Research Article

Alternative Criminal Punishments for the Settlement of Misdemeanor in a Social Justice Perspective

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ABSTRACT

The national law has a clear vision to realize a just and democratic rule of law. Criminal legal system serves to protect the interests of the society and the nation. Criminal law enforcement nowadays is no longer directed at enforcing crimes, but also to cope with humanitarian interest in criminal actions, especially when it has to defend against misdemeanor. This paper aims to analyze the current dynamics in how Indonesian criminal law contextualize its existence in facing misdemeanor. By using juridical and normative approach with descriptive analytical technique, the results showed inadaptability of criminal law with misdemeanor cases. The results highlight that as a complex part of socio-economic and legal problem, misdemeanor is dynamically challenging legal system and criminalization. This study demonstrated the need for alternative penalties for minor crimes as an integral part of reforming the Indonesian Criminal Code. More specifically, this study shows several requirements that need to be met in the legalization of alternative criminal penalties for minor crimes. In addition, alternative punishments can provide benefits to the community, such as involving criminals in community service and unpaid work. The recommendations are pointed out regarding the application of alternative criminal penalties for minor crimes.

Keywords: Alternative Punishment; Criminal Law; Social Justice; Misdemeanor.

A. INTRODUCTION

Ease of access to information through internet-based digital technology and an increasingly broad market affects the community directly or indirectly to live a consumptive lifestyle today. The negative impacts are caused by technological developments and trade, coupled with economic instability, lack of employment opportunities, high levels of competition, and instability in public emotions and the large population of Indonesia, the number of crimes that occur in Indonesia is increasing. This can be proven by the increase in the number of criminal acts registered in the Supreme Court of the Republic of Indonesia during the last five years. The following is the number of criminal cases registered in the Supreme Court from 2015-2019 (Supreme Court of the Republic of Indonesia, 2020). In 2015, there were 263502 registered criminal acts in the Supreme Court. In 2016 there were 391264 criminal acts registered in the Supreme Court. In 2017 there were 414980 criminal acts registered in the Supreme Court. In 2018, there were 477617 criminal acts registered in the Supreme Court. In 2019, there were 557677 registered criminal cases in the Supreme Court.

The number of cases above shows that there has been an increase in criminal cases from year to year. This increase does not only show that the perpetrators of criminal acts are not worried about the penalties imposed by the articles in the law, but also shows that Indonesia as a nation is currently in a crisis of morality. Criminal law enforcement and punishment should no longer be seen as the only hope to be able to solve or overcome crimes completely because the essence of crime contains humanitarian problem and 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 associated with other complexity and social structures (Maroni, 2016).

In the theory of social contract, a nation is formed from a collection of social groups that bind themselves to each other for benefits and fulfill common interests. In general, this common interest is in the form of protection from threats from social groups or groups of other social groups, obtaining supplies of necessities and resources, material benefits and social status, better social welfare and individual lives, having similarities in terms of linguistics, historical parity, cultural linkages, having similarities in areas, the existence of strong enemies that must be faced together, and various other reasons related to other social interests (Belloni, & Ramović, 2020). Therefore, a nation is formed from a group of social groups, each of which has different interests and with a vision that is packaged within the framework of a common interest or national interest.

According to the description above, the interests of social groups are the basis for the formation of a nation. This interest is 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 state goal. However, apart from being the binder and motivation to unite the nation, the interests of social groups and individuals in a nation can also be a potential problem and cause for chaos as the result of the occurrence of “conflicts of interest” between social groups and individuals (Lilja, 2018). In order to prevent conflicts of interest, the state must be able to establish a legal norm or rule that can be obeyed by the community. Law is the foundation of development in other fields. This means the actualization of the function of law as a tool of social engineering/development, an instrument of dispute resolution, and a regulator of community behavior and social control. The vision of national law development 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 to protect all people and the nation, as well as to spill Indonesian blood, to promote public welfare, to educate life as a nation, and to participate in implementing world peace based on independence, eternal peace and social justice based on Pancasila and the 1945 Constitution (Syamsuddin, 2013).

