. PT. Barracuda Fintech Indonesia has obtained 500,000 customers from the lower middle class with loan values ranging from Rp. 500,000 up to Rp. 2,500,000. PT. Barracuda Fintech Indonesia has an application called "Kascash" and "Tokotunai". The Tokotunai application is recorded as having disbursed loans of up to 70 billion Rupiah, with returns received of 78 billion Rupiah. The Kascash application has received a return of 13 billion Rupiah. PT. Barracuda Fintech Indonesia does not charge interest on any loans, but PT. Barracuda Fintech Indonesia sets a discount on administration fees that are charged up front with a high nominal. For example, for a loan of Rp. 1,500,000, the customer will only receive Rp. 1,100,000 and the customer must repay a loan of Rp. 1,500,000 to PT. Barracuda Fintech Indonesia. Administrative fees that are deducted to customers at the start of the loan reach 25 billion Rupiah for one application. In addition, PT. Barracuda Fintech Indonesia also stipulates fines for late payments of up to Rp. 50,000 per day. Nindya Aldila, "Barracuda's illegal fintech has made profits of up to Rp. 5 Billion," *Bisnis.Com*, last modified 2019, accessed October 17, 2020, <https://finansial.bisnis.com/read/20191227/89/1185050/fintech-illegal-barracuda-already-raih-keuntungan-untuk-rp5-billion>.

In addition, the life of a socialite that is glamorous and is shown every day to the public through social media, of course, creates various feelings in the community such as feelings of envy, awe, amazement, hatred, the desire to possess, and so on.

For example, social media Instagram is a trend among teenagers at this time. Instagram is one of the most used social media by Indonesian people, especially teenagers nowadays. Instagram is a social media application that is used to share short videos, photos and information in the form of captions or explanations about these short videos and photos, share these photos on various other social media, get information about news, lifestyle, culinary and so on. The main use of Instagram is to upload and share short videos and photos with other users (Ulfa, 2019).

Information obtained through Instagram can have an impact on the image built on their Instagram account. Like if they often look for information related to creativity, chances are they will also post things related to creativity and work. But it will be a negative thing when users often look for information that is not useful or post short videos or photos that show their luxury and greatness just to show off, self-conceit, and so on. Posts like that can cause social jealousy which will harm others and themselves (Ulfa, 2019).

Therefore it is not surprising that currently social media is not only a place for socializing and sharing information, but also a place for spreading hate, bullying, ridiculing each other, fraud,

media for negative political propaganda, and even used as a medium for terror carried out by unscrupulous debt collectors of financing companies (Tova, 2012).

From the negative impacts caused by developments in technology and trade, coupled with economic instability, lack of jobs, high levels of competition, unstable people's emotions and the large population of Indonesia, the number of criminal acts that have occurred in Indonesia has increased. This can be proven by the increase in the number of criminal acts registered with the Supreme Court (MA) of the Republic of Indonesia in the last five years.

The following is the number of criminal cases registered with the Supreme Court from 2015-2019: Directory of Decisions of the Supreme Court of the Republic of Indonesia, "Number of Criminal Acts," Supreme Court of the Republic of Indonesia, last modified 2020, accessed October 17, 2020, <https://decusan3.mahkamahagung.go.id/search.html?q=-+penal>.

1. In 2015 criminal acts registered at the Supreme Court were 263502 cases;
2. In 2016 criminal acts registered at the Supreme Court were 391264 cases;
3. In 2017 criminal acts registered at the Supreme Court were 414980 cases;
4. In 2018 criminal acts registered at the Supreme Court were 477617 cases;
5. In 2019 criminal acts registered at the Supreme Court were 557677 cases.

The number of cases above shows that there has been an increase in criminal acts or crimes from year to year. This increase not only shows that the perpetrators of criminal acts are not worried about the sanctions that are threatened through articles in the law, but also shows that the Indonesian nation is currently in a crisis of morality.

Enforcement of criminal law and sentencing should no longer be seen as the only hope to be able to solve or overcome crimes completely, because in essence crime is a "humanitarian problem" and a "social problem", which cannot be solved solely by criminal law. As a social problem, crime is a dynamic social phenomenon that always grows and is related to other very complex social phenomena and structures (Maroni, 2016).

