

Implementation of Community Service Order Based on Law Number 1 of 2023 In The Perspective of Justice And Legal Expediency

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Abstract : *This research is related to the reform of criminal law in Indonesia through community service order as an alternative to imprisonment. The type of research used in this study is normative legal research. The specifications used in this legal research are descriptive analytical, with a statute approach and a conceptual approach. The types of legal materials used in this research are primary and secondary legal materials. The method of collecting legal materials used by the author in this research is literature study. The method of legal material analysis conducted in this research uses qualitative analysis. The results of this research show that based on Law Number 1 of 2023 concerning the Criminal Code (KUHP), community service order is one of the main types of penalties that also serves as an alternative to short-term imprisonment, specifically for criminal offenses with a potential penalty of less than five years and where the judge imposes a maximum prison sentence of 6 (six) months. It also serves as a substitute for fines that do not exceed category II. This is an implementation of community service order to achieve the objectives of punishment and with the perspectives of justice and legal expediency.*

Keywords : *penal, community service order, law*

Abstrak : Penelitian ini berkaitan dengan pembaruan hukum pidana di Indonesia melalui pidana kerja sosial sebagai alternatif pidana penjara. Jenis penelitian yang digunakan adalah penelitian hukum normatif. Dalam penelitian hukum ini Spesifikasi penelitian yang digunakan adalah bersifat deskriptif analitis, dengan pendekatan perundang-undangan dan pendekatan konsep. Jenis bahan hukum yang digunakan dalam penelitian ini adalah jenis bahan hukum primer dan sekunder. Metode pengumpulan bahan hukum yang digunakan penulis dalam penelitian ini adalah studi kepustakaan. Metode analisis bahan hukum yang dilakukan dalam penelitian ini menggunakan analisis kualitatif. Hasil penelitian ini menunjukkan bahwa Berdasarkan Undang-Undang Nomor 1 Tahun 2023 tentang KUHP, pidana kerja sosial merupakan salah satu jenis pidana pokok yang juga berfungsi sebagai pidana pilihan dari pidana penjara jangka pendek, yaitu untuk tindak pidana yang diancam kurang dari lima tahun dan hakim menjatuhkan pidana penjarav paling lama 6 (enam) bulan, juga sebagai pengganti pidana denda yang tidak melebihi kategori II. Hal ini merupakan implementasi pelaksanaan pidana kerja sosial agar dapat mencapai tujuan pidana dan berperspektif keadilan serta kemanfaatan hukum.

Kata kunci : pidana, kerja sosial, huku



I. INTRODUCTION

According to the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the State of the Republic of Indonesia, Article 1 paragraph (3) states that Indonesia is a state based on law.¹ This means that the law serves as a tool to support the implementation of the tasks and functions of the state in providing security and public order, protecting the lives and property of citizens, and realizing justice in society. As a state of law, Indonesia requires all relationships among its citizens as legal subjects to comply with and adhere to the applicable legal rules because the purpose of creating laws is to achieve justice, legal certainty, and benefits for society. The law is also used to establish order in society due to violations committed against others, ensuring that individuals do not take matters into their own hands (vigilantism). In this context, law enforcement is closely related to the realm of criminal law.

The enforcement of criminal law is necessary for criminal law to have meaning. The enforcement of criminal law is part of a penal system. The penal system consists of the principles and objectives of punishment, the rules of punishment, and also involve its substantive aspects. The foundation of the penal system in Indonesia is inseparable from the Criminal Code (KUHP) established through Law Number 1 of 1946, which is still a legacy from the Dutch East Indies government. According to this law, there is no written formulation regarding the objectives and guidelines of penalization in Indonesia.²

In Bambang Waluyo's opinion, the current penal system based on the current Criminal Code is still oriented towards a repressive nature, which means that it is still focused on prosecution or retaliation against the perpetrators of criminal offences. The adopted penal system still follows the retributive paradigm, which involves providing proportional punishment to criminal offenders for the crimes they have committed. Based on this paradigm, the purpose of punishment is solely intended to provide a deterrent effect to criminal offenders so that they will not commit crimes again and to prevent society from engaging in criminal activities in the future.³