This vision is described further in the mission of national law development, by realizing legal material in all fields in the context of replacing colonial law and national laws that are no longer in accordance with the development of society which contains certainty, justice and truth, by taking into account the legal values that live in society; creating a legal culture and a law-aware society, realizing quality, professional, moral and high integrity legal apparatus; and creating a strong, integrated and authoritative legal institution (Syamsuddin, 2013). The law formed must be able to prevent conflicts of interest in the community. These conflicts of interest can result in disputes and even social conflicts. In social conflict, dispute will arise any legal consequences, both civil and criminal. Referring to the legal consequences in the two areas, the actions of individuals or social groups that violate criminal norms are an urgency of special attention in the wider community. This issue is basically due to the public perspective that a criminal offense is a crime that can have a direct impact and disrupt the entire social fabric of society, nation and state.

Enforcement of criminal law and punishment should no longer be seen as a mere legal problem and adhere to rigid legality principles and narrow sentencing purposes, but also detrimental to the problem of policy (Maroni, 2016). This is related to the primary function of criminal law, which is the prevention of crime, while the secondary function is to ensure that the authorities in overcoming crimes carry out their duties in accordance with what is outlined by the criminal law. In its function of overcoming crime, criminal law is part of criminal politics in addition to non-penal efforts in resolving harm. In such condition, the existence of criminal law must be parallel with the non-penal crime prevention policy (Hutahaean, 2013). The use of criminal law should prioritize non-penal measures unless these efforts are no longer reliable (Maroni, 2016; Wulandari, 2020). According to Kadish et al. (2016), nowadays criminal law has extended the range of criminal sanctions to very different types of behavior, a behavior that does not cause serious harm, or a crime that does not even cause any harm (Ali, 2018). This is reflected in the minor criminal acts that often occur in the daily life of the community, such as the potential for minor animal mistreatment crimes that are carried out spontaneously due to evicting livestock or pets belonging to neighbors that damage or pollute the yard. Chats between neighbors can potentially become a criminal act of light humiliation. Buying and selling used goods online can lead to the potential for minor criminal acts of detention, and so forth. Minor crimes only cause minor harm to the victim, but minor crimes are very easy to occur, only triggered by a lack of education, spontaneity followed by mistakes, and a lack of care in neighbors and in society. Even though they only cause minor loss or damage, the perpetrators of minor crimes should not be left alone. This is because the perpetrators of minor crimes will not regret their actions so that it can encourage them to commit heavier crimes. However, handling minor crimes should not only focus on sanctions or penalties as contained in Article 10 of the Criminal Code. Therefore, the government through the Draft Law on the Criminal

Code must be able to create an alternative criminal punishment for the perpetrators of minor crimes which can be a means of educating a socially just society.

Previous research has widely discussed misdemeanor and minor crimes in Indonesia in the context of criminal law (Rahmawati, 2013; Pradana et al., 2020) and restorative justice (Mulyani, 2017; Muhaimin, 2019). Furthermore, minor crimes in Indonesia are still processed conventionally so that many cases are not completed or the decisions do not implement the legal objectives, namely legal certainty, justice and expediency (Angrayni, 2016; Sutrasno, 2019). In a global context, the resolution of misdemeanor crimes still leaves many problems (Kohler-Hausmann, 2013; Natapoff, 2015). Several alternatives for resolving cases of minor crimes can be carried out based on local wisdom and customary law (Aedi, 2019), or providing social sanctions to perpetrators (Slat, 2019).

Based on the description above, in order to realize the ideals of independence of the Indonesian nation, especially in terms of advancing the general welfare and for the sake of realizing a state welfare law in Indonesia, handling minor crimes must prioritize social justice in it. For this reason, there must be an alternative criminal sentence beyond the basic sentence and additional penalties currently regulated in Article 10 of the Criminal Code. The alternative criminal punishment should refer to Pancasila, especially the principles of social justice for all Indonesian, 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 harm to the convicted person but must provide a deterrent effect on the convicted person from repeating the act, and also the sentence carried out by the convicted person must provide a contribution or benefit to the general public.

B. RESEARCH METHODS

This research applied a normative juridical research, which discusses the legal aspects by conducting library research in the form of comparisons of law or legal history oriented to the prevailing laws and regulations (Nawawi, 2010). Sources of data used in this study are secondary data in the form of statutory regulations, law books, journals, scientific papers, and other reference sources from the internet, which are credible and accountable sources.

C. RESULTS AND DISCUSSION

According to Moeljatno (2002), criminal law is a set of rules governing actions that constitute a criminal act, rules that regulate liability or legal consequences of a criminal act, and the verbal process of law enforcement against a criminal act. This element shows the relationship between material criminal law and formal criminal law, which means that violations of material criminal law will be meaningless without the enforcement of formal criminal law (criminal procedural law). Likewise, the formal criminal law cannot function without violating the norms of material criminal law (Sofyan, & Azisa, 2016). The current Indonesian Criminal Code consists of three books, namely

(Soesilo, 1994): First Book regarding General Regulations (starting from Article 1 to Article 103 of the Criminal Code), Second Book regarding Crimes (starting from Article 104 to Article 488 of the Criminal Code), Book Three regarding Violations (starting from Article 489 to Article 559 of the Criminal Code).