Enforcement of criminal law and sentencing should no longer be seen as a mere legal issue and should no longer adhere to the principle of rigid legality and narrow sentencing objectives, but also to the detriment of policy issues (the problem of policy) (Maroni, 2016).

This relates to the primary function of criminal law is crime prevention, while the secondary function is to ensure that authorities in tackling crime carry out their duties in accordance with what is outlined by criminal law. In its function of tackling crime, criminal law is part of criminal politics in addition to non-penal efforts in crime prevention. In such conditions, the existence of criminal law must be in line with non-penalty crime prevention policies. Even in its position as *ultimum remedium*, the use of criminal law must prioritize non-penal efforts unless these efforts can no longer be relied upon (Maroni, 2016). According to Kadish, currently criminal law has expanded the range of criminal sanctions to very different types of behavior, a behavior that does not cause serious harm, or crimes that do not even cause any harm (Ali, 2018). This is reflected in minor criminal acts that often occur in daily life in society, such as the potential for spontaneous petty mistreatment of animals due to expelling livestock or pets belonging to neighbors who damage or pollute the yard of the house; Chat or conversation between neighbors that could potentially be a crime of light insult; Buying and selling used goods online which can lead to potential criminal acts of misdemeanor collection; and so forth. Misdemeanor crimes only cause minor losses to victims, however, misdemeanors can easily occur when they are only triggered by a lack of education, spontaneity followed by mistakes, and a lack of concern for neighbors and society. Even if it only causes minor loss or damage, the perpetrators of minor crimes must not be allowed to go away, this is because the perpetrators of minor crimes will not regret their actions so that they can encourage them to commit more serious crimes. However, the handling of minor crimes should not only focus on sanctions or punishments as contained in Article 10 of the Criminal Code. Therefore, the government through the Draft Criminal Code (RUU KUHP) must be able to create an alternative criminal punishment for perpetrators of minor crimes which can become a means of socially just education for society.

Based on the description above, in order to realize the ideals of independence for the Indonesian nation, especially in terms of promoting public welfare and for the sake of realizing a



legal state for the welfare of Indonesia, the handling of minor crimes must prioritize social justice in them. For this reason, there must be an alternative criminal punishment beyond the main punishment and additional penalties currently regulated in Article 10 of the Criminal Code. The alternative criminal punishment must prioritize Pancasila, especially the precepts of Social Justice for All Indonesian People, the 1945 Constitution and the noble values that live in the midst of society. For this reason, the alternative criminal punishment may not give excessive losses to the convict but must provide a deterrent effect to the convict so that he does not repeat the said act, and also the punishment carried out by the convict must contribute or benefit the general public..

## RESEARCH METHOD

This research is a type of normative juridical research, namely research that discusses legal aspects by conducting library research, either in the form of comparative law or legal history that is oriented towards applicable laws and regulations (Nawawi, 2001). Sources of data used in this study are secondary data in the form of laws and regulations, law books, journals, scientific papers, and other reference sources originating from the internet which come from credible and accountable sources.

## DISCUSSION

### Misdemeanors in Society

According to Article 205 paragraph (1) of the Criminal Procedure Code (KUHP) a minor crime is a case that is punishable by imprisonment or imprisonment for a maximum of 3 months and or a fine of up to seven thousand five hundred rupiahs. Regarding the nominal value of fines for minor crimes in the Criminal Code, the Supreme Court through Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits for Misdemeanor Crimes and the Amount of Fines in the Criminal Code, increased the value of fines from the articles in the Criminal Code which regulate cases that have qualification as a misdemeanor. The value of the fine, which was originally "two hundred and fifty rupiahs", was increased to "two million five hundred thousand rupiahs". Misdemeanors are criminal acts that are minor or not dangerous. The Criminal Procedure Code regulates that the examination of minor crimes is carried out quickly and simply. The interesting thing about the Misdemeanor Crime is that it is included in the light insult crime which is located in the second book of the Criminal Code. This light insult in doctrine is one of a group of criminal acts called minor crimes (*lichte misdrijven*) contained in the second book of the Criminal Code (Solar, 2012). Misdemeanors are categorized as crimes because the Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits of Misdemeanor Crimes and the Amount of Fines in the Criminal Code has stated the articles in the Criminal Code that are categorized as minor crimes and the entire article mentioned is part of the second book of the Criminal Code (KUHP). Crime).