Considering the historical background of the enactment of Criminal Code in Indonesia, which is a Dutch heritage criminal law, there is a necessity to reform the criminal law through the revision of new Criminal Code that alligns with the values of society, the contemporary era, and fulfils the sense of justice. Various criticisms regarding the applicability of the current Criminal Code are crucial reasons for criminal law reform. The need for reform is in accordance with the results of the 1976 UN Congress on crime prevention, where it was stated that the criminal laws in effect in various countries generally originate from foreign laws that are unfair, outdated, and not in accordance with reality.⁴

¹ Mahfud MD, *Membangun Poitik Hukum, Menegakkan Konstitusi*, Jakarta: PT. Raja Grafindo Persada, 2011, hlm.17

² Barda Nawawi Arief, 2016, *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan*, Semarang: Pustaka Magister, hlm. 7

³ Bambang Waluyo, 2017, *Penegakan Hukum di Indonesia*, Jakarta: Sinar Grafika, hlm. 107

⁴ Bambang Waluyo, 2015, "Relevansi Doktrin *Restorative Justice* Dalam Sistem Pemidanaan Di Indonesia", *Jurnal HALREV Fakultas Hukum UNHAS Volume 1 Isu 2, Agustus 2015*, hlm. 211

The effort to formulate a new Criminal Code that aligns with the values of Indonesian society began in 1963 with the preparation of the Draft Criminal Law in a criminal law book or the Indonesian Criminal Law Book.⁵ The policy for the establishment of the Indonesian National Criminal Code can serve as the basis of the national criminal law system in Indonesia, realizing the desire to achieve the mission of decolonizing the Dutch Criminal Code. After an extensive process, Law Number 1 of 2023 on the Criminal Code was finally enacted, replacing the Dutch Criminal Code. According to Beni Puspito and Ali Masyhar, this reformation adopts the concept of prismatic rule of law, combining the positive aspects of *rechstaat* and rule of law, with the intention of providing a broad space for the fulfilment of justice.⁶

The reformation of criminal law in the new Criminal Code encompasses updates to formal criminal law, substantive criminal law, and the law on the implementation of penalties. These three legal areas are collectively improved to ensure smooth implementation without obstacles.⁷ One part of the reformation in substantive criminal law involves updates to the Criminal Code. There are three aspects arranged in the concept of the new Criminal Code's reformation, namely the issues of criminal offences, the issue of guilt or criminal responsibility, and criminalization and punishment issues. Regarding criminalization and punishment issues, according to the new Criminal Code, the objectives of punishment are prevention, guidance/rehabilitation, conflict resolution, restoration of balance, creation of a sense of security as well as fostering remorse and freeing oneself from guilt.⁸ This concept is based on a balanced (monodualistic) consideration between societal interests and individual interests.

According to the penal system in the old Criminal Code, the imposition of punishment is guided by Article 10 of the old Criminal Code regarding the types of punishment that can be given to the perpetrators of criminal acts. Imprisonment is one of the main types of punishment that is most frequently chosen by judges when imposing penalties on perpetrators of criminal acts to create a deterrent effect. It seems as if there is no alternative type of punishment other than imprisonment. However, the imposition of imprisonment is currently being heavily criticised as it is considered ineffective in creating a deterrent effect on perpetrators and is no longer in accordance with the objectives of punishment and rehabilitation. Imprisonment is no longer the best solution to solve crime-related issues. From the perspective of justice and legal expediency, the imposition of imprisonment is no longer effective, especially for minor criminal offences.⁹

Along with the development of thoughts on the effectiveness of punishment, Law Number 1 of 2023 has accommodated alternatives to imprisonment. One of the

⁵ Badan Pembinaan Hukum Nasional, 2015, *Draft Naskah Akademik Rancangan Undang-Undang Tentang KUHP Maret 2015*, Jakarta: Kementerian Hukum dan HAM, hlm. 9

⁶ Puspito, B., & Masyhar, A. (2023). Dynamics of Legality Principles in Indonesian National Criminal Law Reform. *Journal of Law and Legal Reform*, 4(1), 109-122. <https://doi.org/10.15294/jlrr.v4i1.64078>.