Both chapters regulated in the criminal code are classified into two types of criminal acts as follow: crime and violations. There is no article that stipulates Criminal Code that specifically regulates or explains the meaning or difference between "crime" and "offense", however, if we look at the comparison of the articles contained in the second book (crime) and the article. As in the third book (violation), simply the difference between crime and violation in the Criminal Code lies in the sanctions/penalties contained Book of Two and Book of Three. The second book (crime) contains sanctions/penalties in the form of death penalty (as in Article 104 and Article 340, imprisonment (as in Article 351 and Article 378); imprisonment penalty (as in Article 232 paragraph (3)); penalties for fines; and additional penalties (revocation of certain rights, confiscation of goods, and announcement of a judge's decision).

The third book of 'violation' contains sanctions/penalties in the form of penalty of confinement; fines; and additional penalties (confiscation of goods). The prison sentence as stated in Article 12 paragraph (1) of the Criminal Code, is divided into two types, namely life imprisonment and temporary imprisonment. The duration of the implementation of the temporary prison sentence is regulated in Article 12 paragraph (2), paragraph (3) and paragraph (4) with a minimum length of time for the implementation of the sentence at least one day and the maximum length of execution of the sentence may not exceed twenty years. A convict who is serving a prison sentence is also required to carry out the work he is ordered to do in accordance with the provisions of Article 14 of the Criminal Code. The minimum length of time for the implementation of the imprisonment sentence is one day and the maximum sentence is one year, as regulated in Article 18 paragraph (1) of the Criminal Code. In certain circumstances, the maximum 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 convicted person is obliged to carry out the ordered work but the work ordered is lighter than the work carried out by the convicted prisoner, this is regulated in Article 19 paragraph (1) and paragraph (2) of the Criminal Code.

According to the two statements above, crime has a heavier sanction/punishment than a violation. This is because the actions or actions prohibited in the second book (crimes) are actions or actions that are considered wrong and should not be carried out based on the morality and reason of civilized society. In the other words, according to human morals and common sense such actions are not justified to be carried out and the prohibition against these actions is universally applicable (such actions or actions are prohibited from being 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* (Hosenfeld, 2014).

Meanwhile, the penalty of a lighter violation is the actions or behavior that should not be carried out because these actions are prohibited by law or what is known as *mala prohibita*, such as for example the six weeks imprisonment 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 reason of thinking of civilized society so that the prohibition against such actions or deeds does not apply universally. However, legislators see from an aesthetic point of view, public comfort and public order so that legislators consider it necessary to prohibit these actions or acts.

In traditional criminal law theory, *mala in se* is an act or deed which is considered evil by it and *mala prohibita* is an act or deed which is considered evil only because the action or act is prohibited by a positive social order (Lee, 2022; Bero & Sarch, 2020). Hans Kelsen (2011) argues that patterns of "certain actions of man" are, by their very nature, offenses. However, whether a "certain action" is an offense cannot be answered by analyzing the action, this can only be answered based on a certain legal order.

The concept of offense is defined by the legislators. In the process the legislators must first assess that a certain type of action is an act that endangers the community, namely a *malum* before determining the *malum* sanction. Before sanctions were stipulated by lawmakers, the *malum* was not an offense. Hans Kelsen emphatically rejects the existence of *mala in se*. According to Kelsen (2011), there was only *mala prohibita*, this was because an act or action was only declared as *malum* or offense if the act was prohibitum or prohibited. This is a consequence of the principle of "*nullum crimen nulla poena sine lege*" (no sanction without a legal norm that provides sanctions, no offense without a legal norm determining the offense. Acts or actions of new humans can be seen as offenses if a norm of Positive law establishes a sanction as a consequence of the action or the act (Kelsen, 2011).