The following are articles in the Criminal Code which constitute minor crimes:

1. Mistreatment of Light Animals Article 303 paragraph (1) of the Criminal Code (Second Book);
2. Mild Insult Article 315 Criminal Code (Second Book);
3. Light Maltreatment Article 352 paragraph (1) of the Criminal Code (Book Two);
4. Misdemeanor Theft Article 365KUHP (Second Book);
5. Misdemeanor Article 373 Criminal Code (Second Book);
6. Misdemeanor Article 379 Criminal Code (Second Book);
7. Minor Fraudulent Acts Article 384 of the Criminal Code (Second Book);
8. Light Damage Article 407 paragraph (1) Criminal Code (Second Book);
9. Light Detention Article 482 Criminal Code (Second Book)
10. Article 482 Criminal Code (Second Book)

The number of minor criminal cases that occurred in Indonesia is not small. The following is the number of misdemeanor cases registered at the Supreme Court from 2015-2019: Directory of Decisions of the Supreme Court of the Republic of Indonesia, "Number of Misdemeanors," Supreme



Court of the Republic of Indonesia, last modified 2020, accessed October 17, 2020, <https://decision3.mahkamahagung.go.id/search.html?q=criminal+light>.

1. In 2015 there were 60,078 cases registered;
2. In 2016, 69,319 cases were registered;
3. In 2017, 76,121 cases were registered;
4. In 2018, 113186 cases were registered;
5. In 2019, 125821 cases were registered.

The number of misdemeanors that has increased from year to year shows that there are still many people who underestimate a crime, some people see that a misdemeanor is just a meaningless violation. This can be proven through the many forums for buying and selling used motorcycles online where many used motorbikes costing one million to three million rupiah are sold without administration (without papers/bodong). These motorbikes sometimes only have a Motorized Vehicle Registration Certificate (STNK) without a Motorized Vehicle Ownership Book (BPKB), some are even sold without a STNK and BPKB. In fact, if analyzed rationally, motorbikes that are sold cheaply without any documents at all are definitely motorcycles that have legal problems, they may even be goods resulting from a crime, and whoever buys or keeps the proceeds of crime, then that person has committed an act of crime. detention crime.

It is very regrettable that at this time there are groups of people who still don't care and still want to carry out acts that are against the law just because these actions are considered to be minor violations. Incidents like this generally occur because the community believes that the punishment that is threatened is not scary, or even the community thinks that law enforcement is very weak. Therefore, there must be an alternative criminal punishment that not only gives fear to the community, but also must be able to touch the conscience of the community so that the community no longer commits minor crimes consciously and voluntarily.

### **Forms of Alternative Punishment for Misdemeanors**

Criminal law is a means of social control. Social control is a process of educating the public to obey and obey the law in order to create a society that is socially just, intelligent and prosperous. The concept of punishment is very simple, namely providing control through boundaries that may not be violated (these boundaries are designed in such a way that generally use the basis of norms and moral values) and if they are violated there will be punishment in the form of physical suffering or deprivation of liberty. This is applied because naturally human nature is to follow actions that he considers easy and enjoyable, leaving behind something that is unpleasant and troublesome. But nowadays criminal law and punishment are no longer effective sanctions as a crime prevention measure.

The failure of criminal law to carry out its functions (both primary and secondary functions) is the result of the attitude of law enforcement officials who view criminal law enforcement and the application of criminal sanctions as a logical consequence of every crime, so that when criminal and criminal laws have been applied, crime prevention is considered finished. Such a view has shaped the attitude of law enforcers to always uphold criminal law by imposing severe penalties on every crime. Although in order to apply criminal and penal laws, law enforcement officials must take various methods, including methods that are contrary to human rights recognized by civilized nations. By using the politics of criminal law (policy approach), enforcement of criminal law with sanctions in the form of punishment is not seen as a necessity in tackling crime, but is seen as a policy that places criminal law and sanctions in the form of punishment as one of the many alternatives that can be taken. to tackle crime. With such a view, the enforcement of criminal law with sanctions in the form of punishment will only be used to achieve this criminal and criminal law. In other words, legal politics sees criminal law enforcement and punishment as a means of overcoming crime to achieve a goal (Maroni, 2016).

