

Criminal Sanction of Social Work in the Corruption Case in Indonesia

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Abstract

Corruption in Indonesia is so severe, like a disease that has eaten its own body. Many state administrators in the realm of executive, legislative and even judiciary are involved in corruption. So far, the punishment of corruptors uses the type of imprisonment sanctions, although there are provisions for capital punishment for corruptors, but these sanctions have never been used. Both of these sanctions are only oriented to legal certainty, namely right or wrong, while the other side about arousing shame as part of social sanctions has not been institutionalized as a criminal law objective, especially for corruptors. In fact, there are instruments of criminal sanctions of social work that can be institutionalized in the revision of the Corruption Eradication Act in Indonesia. Because the nature of criminal sanction of social work is not part of imprisonment, thus this research supports the legislature to give attribution authority to the Ministry of Social Affairs to organize it.

Keywords: Corruption, Criminal, Work, Social

1. Introduction

Although the criminal sanction of social work (PKS) has been included in the Indonesian Criminal Code bill, it has not been regulated in the Corruption Eradication Act (PTKPK Law). Therefore, as a proposal and finding of this dissertation, there are several juridical-empirical reasons regarding the need to regulate the provisions of the PKS in the amendment to the new PTPK Law, especially adding the provisions in Article 2, 3, 4 or Article 15 of the Law.

The purpose of resolving criminal law violations is the imposition of criminal sanctions. The settlement of cases of criminal law violations will always end with the imposition of criminal sanctions on criminal law offenders. Penalties against criminal offenders are often regarded as the goal of criminal law. Therefore, if a corruptor has been brought to court and sentenced to criminal sanctions, then the case of a criminal law violation is deemed to have been completed (ended).

Such thinking has placed the instruments of justice in criminal law and criminal law enforcement are criminal (sanctions) as threatened in the Articles violated in the PTPK Law. Criminal (criminal threat) in criminal law serves as a means of coercion so that the prohibition in criminal law is obeyed (not violated), but also as a means of coercion in order that all people obey other norms that contain written and unwritten guidance of life.

The characteristics of criminal law as mentioned above are often referred to as criminal sanctions. So if the sanctions have been imposed on the violators of criminal law, the case of a criminal law violation is declared complete. Consequently, the imposition of criminal sanctions becomes a parameter of justice in adjudicating (settling) cases of criminal law violations. Therefore, a criminal law violator who has not yet been convicted, then the settlement of the case of the violation has not been considered complete, even though the loss caused by a criminal law violation has been settled (loss and compensation has been paid).

When criminal law is placed as a sanction law with the imposition of criminal sanctions as a parameter of justice associated with real and obvious problems of life and community needs, the model for resolving criminal law violations becomes unrealistic. The impacts and problems that arise due to the violation of criminal law are very complex and real that reach life at the present and affect the future of human life, simplified in the form of imposing criminal sanctions that are most relied on are criminal sanctions. Physical and psychological suffering, loss of family members, property, and honor, not being able to work (losing a job) and other social and humanitarian problems due to crime are not a concern in criminal law. If you want to demand that you get compensation for damages due to criminal law violations, you have to go through civil law procedures because private compensation is not a matter of criminal law.

The basic purpose of punishment is to contribute, coincide with crime prevention initiatives, to respect the law and the maintenance of a just, peaceful and safe society by imposing sanctions that only have one or more of the following objectives:

- (a) To condemn unlawful acts;
- (b) To prevent perpetrators and others from committing violations;
- (c) To separate offenders from the community, if necessary;

- (d) To help rehabilitating the offender;
- (e) To provide reparations for the losses of victims or the community; and
- (f) To promote a sense of responsibility to the offender, and recognition of the loss of the victim and the community.

Hence, the purpose of punishment is to contribute to “respect for the law and the maintenance of a just, peaceful and safe society” and to do this, the judge must consider several objectives.

Legal objectives will be limited by the formulation of criminal sanction regulation policies regulated by law. Thus, the judge will be locked by the legal dogmatics that lead a convict of corruption to be a prisoner for punitive reasons and a narrow intent to punish. This view is only entrenched and rooted in non-dimensional punishment, namely to the perpetrators as subjects and their actions as objects and their punishment as instruments. Thus, the settlement of the law of corruption will experience pragmatism where the victim is the community and the state as if it is beyond the purpose of punishing the perpetrator.

The reform of criminal law sanctions and the idea of an actual and correlative legal purpose for the purpose of punishing corruptors with the intention of the legislators to impose sanctions on corruption, which must reach the point of ethical coherence and certainty. The ethical coherence of punishment sanctions for corruptor must be attached to the judge who impose, the guilty corruptor and the people who judge. This triangle cannot be cut off on each side if punishment is not considered formalistic.

However, the dimension of legal certainty is philosophically not only a punitive basis which is clearly covered by the provisions of the law, but those values are recognized empirically in the practice of punishing corruptors as procedural and material certainty. So far there have been several corruption sanctions attached to corruption perpetrators by the panel of judges which have not had a significant impact on the purpose of punishing as the researchers discussed in the previous chapter about how the criminal failure of additional fine of compensation and also “temporary prison punishment pidana” prevent corruption. Moreover, stigmatizing (labelling) and embarrassing corruptors. Criminal sanction of social work is an instrument or “vehicle” that can be used to provide a general deterrent and deterrent effect to the perpetrator and the community through the criminal which is inherent in order to embarrass the convicted person.