⁷ Lilik Mulyadi, 2007, *Kapita Selekta Hukum Pidana, Kriminologi dan Viktimologi*, Jakarta: Djambatan, hlm. 38

⁸ See Article 51 Law Number 1 of 2023

⁹ Kuart Puji Prayitno, 2012, "Restorative Justice Untuk Peradilan di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum *In Concreto*)", *Jurnal Dinamika Hukum Universitas Jenderal Soedirman Volume 12 Nomor 3 September 2012*, hlm. 408

alternative punishments is community service order. Community service order has become a global trend as an alternative form of punishment, therefore Indonesia, which is currently in the process of reforming its criminal law, is deemed necessary to implement the execution of community service order. Community service order is one of the primary forms of punishment regulated in Article 65 and Article 85 of Law Number 1 of 2023. The purpose of community service order is to relieve the convicted person from guilt while encouraging community participation in order to actively participate in the rehabilitation of the convicted person through activities that are beneficial to society.

Community service order is an alternative to short-term imprisonment which also aims to provide opportunities for criminal offenders to rehabilitate and improve their social relations with the community. This aligns with the principle of justice in community service order which applies a balanced and proportional punishment to the criminal offender. Community service order can also be beneficial in reducing the burden on prisons and reducing costs incurred by the state in maintaining detainees. Furthermore, community service order can enhance the effectiveness of law enforcement by providing more flexible alternative punishment that corresponds to the level of crime committed by the criminal offender. This ensures that the punishment given aligns with the level of crime committed by the offender and the principle of justice in law enforcement.

In the context of Indonesian criminal law which still prioritises the theory of retribution, the implementation of community service order can be considered as a new innovation. The concept of community service order leans more towards the idea or concept of restorative justice rather than the retribution theory. According to Law Number 1 of 2023, community service order is considered more beneficial as a form of rehabilitation rather than imposing a punishment or retribution for criminal acts.¹⁰ The benefit of community service order for the Indonesian criminal law system is seen as an alternative to short-term imprisonment. Therefore, it is hoped that the negative impact of the large number of people imprisoned can be avoided or at least minimised. Ultimately, the implementation of community service order will serve as an appropriate solution to address the issue of overcapacity in Penal Institutions.¹¹

The research focus discussed in this study is related to the implementation of community service order as an alternative to imprisonment from the perspective of justice and legal expediency. Based on the above explanation, this paper aims to answer how the implementation of community service order is according to Law Number 1 of 2023 and how community service order is viewed from the perspective of the principles of justice and legal expediency.

¹⁰ Jamin Ginting, 2020, "Sanksi Kerja Sosial Sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum di Indonesia", *Jurnal Law Review Volume 19 Nomor 3 Fakultas Hukum Universitas Pelita Harapan Maret 2020*, hlm. 246, diakses dari <https://ojs.uph.edu/index.php/LR/article/view/2098>

¹¹ Asiyah Jamilah dan Hari Sutra Disemadi, 2020, "Pidana Kerja Sosial: Kebijakan Penanggulangan *Overcrowding* Penjara", *Jurnal IUS Kajian Hukum dan Keadilan Volume 8 Nomor 1*, diakses dari https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/726/pdf_140

II. RESEARCH METHOD

The type of research used in this study is normative legal research. This legal research specifies descriptive analytical, which elaborates on issues related to the implementation of community service order based on Law Number 1 of 2023 in the perspective of justice and legal expediency. The research approach used in this study is a statute approach and concept approach. The statute approach is used by analysing the regulation of community service order in Law Number 1 of 2023, while the concept approach is used to link community service order with the concept of justice and legal expediency in society. The types of legal materials used in this study are primary and secondary legal materials. The method of collecting legal materials used by the author in this research is literature study. The method of analysing legal materials conducted in this research uses qualitative analysis. It means that the legal materials that have been collected are analysed to obtain clarity on the issues discussed.