Currently, many people are not afraid of punishment in the form of prison, confinement, or fines. There was an experience that the author experienced when conducting research in a criminal trial at a district court, at that time the panel of judges had finished reading the verdict and asked the defendant about his opinion on the verdict, whether the defendant wanted to file an appeal





against the decision or No. The defendant answered the panel of judges' questions by rejecting the opportunity to appeal and accepting the verdict. Then the panel of judges asked why the defendant accepted and did not appeal? Then the defendant replied with a surprising answer. The defendant said "I would rather be in prison, sir, in prison I don't have to think about the burdens of my life and my life will be freer in prison.

This is very surprising and shakes the soul as a legal academic who always thinks systematically and philosophically about the ideal concepts of law and how perfect a society is that obeys the law and lives in a harmonious order. What's wrong with this? What is the legal norm? Is the punishment ineffective? Is the law enforcement system still weak? Or is the morale of society getting worse and worse?

Reflecting on this the author thinks and tries to answer the question and remembers a military proverb which says: "if an order (law) has been delivered but the order has not been obeyed, then something went wrong in the delivery so that the troops (the people) still do not understand, by therefore orders must be repeated so troops can understand (socialization/education). If the order has been repeated but still not carried out, then the field commander (law enforcer) must be replaced because he cannot discipline his troops. If the field commander has been replaced but orders still cannot be executed, then the blame lies with the general (policy stakeholder). And if the general has been replaced and the order still cannot be carried out, then the fault is in the order."

Looking at the current Criminal Code which is a legacy of the colonial system (colonizers) which until now the scars from colonialism still make an impression on the hearts of the Indonesian nation.

The colonial legacy of the Criminal Code is not a complete criminal law system, because there are several articles/delicts that have been repealed. Therefore, new laws have emerged outside the Criminal Code which regulate special offenses and special rules (Pradityo, 2017).

Many contents of the Criminal Code are inconsistent with the spirit of independence and our culture as easterners. However, it has been seventy-five years since the Indonesian nation became independent, the polemic about changing colonial heritage laws (KUHP, KUHPerdata, HIR, KUHD, Rbg) to become national law, which is the original legal product of the Indonesian people, has yet to be resolved. The main cause of this polemic is not only due to the difficulty of abandoning old habits (the current law), but also a conflict of interests between groups which still prioritize their respective sectoral egos. Another factor is that there is no firmness in the 1945 Constitution regarding the deadline for replacing colonial legacy laws with national laws designed by the Indonesian people themselves.

Returning to the discussion regarding alternative forms of criminal punishment for minor crimes, as a country that has a rich culture with the values of many unique local wisdoms, we can adopt several models of criminal punishment as alternative criminal penalties.

The Unitary State of the Republic of Indonesia is a constitutional state, with a view of life based on Pancasila as the state philosophy. Pancasila is the ideology of the Indonesian nation, after Indonesia became independent on August 17, 1945. The State of Indonesia is a republic in the form of a republic based on the 1945 Constitution as the legal basis of the Republic of Indonesia. The Indonesian state consists of various kinds, styles and various ethnic groups, thus making the Indonesian nation have a variety of languages, cultures, races and customs (Safrijal, 2013).

Otje Salman Soemadiningrat stated that efforts were made to remove customary criminal law and customary sanctions from the legal system in Indonesia and replace them with statutory regulations so that procedures for settling criminal cases were generally channeled through the general courts. However, the reality is that until now there are judges who base their decisions on customary law or at least on laws that are considered customary law (Jaya, 2016).

Etymologically the term adat consists of two words, namely sanctions aimed at establishing order in human relations so that security and order are maintained. Whereas custom is a reflection of the personality of a nation, is one of the incarnations of the soul of the nation concerned from century to century (Upa, 2014).



Customary law as a local wisdom value that grows and develops in society, can be used as an alternative criminal punishment for minor crimes. For example, the implementation of caning in Aceh can be an alternative criminal punishment.