This is to see the reaction of the public and corruptors and also the potential perpetrators of corruption against this criminal enactment. To find this there is a theory about “Denunciation”, which is the theory behind the cancellation as a purpose of punishment is to express the public’s disapproval of the crimes committed. Crimes in the Criminal Code reflect behavior that is not approved by our community and the community considers it incompatible with our value system. Thus, this theory does not place the blame on certain actors and more about determining the values and moral codes that we expect in society to obey. This theory is likely to have a mandatory minimum sentence for certain violations.¹ For example, the mandatory punishment for corruptors is a temporary prison sentence, and no one pays attention to individuals, such as convict Akil Mochtar (Former Constitutional Court Chief Justice), whose minimum sentence may not be appropriate.

Therefore, PKS from the aspect of prevention of corruption refers to the underlying assumption with prevention, which threats or examples of punishment will make people not to commit a crime. Generally the principle is considered that if you increase the severity of punishment, you will reduce crime rates. However, now there are many studies that refute this idea, especially in terms of prison sentence. The Victim Eradication Commission found that there was no evidence of a deterrent effect to increase the severity of punishment, but it is accepted that the deterrent effect came from the whole process rather than the specific sentence imposed.² The efficacy of this goal in imposing penalties is therefore questionable.

2. Research Method

The type of this research is normative legal research. Research approaches include statute approach, case approach, historical approach, comparative approach, and conceptual approach.³ The types of legal substances in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials consist of legislations, official records or treatises in the drafting of legislation, or court decisions. Secondary law materials are legal materials that provide an explanation of primary legal materials to assist in analyzing the problem. The tertiary legal material is *Kamus Besar Bahasa Indonesia* and the Law Dictionary.

The analytical technique of this research is qualitative juridical⁴ analysis which refers to research materials that lead to a theoretical study of legal concepts, norms, or rules, legal materials or research objects not only described as such, but also argued about a criminal law objective, especially for corruptors.

¹ <http://www.lawconnection.ca/content/sentencing-theory-backgrounder>

² *Ibid.*

³ Bambang Sunggono, *Penelitian Hukum Normatif*, Bandung: CV. Mandar Maju, 2000, pg.76.

⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, 1995, pg. 39.

3. Results and Discussion

3.1 Formulation of the Criminal Policy of Social Work as a Criminal Law Renewal

From the eradication of criminal acts of corruption in Indonesia there has never been a case which is imposed with criminal sanctions of social work, because until now PKS has not been enacted as an alternative of criminal sanction of corruption. In fact, corruption in Indonesia at this time has been so intense, acute, and systemic. The existence of firm and strict criminal sanctions has a very important role in the process of eradicating corruption. In Law No. 31 of 1999 juncto Act No. 20 of 2001 concerning the Eradication of Corruption Crimes or the so-called PTPK Law there is actually a juridical space that can be used to impose death penalty to perpetrators of corruption, namely in Article 2 paragraph (2) The PTPK Law which formulates that in the case of corruption as referred to paragraph (1) is carried out in certain conditions, death penalty can be imposed. For researchers the legislators must be innovative, that death penalty is not one way to eradicate corruption.

Therefore, the contextual existence of the PKS can be aligned with the needs of the amendment of the Criminal Code, especially the aspect of sanction regulation that has not answered the needs of the nation today, especially in eradicating corruption crime. According to Sudarto there are 3 (three) reasons for the need to renew the Criminal Code. Namely sociological, political and practical reasons (needs in practice):¹

1. In terms of politics, it is fair for the Indonesian people who are already independent to have their own Criminal Code because it is a symbol of pride as an independent nation.
2. The official text of the Criminal Code is in Dutch, in connection with that, it does not match with the Indonesian Nation which has ingrained from the nation of Indonesia.

Sociologically, the Criminal Code does not reflect the values that live in Indonesian society. This is certainly contrary to the problem of culture, on the other hand the Dutch Criminal Code based on capitalism, and liberal and individualism systems. On the other hand, the Indonesian nation is based on togetherness, kinship and mutual cooperation. Therefore, it is not suitable for the Criminal Code to be applied in Indonesia. Therefore, in the renewal of criminal law it needs to have a National Criminal Code produced by itself. A reflection of cultural values, in this case it implies an appeal to implement a sociological approach based on togetherness and kinship which then we combine with a rational policy-oriented approach.²

In the context of the PKS, according to Muladi, one of the characteristics of criminal law reflecting the future criminal law projection is that national criminal law is formed not only for sociological, political and practical reasons but must be consciously compiled in the framework of the National Ideological framework of Pancasila.³

For this reason, Barda Nawawi emphasized that the reform of criminal law essentially means, an attempt to reorient and reform criminal law in accordance with the socio-political, socio-philosophical and socio-cultural central values of Indonesian society that underlie social policy, criminal policy, and law enforcement policies in Indonesia.⁴ Criminalization in Indonesia today is to protect individual interests or protect human rights and protect the interests of society and the state from misconduct or misbehaviour that harm individuals, society, the state and also keep the authorities from acting arbitrarily to individuals and society. It is predictable if the community demands justice through the criminal law process against the impact of violations of criminal law that will face obstacles, namely material criminal law, formal criminal law, and the existing philosophy of criminal law and criminal justice are indeed not designed to respond to the direct impact of crime on victims and community or social humanitarian problems that accompany it.

Therefore, the renewal of criminal sanctions is more directed towards the humanitarian side and is a response to the direct impact of crimes against victims such as neglected distribution of the development of education, health, clothing, food, housing, science and technology facilities, and etc, thus the aim and purpose of criminal justice must be returned directly to the recovery of victims' losses by corruptors through the mechanism of imposing effective and efficient criminal sanctions namely social work criminal.