III. RESULT AND DISCUSSION

Implementation of Community service order under the National Criminal Code

The development of social life in Indonesia shows dynamic advancements in accordance with the development of information technology and the global situation. On the other hand, legal issues in the community life are also evolving, especially those related to criminal offences. Legal issues in the field of criminal law are also growing.¹² There are various old criminal law rules that are no longer in accordance with the development of community life and are no longer in accordance with the current times. Therefore, changes in the field of law are necessary if there are rules that are no longer appropriate, especially in the field of criminal law.¹³

According to Barda Nawawi Arief, he stated that fundamentally, legal reform, especially criminal law reform, means efforts to make changes and reforms to criminal law that must be in accordance with social philosophical values, socio-political values, and socio-cultural values of Indonesian society. These core values exist and are alive in Indonesian society and become the basis of social policies, criminal policies, and/or law enforcement policies.¹⁴

The legislature and the executive have successfully completed and approved the Draft Criminal Code (KUHP) so that it becomes a law, done on December 6, 2022. This latest Criminal Code was then ratified through Law Number 1 of 2023 on the Criminal Code. Despite the controversy, it must be acknowledged that this is an effort toward criminal law reform in Indonesia, considering that Indonesia still uses the Criminal Code inherited from the Netherlands. Although the Criminal Code brings the spirit of reform

¹² Ahmad Rofiq, Hari Sutra Disemadi & Nyoman Serikat Putra Jaya, 2019, “*Criminal Objective Integrity In the Indonesian Criminal Justice System*”, *Al Risalah Journal Volume 19 Nomor 2*, hlm. 181

¹³ Hari Sutra Disemadi & Kholis Roisah, 2019, “*Urgency of the Contempt of Court Criminalization Policy to Overcome Harassment Against the Status and Dignity of Courts*”, *Brawijaya Law Journal Volume 6 Nomor 2*, hlm. 225

¹⁴ Barda Nawawi Arief, 2011, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Jakarta: Prenadamedia Group, hlm. 29

in criminal law, many critics say there are still controversial articles that have the potential to threaten democracy, privacy rights, and open opportunities for criminalisation of society.¹⁵

The Criminal Code reform in Indonesia extensively discusses the importance of protecting human rights and imposing stricter sanctions for criminal offenders in accordance with the values and norms prevailing in Indonesia. Additionally, the Criminal Code reform also discusses the protection of victims of criminal offences, including the protection of women and children who are often victims of violence and sexual abuse. According to Randy Pradityo, the Dutch Criminal Code is no longer effective in dealing with various issues and the development of new forms of criminal offences that arise along with changes in society. Therefore, it is necessary to reform the Indonesian criminal law in accordance with the basic values and social philosophical, socio-political, and sociocultural values that exist in Indonesian society.¹⁶

According to Law Number 1 of 2023, there is recognition of new forms of punishment, including supervision and community service, as alternative forms of punishment to imprisonment. This is due to numerous criticisms of imprisonment which is seen as far from the purpose of punishment and corrections, as well as the issues of overcapacity in Penal Institutions. Based on Article 65 paragraph (1) of Law Number 1 of 2023 concerning Criminal Code stipulates the basic punishment consists of:

- a) imprisonment;
- b) confinement;
- c) supervision;
- d) fine;
- e) community service order.