Refers to Hans Kelsen's (2011) opinion, if it is related to the systematics of the Indonesian Criminal Code, it will raise the question why there is a separation or classification of a criminal act into a crime and violation in the Criminal Code. The answer is because legislators see that law or legislation develops along with the development of social society, technology, politics, economy and civilization. The development of one aspect of the life of the people of the nation and state will create loopholes of conflict or disorder in society, which generally is not an act that can be classified as *mala in se*, such as Article 508 of the Criminal Code, which prohibits someone who is not entitled to use the attributes of an association or military identification. The actions in this article are not evil acts, especially now that the emblem or symbol of a certain organization is a trend in clothing (such as young people wearing an army symbol or police symbol on their clothes and jackets). And if in the use of the symbol there is an attempt (*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 becomes its subsidiary. Simply put, an action classified as a violation is an act or action which, if done/violated, will not have an impact on the social order, the nation and the state, if the act is equated with a group of acts or actions classified as crime then the state will be burdened with case handling fees as well as facility fees that are required to be met by the state for prison convicts.

Therefore, criminal code is arranged several exceptions to violations such as in Article 54 of the Criminal Code which states that attempted violations are not punishable by law. This is of course different from attempted crimes punishable by two thirds of the length of the criminal sentence committed or fifteen years for crimes punishable by death 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 help in crimes will be subject to criminal sanctions.

According to Article 205 paragraph (1) of the Criminal Procedure Code (KUHAP) minor crimes are cases punishable by sentence or imprisonment of up to 3 months and/or a maximum fine of seven thousand five hundred rupiahs. In relation to the nominal value of fines for minor crimes in the Criminal Code, the Supreme Court through the Supreme Court Regulation Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the amount of Fines in the Criminal Code, increases the value of fines from the articles in the Criminal Code that regulate cases that have qualification as a minor offense. The value of the fine, which was originally valued at “two hundred and fifty rupiahs”, was increased to “two million five hundred thousand rupiahs”. Minor offenses are crimes that are light or harmless in nature. The Criminal Procedure Code regulates that the examination of minor crimes is carried out quickly and simply. The interesting thing about minor crimes is that they include the criminal act of light humiliation which is located in the second book of the Criminal Code. This minor insult in doctrine is one of the groups of criminal acts called minor crimes (*lichte misdrijve*n) contained in the second book of the Criminal Code (Solar, 2012). Minor offenses are categorized as a crime because the Supreme Court Regulation Number 2 of 2012 concerning Adjustment of Limits of Minor Crimes and Amount of Fines in the Criminal Code has stated that the articles in the Criminal Code are categorized as minor crimes and all of the articles mentioned are part of the second book of the Criminal Code.

The following are articles in the Criminal Code which are minor crimes, such as Light Animal Torture Article 303 paragraph (1) of the Criminal Code (Second Book), Minor insults, Article 315 of the Criminal Code (Second Book), Minor Maltreatment Article 352 paragraph (1) of the Criminal Code (Second Book), Minor theft, Article 365 of the Criminal Code (Second Book), Minor embezzlement of Article 373 of the Criminal Code (Second Book), Fraud Article 379 of the

Criminal Code (Second Book), Misdemeanor Article 384 of the Criminal Code (Second Book), Minor Damage Article 407 paragraph (1) of the Criminal Code (Second Book), Mild Fencing Article 482 of the Criminal Code (Second Book)

The number of minor criminal cases that occurred in Indonesia was not small. The following is the number of minor criminal cases registered in the Supreme Court from 2015-2019 (Supreme Court of the Republic of Indonesia, 2020). In 2015, there were 60,078 registered cases. In 2016 there were 69,319 registered cases, and 76,121 registered cases in 2017. Furthermore, in 2018, there were 113,186 registered cases and it increased to 125,821 registered cases in 2019. The number of minor crimes that has increased from year to year shows that there are still many people who underestimate a crime. Some people view that minor crimes are just a meaningless offense. The phenomena generally occur because people think that the punishments are not scary or even people think that law enforcement is very weak. Therefore, there must be an alternative criminal punishment which does not only give 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.

Criminal law as a tool of social control is a process of educating people to comply and adhere the law in order to create a socially just, intelligent and prosperous society. The concept of punishment is very simple, namely providing control through limits that cannot be violated. These limits are designed in such a way that generally uses the basis of moral norms and values. If they are violated there will be punishment in the form of physical suffering or deprivation of liberty. The failure of criminal law to carry out its functions (both primary and secondary functions) is a result of the attitude of law enforcement officials who view criminal law enforcement and the application of penalties as a logical consequence of each crime, so that if criminal law has been uphold, crime prevention is considered done. This view has shaped the attitude of law enforcers to always enforce criminal law by imposing serious penalties for every crime. Although in order to apply these model and criminal laws, law enforcers must take various methods including methods that are contrary to human rights recognized by civilized nations. By using the politics of criminal law (penal policy), penal law enforcement with penalties is not seen as a necessity in tackling crime, but is seen as a policy that places criminal law and penalties in the form of punishment as an alternative to the many options that can be used 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 the said criminal law. In other words, law politics sees the enforcement of criminal law and punishment as a means of overcoming crime to achieve an objective (Maroni, 2016).