Examples of PKS duties or services based on mandatory attendance orders for corruption convicts that are considered similar to community services are as follows:

1. Working with workers from the local government or regional council to clean up the city environment and others
2. Working in hospitals or health centers to help elderly patients
3. Working in recreational parks, playgrounds and clean public facilities
4. Working in places of worship, welfare houses and orphanages
5. Joining motivation classes, lectures and career talks
6. Joining a short-term course at a training center and other sponsor courses at a government training center

¹ Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*, Bandung: Sinar Baru, 1983, hlm. 66.

² Yesmil Anwar dan Adang, *Pembaruan Hukum Pidana (reformasi hukum pidana)*, Grasindo: Jakarta, 2002, hlm. 30

³ Muladi, "Proyeksi Hukum Pidana Materiil Dimasa Yang Akan Datang", Pidato pengukuhan Guru Besar Ilmu Hukum UNDIP, Semarang, 1990, hlm. 35.

⁴ Bardanawawi *op.cit* hlm. 98.

7. Other works or services deemed appropriate by mandatory attendance officers in each district

PKS is an order imposed by a court that requires corruption offenders to perform services or tasks for a specified period without wages for welfare agencies and the community. There are usually five aspects to this command: the court gives the order, the type of order, the period of service, the consideration or reason for the service provided, and the party serving it.¹ This PKS is also defined as non-custodial punishment because it will not involve imprisonment or is considered an alternative imprisonment.² Some refer to the service community as a correction to society which is defined as a nonincarcerative (not imprisoning) sanction where offenders serve all or part of their punishment in society. As a whole, community services provide opportunities for corruption offenders or convicts to learn job skills, to get vocational training and other important life skills. At the same time, this improves the losses caused by their actions while contributing to the communities in which they live. Thus it was stated that the order of community service was a two-way street; it is the active involvement of both actors and the community.

3.2 Functionalization of Social Work Crimes in Humiliating Corruptors

The discourse of adding social work sentences - in addition to prison sentences - for convicted corruption cases, has strong support. Social sanctions for convicted corruption cases need to be increased as one of the ways to encourage the emergence of deterrent effect and shame to commit corruption.³ In relation to the PKS, based on Article 55 paragraph (1) of the Criminal Code Bill,

- (1) Criminalizing aims:
 - a. to prevent criminal acts by enforcing legal norms for the protection of society;
 - b. to popularize the convicted person by providing guidance thus can be a good and useful person;
 - c. to resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace in society; and
 - d. to make it free from guilt in the convicted person.
- (2) Criminal punishment is not intended to make suffered and demean human dignity.

In the context of the implementation of innovation, namely the development of social work criminal sanctions as a new type of criminal sanction that needs to be transplanted into the Corruption Prevention and Eradication Act to tackle corruption crimes with entrapment by giving a shame effect that is, there is Based Alternative to Incarceration for example there is a criminal policy of social work. Generally, it stated that “*the offender’s charges are dismissed at the discretion of the court following the consideration of the character, antecedents, age health or mental condition of the accused; or the trivial nature of the offence or the extenuating circumstances in which the offence was committed*”⁴ The advantage of this criminal mechanism for social work is “*the offender is given the opportunity to redeem her/himself*”. The most innovative is *Community Service Order* (pen.) into the care of an appointed custodian yakni “*an offender who is (pen. under 60 million rupiah) is released into the care of a designated suitable person for a specific period. This may be combined with corporal punishment*”⁵. The advantage is that “*the offender receives support and guidance from those close to her/him; and can be counseled formally by the relevant professionals*”.⁶ In Indonesia, these social work criminal activities have not been regulated because of various reasons, for example the lack of professional personnel who supervise and also another is the budget, but in the provisions of Article 88 paragraph (1) of the Criminal Code Bill it stated that: Criminal Acts of Social work is that if the imprisonment will be imposed with no more than 6 (six) months or a fine of no more than a criminal penalty of Category I, then imprisonment or a fine can be replaced by a criminal sanction of social work. Then paragraph (2) that related to the imposition of social work as referred to paragraph (1), the following matters must be considered:

- a. The defendant’s recognition of the crime committed;
- b. The working age of the defendant is in accordance with the provisions of the law and regulation;
- c. Approval of the defendant after being explained about the purpose and all matters related to criminal sanction of social work;
- d. Defendant’s social history;
- e. Protection of the defendant’s work safety;
- f. Defendant’s religious and political beliefs; and
- g. The ability of the defendant to pay fine penalties.

Then according to paragraph (3) that the implementation of criminal sanctions of social work must not be

¹ Claster, D.S., (1992). *Bad Guys and Good Guys: Moral Polarization and Crime*. Greenwood Press, Westport CT.

² J. Muncie, G Hughes, and E. McLaughlin. (2006). ‘New punitiveness: The politics of child incarceration’. *Youth Justice critical readings*. London: Sage.

³ <http://nasional.kompas.com/read/2008/08/14/05252620/kerja.sosial.bagi.koruptor>

⁴ Boitumelo Makunga *The Improvement of The Treatment of Offenders Through The Enhancement of Community – Based Alternatives to Incarceration* dalam Laporan Renny Ariyani Jaksa pada Biro Hukum Kejaksaan Agung RI dalam Senior Seminar Crime Prevention Fuchu City, Japan, January 16 – February 13, 2009. hlm. 9-10.

⁵ *Ibid*

⁶ *Ibid*

commercialized and paragraph (4) stipulates that the Criminal Act of social work shall be imposed maximally:

- a. Two hundred and forty hours for defendants aged 18 (eighteen) and above; and
- b. One hundred and twenty hours for defendants under the age of 18 (eighteen) years.