Community service order is used as a criminal option that replaces imprisonment by involving social activities aimed at changing the behaviour of the criminal offenders. In several countries, including Indonesia, community service order is regulated in legislation as an alternative to imprisonment. The purpose of the implementation of community service order is to rehabilitate, reintegrate, and resocialise offenders into society. However, the implementation and effectiveness of community service order remain topics of debate among academics, legal practitioners, and policy makers.

Community service order is one of the alternative forms of imprisonment mandated by the “Tokyo Rules” to be included in the Criminal Code of every country in the world. Community service order originated in Europe, involving the imposition of a beneficial work for criminal offenders to avoid imprisonment. This type of punishment has been known in Germany since the Middle Ages, applied to criminal offenders sentenced to a fine but unable to pay it, thus they are obliged to perform beneficial work

¹⁵ <https://theconversation.com/panel-ahli-kuhp-baru-terlalu-privat-anti-demokrasi-dan-membuat-masyarakat-rentan-dipenjara-196049>, diakses pada tanggal 29 September 2023 pukul 17.15 WIB

¹⁶ Randy Pradityo, 2017, “Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat”, *Jurnal Legislasi Indonesia Volume 14 Nomor 2*, hlm. 137-143, diakses melalui <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/92/pdf>

for society without pay. In the late 19th century and early 20th century, community service order began to be included as an alternative to imprisonment and fines in criminal legislation in European countries, including Germany, Switzerland, Italy, and Norway.¹⁷

Community service order in its development has been modernized. It has removed its nature as a forced labour punishment to avoid imprisonment and can become an independent criminal offence or as an alternative to short-term imprisonment within the framework of conditional punishment. Community service order as another alternative to imprisonment will eliminate the negative impact of life in prison and will evoke a sense of shame in the criminal offender, as their community service can be seen directly by the society. Moreover, the community service directly brings benefits to the community. The form of community service order can be carried out in hospitals, orphanages, nursing homes, schools, and other social institutions, tailored as far as possible to the criminal offender's profession, skills, and expertise. This punishment will also alleviate the overcrowding of penal centres that significantly hinders rehabilitation within penal institutions.¹⁸

The implementation of community service order in Law Number 1 of 2023 regarding the Criminal Code is technically regulated in Article 85. According to Article 85 paragraph (1) of the Criminal Code, it states that:¹⁹ "Community service order can be imposed on the defendant who commits a criminal offence punishable by imprisonment of less than 5 (five) years, and the judge imposes a maximum imprisonment of 6 (six) months or a maximum fine of Category II". In the imposition of community service order, the role of the judge is very crucial, because the imposition of this punishment depends on the judge's decision. The judge, in imposing community service order, must consider the following aspects:²⁰

- 1) the defendant's acknowledgement of the committed criminal offence;
- 2) the defendant's work capability;
- 3) the defendant's consent after being explained about the purpose and all matters related to community service order;
- 4) the defendant's social history;
- 5) the protection of the defendant's work safety;
- 6) the defendant's religion, belief, and political belief;
- 7) the defendant's ability to pay the fine penalty.

The implementation of community service order must not be commercialised,²¹ and it can be imposed on the defendant for a maximum of 240 (two hundred and forty) hours and a minimum of 8 (eight) hours.²² Community service order is carried out for a

¹⁷ Iskandar Wibawa, 2017, "Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia", *Jurnal Media Hukum Volume 24 Nomor 2*, hlm. 109

¹⁸ Ibid, hlm 110

¹⁹ See Article 85 paragraph (1) Law Number 1 of 2023

²⁰ See Article 85 paragraph (2) Law Number 1 of 2023

²¹ See Article 85 paragraph (3) Law Number 1 of 2023

²² See Article 85 paragraph (4) Law Number 1 of 2023

maximum of 8 (eight) hours per day and can be conducted gradually over a period up to 6 (six) months, with continuous supervision of the defendant's activities during the community service order.²³

If a convict fails to fulfil either all or half of their obligations to serve the community service order without a valid or justifiable reason, then the convict will be instructed to:²⁴

- a) repeat all or part of the community service;
- b) serve all or part of the imprisonment sentence that is replaced by the community service sentence;
- c) pay all or part of the fine that was replaced by the community service order or substitute the unpaid fine with imprisonment.