Seeing the current Criminal Code, which is a legacy of the Dutch colonial system, which is used now, the scars from the colonialism still make an impression on the hearts of the Indonesian people. This colonial legacy Criminal Code is not a complete

criminal law system because there are several articles/offenses that have been revoked. Therefore, a new law has emerged outside of the Criminal Code which regulates special offenses and special rules (Pradityo, 2018). Many of the contents of the Criminal Code are not in accordance with the spiritual aspects of independence and our culture as easterners. However, for seventy-five years of Indonesian independence, the polemic regarding the change of colonial legacy laws (Criminal Code, Civil Code, *Herzien Inlandsch Reglement*/HIR, Trade Law, *Rechtreglement voor de Buitengewesten*/Rbg) into national law, which is the original legal product of the Indonesian nation, has yet to be resolved. The main problem of this polemic is not only due to the difficulty of leaving old habits (the current law), but also because of the conflict of interests between groups that still prioritize their respective sectoral egos. Another factor is that there is no strictness in the 1945 Constitution regarding the deadline for replacing colonial legacy laws with national laws designed by the Indonesian nation itself.

Returning to the discussion about alternative forms of criminal punishment for minor crimes, as a country that has a rich culture with the values of much unique local wisdom, we can adopt several models of criminal punishment as alternative criminal penalties. The Unitary State of the Republic of Indonesia is a state based on the rule of law, with a basic view of life based on Pancasila as the philosophy of the state. Pancasila is the ideology of Indonesia as a nation, after Indonesia's independence on August 17, 1945. The State of Indonesia is a republic based on the 1945 Constitution as the legal basis of the Republic of Indonesia. The state of Indonesia which consists of various kinds, patterns and various ethnic groups, thus making the Indonesian nation has a variety of languages, cultures, races and customs (Safrijal, 2013). Soemadiningrat (2002) argues that customary criminal law and customary sanctions are strived to be removed from the legal system in Indonesia and replaced by statutory regulations so that procedures for resolving criminal cases are generally channeled through the general courts. However, the reality is that until now there are still judges who base their decisions on customary law or at least on laws that are considered customary law (Jaya, 2016).

Etymologically, customary laws aim to establish order in human relations so that security and order in customary institution are maintained. Custom is a reflection of the personality of a nation. It is an incarnation of the soul of the nation concerned from century to century (Upara, 2014; Syaufi, & Zahra, 2021). 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 flogging in Aceh can be an alternative criminal punishment. Caning in Aceh is carried out every after Friday Prayers. The execution process of caning that is carried out provides space and freedom for all levels of society to witness it directly, including children (Nurbaiti et al., 2019).

The main objective of the implementation of caning in Aceh, apart from upholding the Islamic Sharia and the Aceh Qanun is intended to provide a deterrent

effect and a preventive effect. The biggest impact given by this caning punishment is not physical suffering, but social trauma or the shame of being punished as a sinner and being watched by the general public while being flogged (Armia, 2019; Nurozi, & Muttaqien, 2021). Alternative criminal penalties for minor crimes must meet several requirements, including opening the status of a defendant's sentence to the public (his status as a violator of the law) but must not demean the dignity of the person and 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 was given came purely from the defendant himself because he was carrying out the sentence (Kahan, 2019).

The implementation of the punishment must provide benefits to the community. The benefits provided to the community are not only in the form of satisfaction because the retaliation or the accused has been punished, but also benefits that can provide direct benefits to the community, such as punishment for community service. The punishment provided a deterrent effect and an effective preventive effect. The punishment must be able to increase the obedience of society to the law, and must be able to educate the public about the importance of obedience to the law and the importance of contributing to society. Lastly, the punishment and execution of the sentence must not conflict with Pancasila, the 1945 Constitution and existing norms. After these requirements are met into the draft law to make alternative criminal penalties for minor crimes, the alternative criminal penalties can be used as a means of social engineering and a means of social control in realizing the ideals of independence of the Indonesia as a nation and realizing social justice and prosperity in society. The alternative forms of criminal punishment include some ways.