Furthermore, according to paragraphs (5), (6), and (7) it regulates as follows:

Paragraph (5) that the criminal sanctions of social work referred to paragraph (3) is at least 7 (seven) hours.

Paragraph (6) The implementation of criminal sanctions of social work can be paid in installments in a maximum period of 12 (twelve) months by paying attention to the activities of the convicted person in carrying out his job and / or other useful activities.

Paragraph (7) If a convicted person does not fulfill all or part of the obligation to carry out a criminal sanctions of social work without a valid reason then the convicted person is ordered:

- a. Repeating all or part of the criminal sanctions of social work;
- b. Undergoing all or part of the prison sentence that is replaced by the criminal sanctions of social work;

or

- c. Paying all or part of the fine penalties that is replaced by criminal sanctions of social work or serving a prison sentence as a substitute for a fine penalty that is not paid.

In the context of the purpose of implementation of criminal sanctions of social work, in Australia in 1990, John Braithwaite¹ conducted research that resolving criminal cases by involving certain parties through integrative ashaming is more useful and effective than just punishing the convicted person. According to Braithwaite's theory that the integrative ashaming mechanism of crime settlement is solved by non-conventional methods namely the sharing of roles between prison officers and community leaders to facilitate the implementation of criminal sanctions of social work. Even Community Leaders and perpetrators' families were forcibly pushed to attend the criminal implementation. The community leaders and perpetrators' families (primary family) who must participate actively are called collective learning.

The participation of community leaders, such as administrators of houses of worship, schools and other places of public and social facilities and family of perpetrators up to a certain degree is expected to provide moral sanctions to the perpetrators' behavior and at the same time an attitude of concern of the perpetrators' families to the perpetrators. Even community leader may be present in this criminal implementation. The intended figures of society are not like those in Indonesia, namely the ulama, but the figures who have a personality and direct influence with the perpetrators so far and concerned about crime prevention, for example certain academies and non-governmental organizations. Their contribution to the implementation of this criminal is expected to provide suggestions and positive influence for the perpetrators to be responsible, regret and promise not to repeat² and most importantly for general prevention. For researchers, the mechanism to embarrass of Braithwaite's "ways" can be applied to the convicts of corruption through the criminal sentence of social work.

The benefits of this kind of criminal sanctions of social work, *first*, the existence of an interaction pattern of problem solving that not only symbolizes the court but also an attribute of the court which also mandates that prevention of corruption is the duty of the state; *fourth*, the perpetrators and their families have felt embarrassed through this method coincidentally (reintegrative shaming) and also stigmatization has occurred; *thirdly*, the state party was satisfied with the losses suffered directly, which are successfully recovered, and on the other hand there was public participation to punish corruptors: and *fourth*, peace and public order were restored immediately by the fact that the corruptors were truly punished and humiliated. By this way the principles of criminal law that are known in Indonesia have subsidiarity, not just merely philosophy but they have been implemented in another country such as Australia.

In the context of Indonesia, with the degradation of public officials, the criminal sanction of social work can be applied to eliminate the stigmatization and labeling obtained by prison. In a certain level, these public officials who are lost in the black world must be returned or rehabilitated through ensnaring criminal policies that are mainly general prevention. This policy is in accordance with the thoughts of Marc Ancel and Habiburrahman. Habiburrahman himself once revealed that "if a crime occurs in an area, then the sick parties are not only the perpetrator but also the community". Long before Edwin H. Sutherland said that "crime is the product of society". Ancel, who has a reformist and moderate view, is more perfect in analyzing that "the failure of criminal law in eradicating crime includes juvenile delinquency, because the criminal law should start with social protection and the community that depends on the right formulation of criminal law, because it is a

¹ Bandingkan dengan John Braithwaite *Reintegrative Shaming of Criminal Offenders* yang mengemukakan hasil penelitiannya pada Seminar Nasional dengan tema Pendekatan Non Penal Dalam Penanggulangan Kejahatan, Semarang, 2 September 1996.

² H.C. Kelman dalam Ahmad Ali *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, (Jakarta: Kencana Prenada Media Group, 2009) hlm. 140-148 mengungkapkan *identification is an acceptance of a rule not because of its intrinsic value and appeal but because of a person's desire to maintain membership in a group or a relationship with the agent. The source of power is the attractiveness of the relation which the persons enjoy with the group or agent, and his conformity with the rule will be dependent upon the salience of these relationships*. Jadi seseorang mematuhi hukum, karena pertimbangan keharmonisan hubungan dengan pihak-pihak tertentu yang dihormati dalam masyarakat.

criminal law system, criminal act, judgment review to the perpetrator and the criminal is an institution that must be maintained, but not used with fiction and juridical techniques that are free from social reality ...”¹

By reflecting to the inadequacy of traditional criminal law sanctions in the Criminal Justice System and the ineffectiveness of criminal sanctions in the implementation of the Corruption Law so far, the pattern of settlement of reintegration shaming aimed at restorative justice through criminal sanctions of social work can immediately begin to be implemented in Indonesia. The implementation of patterns of overcoming and resolving corruption cases by officials and other perpetrators will not be lost from the meaning of former convicts who still need community supervision after serving a sentence; then corruption convicts who return to the community through this approach still have stigmatization and labeling of inmates; finally the settlement process with the restoration of the order balance must be forced by the parties including law enforcer. Special and general deterrence and prevenience can have a close correlation and influence each other, so that the prevalence and level of corruption crime can be measured, especially if the perpetrators are public officials with large financial losses such as E-KTP corruption, meanwhile the convict enjoyed luxurious facilities in the prison wall.