Regarding the implementation of community service order, supervision is conducted by the prosecutor and guidance is provided by the community guidance officer.²⁵ The court's decision on community service order must also include:²⁶

- 1) the actual duration of imprisonment or the amount of the fine determined by the judge;
- 2) the duration of community service that must be carried out, specifying the number of hours per day and the completion period of community service order;
- 3) sanctions if the imposed community service order is not carried out by the defendant.

According to Law Number 1 of 2023, community service order is one of the main types of penalties that also serves as an alternative to short-term imprisonment, specifically for criminal offenses with a potential penalty of less than five years and where the judge imposes a maximum prison sentence of 6 (six) months. It also serves as a substitute for fines that do not exceed category II. This is an implementation of community service order to achieve the objectives of punishment and with the perspectives of justice and legal expediency.

Community service order in the Principles of Justice and Legal Expediency Perspective

The characteristics of the current Indonesian criminal law through the old Criminal Code are still retributive, meaning a retaliation against the perpetrators of criminal offences. The implementation of criminal law is more oriented towards the protection of individuals, society, and the state from criminal offences committed by individuals. The imposition of punishment on the offenders is a manifestation of legal justice in society. The form of sanctions, up to now, is dominated by deprivation of liberty (imprisonment). However,

²³ See Article 85 paragraph (5) Law Number 1 of 2023

²⁴ See Article 85 paragraph (7) Law Number 1 of 2023

²⁵ See Article 85 paragraph (8) Law Number 1 of 2023

²⁶ See Article 85 paragraph (9) Law Number 1 of 2023

the effectiveness of imprisonment as a type of criminal punishment has recently been questioned. Retributive justice contained in the old Criminal Code has begun to shift toward the realisation of restorative justice and the fulfilment of the principle of legal expediency. This has prompted the reformation of the old Criminal Code with the enactment of Law Number 1 of 2023. This law is expected to be in line with the values of Pancasila and can fulfil a sense of justice and expediency in society.

In the context of Indonesian criminal law reform, various efforts are needed to ensure relevant changes. The reformation of Indonesian criminal law must consider the interests and needs of the society as a crucial requirement for fair and beneficial changes to the criminal law. Moreover, the law is expected to be applicable to meet the needs of the society and should not be placed in a realm separate from the social reality or facts present in society.²⁷ With the aim of improving the law enforcement efficiency, combating crime, protecting the community, and dealing with social issues, it will be possible to achieve social protection and social welfare.²⁸

According to the theory proposed by Gustav Radbruch regarding the purpose of the law, it states that the goal of the law is to realize justice, expediency, and legal certainty. Similarly, in the enforcement of Indonesian criminal law, it is aimed to be able to achieve these three elements. However, in practice, there is often a conflict between justice and expediency on the one hand and legal certainty on the other. The new Criminal Code also aims to achieve justice, expediency, and legal certainty. However, the new Criminal Code emphasizes more on the aspects of justice and legal expediency. This is stated in Article 53 paragraph (2) regarding sentencing guidelines which states that if there is a conflict between legal certainty and justice, the judge must prioritize the sense of justice.²⁹

Based on Law Number 1 of 2023, the implementation of community service order becomes very crucial considering the urgency of reformation in a fair criminal law system. In order to achieve the interests of the broader community, efforts for criminal law reform are needed to accommodate the interests of offenders, victims, and society. To achieve the objectives of punishment, better coordination between criminal justice subsystems and consistent policies in the implementation of criminal penalties are essential. This will provide a sense of security and comfort for the society in living life in Indonesia. Therefore, the implementation of community service order is a tangible manifestation of the social, philosophical, and juridical framework of Indonesian society itself.