The first is punishment of cleaning the environment (Irfan, & Israfil, 2017). The penalty for cleaning the environment is a classic punishment in the Common Law system, the lawmakers and judges of the Common Law system see that an act that violates the law will definitely cause harm to the community. In Scotland, minor punishment such as community service and unpaid works is also applied, especially to juvenile delinquency cases (McIvor, 2010). So that, rather than a defendant being sentenced to be deprived of his liberty, it is still not sufficient to repay the losses suffered by the community so that it is better if the defendant is punished to serve the community. The second is the punishment of providing food for orphans, the poor, elderly, and neglected children. Apart from having a retaliatory effect, it does benefit society and is also useful for helping the state government fulfill the mandate of Article 34 of the 1945 Constitution. The condition for this punishment is that the food given must be food which the defendant is processing or cooking as the main cook or the defendant served as the kitchen crew. Punishment is carried out by cooking and feeding a predetermined number of people and if the defendant is still committing a crime, then the number of portions of food he has provided during the second sentence must be doubled. Several arguments show the crucial role of

effective alternative punishments in the application of sentencing for misdemeanors (Patricia, 2020; Beyens, 2010). The third is caring for elderly people in a nursing home. The defendant was sentenced to care for elderly in the nursing home for a certain period of time as a form of service to senior citizens who had contributed to the nation and state. Other ways can be conducted such as teaching literacy and numeracy to street children as well as underprivileged children. The implementation is the same as the punishment for caring for the elderly, and revocation of civil rights. The last refers to conditions that as long as the defendant does not carry out the prescribed sentence, the defendant will be deprived of his civil rights. This is like the temporary bankruptcy of 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 implementation of convicted sentences, the state can also save on the costs incurred for prison operations because the number of convicts who enter the prison will be fewer (Killias et al., 2010). For the convicted person, by carrying out various punitive activities in the form of forced labor and community service, this will help in the process of re-establishing good morals.

The 1945 Constitution of the Republic of Indonesia confirms that sovereignty is in the hands of the people and is exercised according to the Constitution. The 1945 Constitution emphasizes that Indonesia is a state based on law. Thus, the consequences stated in the 1945 Constitution must be based on the prevailing laws and regulations and the laws that live and develop in society (Syaputra, 2008).

It is expected that alternative criminal penalties can reshape the character of the convicted person into a good person and can contribute to society. In addition, by carrying out community service, if the convict does it sincerely, sincerely and wholeheartedly, then when the convict has completed his sentence. The convict will easily be accepted back by the community. In this way, the existence of alternative criminal penalties aims to establish a close kinship inside the communities. Then, it would be expected to minimize the evil intentions of people who can potentially become criminals. Its application might increase people appreciation and encourage people to realize the values of Pancasila indirectly.

In order to minimize and prevent crime, it must be started through the factors that cause the crime. For classic reasons, crime occurs due to complex economic and family problems. If we look at Pancasila, economic problems occur because the fifth principle of Pancasila is not yet realized, namely social justice for all Indonesian. If social justice can be realized, surely all people will be able to feel prosperity and welfare. However, currently Indonesia is still far from social justice as mandated by the Constitution. Therefore, the entire Indonesian nation must strive together as hard as possible to create a social justice society. 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 a socially just human, this has the

potential for failure if the community environment in which the student is located is not good (an environment with a high crime rate). For this reason, the environment outside the school or campus must also be cleaned by changing the behavior of the community, including the convict 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 alternative criminal punishment, namely to create a socially just Indonesian society.

D. CONCLUSION

The increase in the number of minor crimes has conditioned two important aspects in the sociology of law. The first aspect is related to the public perception of underestimating minor crimes, which shows the ineffectiveness of punishment and a deterrent effect. The second aspect relates to the legal consequences of integrating justice and sentencing in minor crimes. This study highlights the need for alternative penalties for minor crimes as an integral part of reforming the Indonesian Criminal Code. More specifically, this study shows several requirements that need to be met in the legalization of alternative criminal penalties for minor crimes. Some of these provisions include the publication of perpetrators of criminal acts to cause embarrassment to the accused. In addition, alternative punishments can provide benefits to the community, such as involving criminals in community service and unpaid work. Criminal justice must be able to educate the public about the importance of obeying the law and the importance of contributing to society. Furthermore, the direction of punishment is solely aimed at increasing public compliance with the law and creating a deterrent effect.

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