The idea of a number of parties to implement for perpetrators of corruption is intended to bring shame, and finally emerges a deterrent effect. But until now this type of punishment is only an idea, and it cannot be applied in Indonesia.² A number of countries, such as the Netherlands and the United Kingdom, are indeed familiar with the type of criminal sanction of social work. The Dutch Criminal Code 1996 version entitled punishment listed types of punishment for community services. Article 22 paragraph (1) letter c of the Dutch Penal Code in the English version includes the following formula. The judge may only impose a penalty of community service upon request from the accused to perform such work.

Different from researchers' views that according to Romli Atmasasmita, the practice of criminal sanction of social work is more often used for criminal offenses in the minor category. The concept was also followed by the Criminal Code Bill. The draft version of the 2007 Criminal Code Bill, for example, recognizes criminal sanction of social work as a substitute for imprisonment of not more than six months.³

Thus, according to the Professor of Criminal Law, Padjadjaran University, Bandung, imitating the concept of social work punishment as it is known in the Netherlands and the UK is inappropriate to apply in corruption cases. Corruption is an extraordinary crime. If it is to be applied to corruption, Romli said, the type of punishment was included as a new provision in the Code Bill on Eradication of Corruption Criminal Act.

This view was conveyed by Romli in a discussion in Jakarta, Tuesday, August 26, 2017. According to Romli that criminal sanction of social work in Indonesia by referring to the Draft Penal Code (draft 2007) may not be specifically applied to corruptors because it is only applied for a substitute of prison sentence of no more than 6 (six months).

In the additional criminal code consists of revocation of certain rights, seizure of certain goods and / or bills, announcement of a judge's decision, payment of compensation, and fulfillment of local customary obligation.

Goals of community service traditionally deal with punishing, reparations, restitution and rehabilitation. By serving the community, the community service system adds punitive action to the probationary period because this is a special condition of probation or this supervised release which limits the personal freedom of the perpetrators and requires them to lose their free time. In achieving reparations or improvements, community service allows lawbreakers or convicts to redeem or 'make the whole victim' constructively.

In addition, community service can be considered as a substitute for financial compensation for individual victims or a form of symbolic restitution when the community becomes a victim. This will reach the goal of restitution. And the most important characteristic of community service is rehabilitation where this type of order fosters a sense of social responsibility among corruption convicts and allows them to improve their self-image by serving the community. It also instills a work ethic and helps convicts of corruption develop interests and skills. Community service is based on the belief that perpetrators and also victims of crime have rights that are worthy of protection. In addition, humans are able to change, that is one of the reasons why commitment to the reintegration of perpetrators to society is very important.⁴

In contrast to researchers about criminal sanction of social work, the National Alliance researcher on the Criminal Code Draft, Supriyadi Widodo Eddyono, also agreed with Romli. According to him, if the aim is to give shame to the convicted person of corruption, then the concept of social work punishment adopted by the Criminal Code Bill has little influence. Therefore, Supriyadi stressed the need of criminal sanction of social work to be part of the main criminal law. In conclusion, the judge can choose to order the convicted person to do social work, in addition to serve a prison sentence or fine.⁵

¹ SR. Sianturi dan Mompang Panggabean *Hukum Penitensia di Indonesia* (Jakarta: AHM dan PTHM, 1996) hlm. 20.

² <http://www.hukumonline.com/berita/baca/hol19996/hukuman-kerja-sosial-jadi-alternatif-pidana-penjara-dan-denda>

³ *Ibid.*

⁴ Anita Abdul Rahim *et.al* "The Extent of the Application of Community Service Order as an Alternative Punishment in Malaysia" *Mediterranean Journal of Social Sciences* MCSER Publishing, Rome-Italy Vol 4 No 10 October 2013 p. 155.

⁵ *Ibid.*

Amar from a judge is important. Because in accordance with the concept of criminal sanction of social work for minor crimes, the implementation of this type of punishment must be approved by the convicted person. The requirement of convicts' agreements includes the 1930 Geneva Convention (Forced Labour Convention), the 1950 Rorono Treaty (the Convention for the Protection of Human Rights and Fundamental Freedoms), the 1957 Geneva Convention (The Abolition of Forced Labor Convention), and the Covenant on Civil and Political Rights.

Agreeing with that study that ICW's Head of Monitoring and Supervising Division, Emerson Yuntho, concerned that the criminal sanction of social work could not be implemented in the short time if it only relies on the Criminal Code Bill. It is because this bill has been drafted for decades, but until now the DPR has not discussed it. There is no guarantee that one to ten years later it will be legalized by the House of Representatives, complained Emerson.

Therefore, Emerson welcomed the proposal that the Draft Law on Eradication of Criminal Acts of Corruption contains a type of criminal sanction of social work for corruption perpetrators and according to Romli it was placed as an alternative to criminal sentence or a fine for convicts of corruption criminal act. However, this international criminal law expert hopes that the application of criminal sanction of social work is adjusted to the history and work experience of the convicts. The application must also pay attention to the health factors of the convicts, beliefs, and location of social work. In addition, there must be guarantees for the protection of work safety for convicts who serve criminal sanction of social work.¹

Theoretically, Kristin Gardner and Owen James stated:² "*The Criminal Code in Canada covers an extremely wide range of offences, and the individuals who are convicted of committing these crimes are equally diverse. It follows that judges should consider many factors when they impose a sentence, whether the sentence is a fine, probation, jail time, or any other sentence that the Criminal Code authorizes a judge to make.*" As a comparison that Civil Code in Canada covers any violations which are very broad, and people who are convicted of committing this crime are also diverse. Therefore, judges must consider many factors when they imposed sentence, whether the sentence is a fine, probation, imprisonment, or other sentences submitted by the Criminal Code.