Caning in Aceh is carried out every Friday after Friday Prayers. The process of executing the caning sentence provides space and freedom for all levels of society to witness it directly, including children (Nurbaiti; Wahyuni; Rizki; Nisa, 2019).

The main purpose of carrying out caning punishment in Aceh, apart from upholding Islamic Sharia and Aceh Qanun. Caning punishment aims to provide a deterrent effect and a preventive effect. The biggest impact given by this punishment is not physical suffering, but social trauma or shame because it was punished as a maker of immorality and watched by the general public while being whipped.

In today's digital era, the toughest form of punishment is punishment that causes shame in society. This is also driven by technological developments and social media. At present, due to the increasing influence of gadgets and social media in life, especially the generation under the age of forty, many people always want to look perfect, especially on social media. Many people are competing to create perfect content, and currently the dominating content on social media is perfect life content, which contains the daily life routines of a social media user with a glamorous lifestyle and shows the happiness of a full life. perfect like the life of a nobleman. There are even some social media users who show an attitude of rivalry towards content creation and some even dismantle each other's personal lives to show that actually the rival's life is not as perfect as the content displayed so that people do not follow back the daily life of the social media user..

The shame of being exposed to one's activities or life in an unpleasant situation due to punishment and social sanctions, can be used as the main feeling of anxiety as a substitute for deprivation of liberty or physical torture.

Alternative criminal penalties for minor crimes must meet several requirements, among others:

1. Disclosing the status of the defendant's sentence to the public (his status as a lawbreaker) but may not undermine the person's self-respect or his family personally, such as taking advantage of someone's physical deficiencies to embarrass him, or using family members who have deficiencies or disabilities. The shame that is given purely comes from the defendant himself because he is serving a sentence;
2. The implementation of the sentence must provide benefits to society. The benefits given to the community are not only in the form of satisfaction due to retaliation or the accused has been punished, but benefits that can provide direct benefits to the community, such as community service punishment;
3. The punishment has a deterrent effect and an effective prevention effect;
4. The punishment must be able to increase people's obedience to the law;
5. The punishment must be able to educate the public about the importance of obeying the law and the importance of contributing to society; And
6. Punishment and the execution of the sentence may not conflict with Pancasila, the 1945 Constitution and existing Eastern Norms.

After these conditions have been fulfilled in drafting a law to create alternative criminal penalties for minor crimes, these alternative criminal penalties can be used as a tool for social engineering and a tool for social control in realizing the aspirations of the Indonesian nation's independence and realizing a just society. social and prosperous.

The forms of alternative criminal punishment include:

1. Punishment cleans the environment. This punishment for cleaning up the environment is a classic punishment in the Common Law legal system, law makers and judges of Common Law countries see that an act that violates the law will definitely give harm to society. So that instead of the defendant being punished for having his independence deprived, it is still not enough to restore the losses that have been suffered by the community so it is better for the accused to be punished to serve the community;

2. Punishment for giving food to orphans, the poor, the elderly, neglected children. Punishment apart from providing a retaliatory effect, is beneficial for society, and is also useful for helping the state government fulfill the mandate of Article 34 of the 1945 Constitution. The conditions for this punishment are that the food given must be food that has been processed or cooked by the defendant, whether the accused as the main cook or the accused became the kitchen crew. The punishment is carried out by cooking and feeding a certain number of people (eg 30 servings of food for thirty people) and if the accused still commits the crime, then the number of servings of food provided during the second sentence must be doubled.
3. Caring for the elderly in a nursing home, the defendant was ordered to care for the elderly in a nursing home for a certain period of time as a form of service to senior citizens who have contributed to the nation and state.
4. Teaching literacy and arithmetic to street children as well as underprivileged children. The implementation is the same as the punishment for caring for the elderly.

Revocation of civil rights. As long as the defendant does not carry out the sentence that has been determined, the defendant will have his civil rights revoked (this is like bankruptcy while the defendants).

Alternative criminal penalties for minor crimes have a positive impact on the nation and state. In addition to the community benefiting from the execution of convict sentences, the state can also save costs incurred for prison operations because fewer and fewer convicts enter prison. For convicts, by carrying out various punishment activities in the form of forced labor and community service, this will assist in the process of re-establishing good morals and morality.