In community service order, convicts are given the opportunity to perform useful social tasks as a means of rehabilitation and self-defense. Thus, community service order is more effective than imprisonment because it provides convicts with the chance to improve themselves and enhance their social skills, allowing them to return as useful contributing members of society. In this way, convicts seem to pay for their mistakes in a more positive and productive way than merely sitting in prison. Community service order is also more efficient than imprisonment, as the expenses required for its

²⁷ C. Wulandari, "Kedudukan Moralitas Dalam Ilmu Hukum," *Jurnal Hukum Progresif*, vol. 8, no. 1, pp. 1-14, Apr. 2020. <https://doi.org/10.14710/hp.8.1.1-14>

²⁸ Randy Pradityo, Op Cit

²⁹ See Article 53 paragraph (2) Law Number 1 of 2023

implementation are lower than the expenses required to keep someone in prison.³⁰ Social conflicts arising from imprisonment can be reduced, as criminal offenders can return to being useful and positively contributing members of society. Although not all convicts may be eligible for community service order, the enactment of Law Number 1 of 2023 establishes an alternative classification of punishment other than imprisonment.³¹

The use of community service order as a new form of punishment can be based on an approach that considers the law to evolve and adapt to social changes. The parties in the criminal justice subsystem must understand and make breakthroughs that the law should not be silent or rigid, but should be flexible and continually adapt to changes in society, so that the law serves to achieve justice and legal expediency. The applicable law must be progressive by prioritizing individual rights, freedom, and protection against discrimination. With a progressive legal approach that emphasizes the necessity for the law to continuously evolve and adapt in accordance with the times and the societal changes.³²

In the context of the implementation of community service order, progressive law theory emphasizes that the law must be used as a means to achieve social justice and protect individual rights. The implementation of community service order must be done fairly and without discrimination, by considering the social and cultural background of the offenses that occur. In this regard, progressive law theory suggests that the implementation of community service order should provide opportunities for offenders to rehabilitate themselves, not just to punish and restrict them. Therefore, progressive law theory serves as the foundation for fair and non-discriminatory implementation of community service order. It must also provide opportunities for offenders to improve themselves and return to society as better citizens. This reflects the implementation of community service order in achieving the objectives of punishment with the perspective on justice and legal expediency.

IV. CONCLUSION

According to Law Number 1 of 2023 concerning the Criminal Code, community service order is one of the primary forms of punishment which also serves as an alternative punishment to short-term imprisonment, specifically for criminal offenses with a potential penalty less than five years. In such cases, the judge may impose a maximum imprisonment of 6 (six) months, and it can also serve as a substitute for fines not exceeding category II. This implementation of community service order aims to achieve the objectives of punishment and with the perspectives of justice and legal expediency.

³⁰ Ahmad Fajri, 2019, "Pidana Kerja Sosial Dalam Membatasi Kelebihan Penghuni di Lembaga Pemasyarakatan", *Jurnal Lex Renaissance Volume 4 Nomor 1*, hlm. 46-64, diakses melalui <https://journal.uii.ac.id/Lex-Renaissance/article/view/14881/pdf>

³¹ Teafani Kaunang Slat, 2020, "Sanksi Pidana Kerja Sosial Terhadap Tindak Pidana Ringan Sebagai Upaya Pembaharuan Hukum Pidana Nasional", *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan Volume 4 Nomor 2*, hlm. 352

³² M. Zulfa Aulia, 2018, "Hukum Progresif Dari Satjipto Rahardjo", *Undang: Jurnal Hukum Volume 1 Nomor 1*, hlm. 59

The implementation of community service order must provide opportunities for offenders to improve themselves rather than merely punishing and restricting them. Therefore, progressive law theory becomes the foundation for the fair and non-discriminatory implementation of community service order. It also offers the opportunities for convicts to rehabilitate and return to society as better citizens. This represents the implementation of community service order in realizing the objectives of punishment with the perspective of justice and legal expediency.

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