For PKS researchers (criminal sanction of social work) is an alternative to corruption which is very promising despite differences in shame perceptions in different western and eastern cultures but in essence, the stigmatization of these crimes and the denunciation of perpetrators can have a deterrent effect. Gadjah Mada University psychologist, Yogyakarta, Rahmat Hidayat said, shame and guilt are different phenomena in every culture. Quoting dissertation of Seger Breugelmanns at Tilburg University, Netherlands, entitled *Cross-cultural Non (Equivalence) in Emotion: Studies of Shame and Guilt*, 2004, Western and Eastern nations have different perceptions of shame. The European Community (studies in Belgium) associates shame with something that is normative, true or false based on prevailing norms. On the other hand, the eastern community (studies in Yogyakarta) places shame on their social relations, whether they can be accepted or rejected by their environment. It is not a matter of right or wrong. "The size is socially appropriate or not. The reference is whether the act is usually done by another person in the environment or not. In that context, the attitude of the affiliated groups becomes important."³

Shame is more dominant as a stimulant of suicide, not guilt. Basically, Indonesian culture views people who commit crimes, even if it is up to corruptor, corruptor is a shame. Shame is an emotional aspect, while guilt is a cognitive aspect related to thinking ability. Meanwhile, for corruptors, shameful things are not corrupt acts. However, whether he is still accepted or not by his environment. This is what ultimately becomes a problem in eradicating corruption in Indonesia. "Corruption is no longer considered a disgrace,". In many cases, the money obtained by corruption is not enjoyed by the actors themselves, but also by the surrounding environment, directly or indirectly. Even though corruptors have been imprisoned, the support of those around them, both family and colleagues in political parties, continues to flow and they are still hailed. In fact, there are corruptors who can appoint subordinates in prison.

Head of the Center for Brain and Social Behavior Studies at Sam Ratulangi University, Manado, Taufiq Pasiak said, shame and honesty are processed in the same part of the brain, namely the prefrontal cortex, specifically the orbitofrontal region. That part is behind the eye and generally governs human morals. In criminal sanction of social work for corruptors who were formerly respectable people such as politicians from religious parties, shame arises as a fruit of inner conflict because he is known as a religious person. However, it does not try to rationalize or seek justification for its actions, for example due to forced systems. Meanwhile, for corruptors, the shame is lost because of the pressure of rationalization efforts or the justification for their corrupt actions. Corruption justification is usually based on the pretext of corrupt money for parties, families, or

¹ *Ibid.*

² <http://www.lawconnection.ca/content/sentencing-theory-backgrounder> Sentencing Theory - Backgrounder Kristin Gardner and Owen James, p. 1.

³ <https://lifestyle.kompas.com/read/2014/05/03/1532263/Antara.Kejujuran.dan.Rasa.Malu>.

donations. Taufiq asserted, rationalization or the process of justifying action is actually a self-defense mechanism when humans are threatened. The process is a positive goal, for example, some people who are lazy or sloppy mean the disaster as a warning from God to do more charity. However, for some people, including corruptors, justification is done for actions that are clearly wrong. For example, someone commits corruption because his family, social environment, or political party needs the money. "The process of rationalization and self-defense mechanism is interpreted differently by corruptors".¹

Amich Alhumami² wrote, in a different cultural context, corruption can be interpreted differently. In modern discourse, corruption is defined as the abuse of power, public institutions, and the authority entrusted to personal interests, economic benefits, or other financial benefits. In the context of patrilineal state culture, the notion of corruption as abuse of power for personal gain is not applied. In this patrilineal society, power has face personalization; public office position is considered private-owned. Therefore, allocating public resources (economic assets, jobs, and funds) to families, relatives, friends and cronies is considered normal. In addition, in traditional societies, the granting of goods or money in term of corruption called gratification is a symbol and binding of social relations. The culture of mutual giving is not considered a bribe, but a form of gratitude. However, modern society understands it differently. Gratuity is defined as corruption because it is used to expedite affairs and facilitate problem solving. The social function of gift exchange is distorted into bribes that are clearly contrary to public morals and social ethics. This condition makes the eradication of corruption in Indonesia even more difficult because the culture of the community has not supported it. Some people actually consider corruptors as "heroes" and corruption as normal. Not embarrassing. However, Rahmat assessed that people's views on corruption can be changed. The view of corruption as a disgrace, a shameful act that removes self-esteem, can be built. The shame attitude is applied not only to corruptors, but also to people who are related to corruptors. "If the shame of visiting corruptors can be built, it will be more effective as a moral and social sanction for corruptors compared to giving corruptors special clothing," he said. The effort to build shame will be more effective through the system, not by building the character of the community. According to Rahmat, character building with a psychological approach is always more difficult. Taufiq added, the community is not accustomed to shame because the system is not yet supportive. Punishment for corruptors is considered too low. In addition, the shame of individuals is difficult to grow because a lot of corruption is done together. Education plays an important role in fostering shame on the basis of right wrong according to the prevailing norms. However, education in Indonesia has not been able to foster that shame as part of public behavior. The patrilineal culture of Indonesian society makes inter-community kinship very strong. In the kinship system, efforts to equate or imitate others are easy to do, both positive and negative. Therefore, to change culture by building positive behaviors, it needs a very strong role model. The problem is, society currently lacks good role models in society. In fact, teachers in schools that should be role models of students in order that the students have a sense of shame over violations of norms, but teachers actually encourage students to cheat on national exams. "The culture of shame cannot be taught because it is not a theory. But it must be exemplified as life skills," he said. In addition, law enforcement also needs to be strengthened. Punishment for corruptors also needs to be increased. Anti-corruption community social movements also need to continue to be built as a means of community control, not only waiting for law enforcement.