### **Alternative Criminal Punishments in Forming a Socially Just Society**

The 1945 Constitution of the Republic of Indonesia (1945 Constitution) emphasizes that sovereignty is in the hands of the people and implemented according to the Constitution. It was emphasized that Indonesia is a state based on law. Thus, the consequences listed in the 1945 Constitution must be based on applicable laws and regulations and laws that live and develop in society (Syaputra, 2008).

Alternative criminal punishments are expected to reshape the character of convicts to become good people and contribute to society. In addition, by carrying out community service, if the convict does it sincerely, wholeheartedly, then when the convict has completed his sentence, the convict will easily be accepted back into society.

In this way, it is hoped that there will be close family relations between the people so that they can minimize the evil intentions of people who have the potential to become perpetrators of crimes. This will also increase the appreciation and practice of the people towards the values of Pancasila.

To minimize and prevent crime, it must start through the factors that cause crime. In the classic reason, crimes occur because of the complexity of economic and family problems. If we look at Pancasila, economic problems occur because the fifth precept of Pancasila has not been realized, namely "Social Justice for All Indonesian People", if social justice can be realized, surely all people will be able to feel prosperity and well-being.

But currently Indonesia is still far from social justice. Not only in the economic field, which are still far from realizing social justice, in the field of law enforcement there are still many who are still far from realizing social justice. There are policy makers who are still looking for profit and personal enrichment, there are socio-political groups that still prioritize their sectoral egos in competing for the hegemony of power, and so on, are just a few examples of the many factors that hinder the realization of social order. Indonesia with social justice.

Therefore, the entire Indonesian nation must work as hard as they can together to create a social order that is socially just. One way is through the application of alternative criminal penalties for minor crimes. For example, if someone who works as an educator tries to shape the character of his students as socially just human beings, this has the potential for failure if the community environment in which the students live is not good (environments with high crime rates). For this

reason, the environment outside the school or campus must also be cleaned by changing the behavior of the community, including convicts through alternative criminal penalties. If the objective of the alternative criminal punishment is successfully implemented to the convicts, then the convicts will automatically spread the objective of the alternative criminal punishment, namely to create a socially just Indonesian society.

## CONCLUSION

The number of misdemeanors that has increased from year to year shows that there are still many people who underestimate a crime, some people see that a misdemeanor is just a meaningless violation. Therefore, it is time for the Indonesian people to have alternative criminal penalties for minor crimes that can replace criminal penalties currently regulated in Article 10 of the Indonesian Criminal Code.

Alternative criminal punishments for minor crimes must meet several requirements, including: Disclosing the status of the defendant's sentence to the public (his status as a lawbreaker) but must not demean the person's self-respect or his family personally such as for example taking advantage of someone's physical deficiencies to embarrass him, or using family members who have deficiencies or disabilities. The shame that is given purely comes from the defendant himself because he is serving a sentence; The implementation of the punishment must provide benefits to society. The benefits given to the community are not only in the form of satisfaction due to retaliation or the accused has been punished, but benefits that can provide direct benefits to the community, such as community service punishment; The punishment has a deterrent effect and an effective prevention effect; The punishment must be able to increase people's obedience to the law; The punishment must be able to educate the public about the importance of obeying the law and the importance of contributing to society; and The punishment and the execution of the sentence may not conflict with Pancasila, the 1945 Constitution and existing Eastern Norms.

One way to create a socially just society order is through the application of alternative criminal penalties for minor crimes. Alternative criminal punishments are expected to reshape the character of convicts to become good people and contribute to society. In addition, by carrying out community service, if the convict does it sincerely, wholeheartedly, then when the convict has completed his sentence, the convict will easily be accepted back into society. Therefore, the government through the Criminal Code Bill can formulate a policy in the form of socially just alternative criminal penalties for perpetrators of minor crimes.