3.3 Establishment of Program of the Organizing Agency of Criminal Sanction of Social Work

In connection with the provision of additional criminal sanctions of social work to corruptors to achieve legal certainty, justice and legal benefits, it is necessary to establish institutions such as the **Institute for Implementing criminal sanctions of social work (LPPKS)** under the Ministry of Social Affairs. The authority to supervise the implementation of criminal sanctions of social work must have normative, effective and efficient and accountable legitimacy. The patterns of resolving humiliating corrupt convicts by involving the community and the Ministry of Social Affairs provoked a positive reaction that the recovery of values disturbed by corruption crime was not only converted by the deprivation of liberty and property of corruptor but also the dignity of human beings as sinners. This is like the conversion theory that researchers use to analyze this part of the labeling and stigmatization process of corruptors which does not end when physical punishment is in prison but outside the prison through means of repentance and remorse. This situation will also encourage the prevalence of corruption which is potential to occur due to applicative general prevency. Because according to Kristin Gardner and Owen James:³

The theory behind this objective of sentencing is that encouraging an offender to acknowledge the harms done to the victims and to the community will reduce the likelihood of the offender committing crimes in the future. A sentence that includes community service, or speaking publicly about the unfortunate consequences of

¹ *Ibid.*

² Amich Alhumami Korupsi, Perspektif Antropologi Kompas, 15 Desember 2008.

³ <http://www.lawconnection.ca/content/sentencing-theory-backgrounder>
Sentencing Theory - Backgrounder

the offender's conduct, would take this objective into account. So with the addition of these last three objectives, the focus has moved away from locking criminals in jail and throwing away the key, and toward trying to find a balance between protecting the community and working with the individual offender to craft a sentence that will help prevent him from committing future crimes. This balancing act is continued with the other principles of sentencing that judges are obliged to consider, and that will be discussed below.

Therefore, it needs to take the steps as follows:

1. Establishment of the The Organizing Agency of Criminal Sanction of Social Work that are authorized to conduct additional criminal supervision programs for corruptor's social work.
2. Establishment of special regulations to assist volunteer officers of the The Organizing Agency of Criminal Sanction of Social Work in monitoring and evaluating the activities of convicted corruptors who are placed in accordance with the advice of local community leaders.

For this background, the steps taken above are: the process of carrying out criminal sanction of social work makes victims (society) artificially and convict of corruption in contact decides how to respond to the execution of the sentence, and corruptors agree how to repair the damage caused by the effects of corruption indirectly. What is meant by "improving" is that every activity needed by the process of carrying out the criminal punishment of social work where the corruptor seems to try to correct the crime that has resulted the victim individually or a community or society to regret deeply.

Then restorative justice through the implementation of criminal sanction of social work is defined as a process in which parties who have shares in certain violations of the law are collectively obliged to resolve how to deal with the consequences of violations and their implications in the future. The results of a successful restorative justice process will usually result in an agreement in which the community where the implementation of the criminal sanction of social work is satisfied with the attitude of the convicted person. For this reason, the government has issued a restorative document formulation strategy that establishes research evidence for restorative justice, and clarifies the purpose of the Government to maximize the use of criminal sanction of social work where we know it works well to meet the needs of criminal law enforcement that only place corruption victims, namely people beyond the object of the judge's decision (*daad-daader-strafrecht-strafalochter*).

Program of The **Organizing Agency of Criminal Sanction of Social Work** against corruption convicts has potential benefits, namely reducing re-interruptions and increasing community satisfaction through the involvement of individuals and community leaders to punish corruptors as a social reaction. A diversion of the issue of the court as a product of the stakeholders is also possible: first, agreeing effectively and efficiently that some violations of the law of corruption are common enemies and evil deeds; fourth, to provide a deterrent effect on potential corruption perpetrators against criminal sanction of social work as institutionalized social sanctions; and third, increasing the involvement of individuals and communities in dealing with behavior of corruptor - and, in particular, greater encouraging the focus on prevention needs rather than execution only.

3.4 The Organizing Agency of Criminal Sanction of Social Work and Criminal Law Objectives

Humans are rational beings, all counting, avoiding distress, pain, suffering and loss. Therefore, Jeremy Bentham categorizes any rational human action as *felicific calculus*. Law enforcement officers are educated, trained, ethical, professional and religious people so they are often challenged for rational thinking.

The Organizing Agency of Criminal Sanction of Social Work is a special legal mechanization in the corruption criminal justice system that provides a solution to the meaning of sentencing that not only has a formal but social and transidental dimension. In legal dogmatics (legal practice) each implementation can be measured by both quantitative and qualitative values. Quantitative is the inflation or decrease in the number of perpetrators of corruption, while the qualitative is the high and low level of regret and repentance of the perpetrators of social work.