## REFERENCE

- Aldila, N. (2019). *Fintech Illegal Barracuda Sudah Raih Keuntungan Hingga Rp5 Miliar*. Bisnis.Com.
- Ali, M. (2018). Overcriminalization dalam Perundang-Undangan di Indonesia. *Jurnal Hukum Ius Quia Iustum, Volume 25*(Nomor 3 September).
- Direktori Putusan Mahkamah Agung Republik Indonesia. (2020a). *Jumlah Tindak Pidana*. Mahkamah Agung Republik Indonesia.
- Direktori Putusan Mahkamah Agung Republik Indonesia. (2020b). *Jumlah Tindak Pidana Ringan*. Mahkamah Agung Republik Indonesia.
- Jaya, N.S.P., (2016). Hukum (Sanksi) Pidana Adat Dalam Pembaharuan Hukum Pidana Nasional. *Jurnal Masalah-Masalah Hukum, Volume 45*(Nomor 2 April).
- Kurniawati, M., (2020). *Ancaman Perilaku Konsumtif di Tengah Pandemi Corona*. Kompas.Com.
- Maarif, N., (2020). *Shopee Jadi e-Commerce Terpopuler di Indonesia*. Detik.Com.
- Maroni. (2016). *Buku Ajar Bagian Umum Pengantar Politik Hukum Pidana* (Cetakan Pe). CV. Anugrah Utama Raharja.
- Mukaromah, V.F., (2020). *Marak Promosi Pinjaman Online, Ini yang Perlu Anda Ketahui agar Tak Tertipu*. Kompas.Com.
- Nawawi, H. H. (2001). *Penelitian Bidang Sosial*. Gadjah Mada University Press.
- Nurbaiti; Wahyuni; Rizki, M., Nisa, H., (2019). Pandangan Masyarakat Terhadap Pelaksanaan Hukuman Cambuk di Aceh. *Indigenous: Jurnal Ilmiah Psikologi, Volume 4*(Nomor 2 Agustus).
- Pradityo, R., (2017). Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat. *Jurnal Legislasi Indonesia, Volume 14*(Nomor 02 Juni).



- Safrijal, A., (2013). Penerapan Sanksi Adat dalam Penyelesaian Perkara Pidana di Kabupaten Nagan Raya. *Kanun: Jurnal Ilmu Hukum, Volume 15*(Nomor 1). <https://doi.org/10.24815/kanun.v15i1.6165>
- Sihombing, N.M.M., et.all., (2019). Dampak Penggunaan Pinjaman Online Terhadap Gaya Hidup Konsumtif Mahasiswa Yogyakarta. *Proceeding SINTAK 2019*.
- Solar, A., (2012). Hakikat Dan Prosedur Pemeriksaan Tindak Pidana Ringan. *Lex Crimen, Volume 1*(Nomor 1 Januari-Maret).
- Sofyan, A., dan Azisa, N., (2016). *Buku Ajar Hukum Pidana* (Kadarudin (ed.); Cetakan Ke). Pustaka Pena Press.
- Syamsuddin, A., (2013). *Proses & Teknik Penyusunan Undang-Undang: Dilampiri UU No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan*. Anak Negeri Publisindo.
- Syaputra, M.Y.A., (2008). Penafsiran Hukum Oleh Hakim Mahkamah Konstitusi. *Jurnal Mercatoria, Volume 1*(Nomor 2).
- Syaputra, M.Y.A., (2016). Kajian Yuridis Terhadap Penegasan Hiearaki Peraturan Perundang- Undangan Di Indonesia Dalam Perspektif Stufen Theorie. *Jurnal Mercatoria, Volume 9*(Nomor 2 Desember).
- Tova, D., (2012). *Hati-hati! Debt Collector "Kejar" Anda Sampai ke Facebook*. Detik.Com.
- Ulfa, N.F., (2019). *Skripsi: Dampak Penggunaan Instagram Terhadap Gaya Hidup Remaja (Studi Pada Siswa-Siswi MTSN Model Banda Aceh)*. Universitas Islam Negeri Ar-Raniry Banda Aceh.
- Upara, A.R., (2014). Penerapan Sanksi Pidana Adat Terhadap Pelaku Tindak Pidana Zina Di Tinjau Dari Hukum Pidana Adat Dan Hukum Pidana Nasional Pada Masyarakat Adat Tobati Di Jayapura. *Jurnal Legal Pluralism, 4*(2).