Table 1. Data of Inmate and Capacity of Prison in 2006-2012

| Explanation | Year | | | | | | |
|-------------------------------|---------|---------|---------|---------|---------|---------|---------|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Inmate: | | | | | | | |
| Prison for adult and young | 47.121 | 5 1.949 | 54.628 | 5 6.083 | 47.617 | 4 8,785 | 46.301 |
| Prison for Child | 1 .582 | 2 .360 | 2 .966 | 2 .188 | 1 .932 | 2 ,201 | 2 .081 |
| Prison for Adult inmate | 62.189 | 7 1.507 | 75.447 | 7 9.023 | 7 9.023 | 8 6,905 | 99.072 |
| Prison for Student | 1 .852 | 2 .179 | 2 .944 | 3 .540 | 3 .750 | 3 .317 | 3 .315 |
| Number | 112.744 | 127.995 | 135.985 | 132.372 | 133.252 | 141,208 | 150.769 |
| Difference in inmate addition | | 15.251 | 7 .990 | -3.613 | 880 | 7 .956 | 9 .561 |
| Capacity | 76.550 | 8 6.550 | 88.599 | 9 0.853 | 95.908 | 9 6,491 | 102.745 |
| Difference in adding capacity | | 1 0.000 | 2.049 | 2.254 | 5.055 | 583 | 6.254 |
| Over-capacity | | 41.445 | 4 7.386 | 41.519 | 3 7.344 | 44,717 | 4 8.024 |

Therefore in 2012, there were around 46,301 adult and pre-trial youths who were entrusted to the prison. Regarding this, in Indonesia, the number of adult and youth prisoners was 46,301 people while 2,081 children were detained, while the remand center was only \pm 209 with the details of 12 class I remand centers, 10 class IIA remand center, 129 class II remand centers, then prisoners owned by the police station and the prosecutor's office as well as the court are almost certainly used for stopovers in order to take care of the administration and then immediately submitted to the branch of the remand center totaling 58 belonging to The Directorate General of Correction. Based on the important argumentation observations regarding the prisoners' safeguard efforts, the detention rooms in the police are often full, so that they are entrusted in detention centers, while the detention rooms at the State Prosecutor's Office only temporarily hold prisoners because of the lack of budget for consumption and security, fourth, skilled human beings and fulfilling the requirements of prisoners are not ready, and thirdly, security facilities and infrastructure such as weapons, handcuffs and so on are limited. So far there has been good coordination between the Attorney General's Office and the Directorate General of Corrections, so that it has never caused complaints from guards and leaders of detention centers.

The thought of the impact of detention of suspects / defendants / convicts in detention centers and over-capacity of prison will be relative or proportionate when we are faced with concerns over the constraints of the purpose of detention, those are for:¹

1. Streamlining the inspection process both at the investigation stage and at the stage of prosecution and examination in court.
2. Protecting the interests of the community from the repetition of crimes committed by the perpetrator of the crime, or
3. Protecting the perpetrator of a crime from a threat that may be carried out by the victim's family or certain groups related to the crime committed.

With existing facilities and prison guards who are currently educated and trained and programs that refer to prisoners' rights as regulated in government, regulations are emphasized on the natural rights possessed by each person and the implementation is carried out with regard to their status as prisoners and the only missing is the right to live freely, no need to worry. Guards and prison management know that care needs of prisoner must be carried out according to the prisoner's care program by paying attention to the level of process of the case investigation. The obligation of prisoners to orderly follow treatment programs is facultative which is not compelling. This obligation is solely to provide beneficial advantage for him by participating in various activities thus feelings of stress, boredom and despair can be passed well.²

The purpose of this criminal punishment has experienced a wave of popularity so far. In essence, rehabilitation is the ideal goal of criminal punishment because all actors cannot be imprisoned indefinitely. The successful rehabilitation to ensure that perpetrators do not commit crimes in the future is the best choice to protect the community. It is interesting that rehabilitation was used to be seen as a goal that could be best achieved through measures such as education or vocational programs in prison. However, there is no evidence to support the notion that imprisonment itself will succeed in rehabilitating perpetrators. In fact, in the James Riady's case, the American Supreme Court reviewed the literature and agreed that detention was generally not effective in rehabilitating or blocking lawbreakers. Instead, the court has concluded that conditional sentences, which are actual prison sentences carried out in the society, will be more effective than sending someone to prison, when considering rehabilitation goals.

Hence, when it is programmed in prison it is still considered valuable, it is now known that the detention itself is more likely to hamper rehabilitation, and make people outside prison more conducive to achieve

¹ Peraturan Pemerintah No. 58 Tahun 1999, *Tentang Syarat-syarat dan Tata Cara Pelaksanaan Wewenang, Tugas dan Tanggung Jawab Perawatan Tahanan*.

² Kristin Gardner and Owen James *op.cit* hlm. 3.

rehabilitation goals. The focus of this theory, like specific prevention, is individual actor. This could explain why this theory underwent a period of unpopularity - what works for one actor may not work for another, which makes it difficult for the judge to know the sentence to be imposed on him. Now, the tendency is to make a criminal sentence that promotes rehabilitation in the community, there are many considerations from the judges, and the ability to be more creative in drafting these penalties.

Minister of Law and Human Rights Yasonna Laoly said that the application of criminal social work can be done to overcome overcapacity in prisons or remand centers. The problem of overcapacity is indeed a classic problem experienced by the Ministry of Law and Human Rights. "Overcapacity is indeed a classic problem for ministries and whatever it is does not need to blame the ministry".¹

"What must be improved is the criminal system that requires gradual reevaluation," said professor of criminal law at Krisnadwipayana University. Professor of Criminal Law Indriyanto Seno Adji when talking on Sunday, May 7, 2017. The improvement that was evaluated, according to Indriyanto, can be started from regulation. According to him, minor criminal cases are unnecessary sentenced to imprisonment. "Primarily, it should be providing facilities easiness for convicts with violations of minor offenses, in the form of beyond social work and others," said Indriyanto. Then, Indriyanto mentioned that the cultural ethics of law enforcement should be no longer based on deterrent effects, but clinical treatment, which can be in the form of rehabilitation of convicted persons in preparation for socialization in community life. "Restorative justice approach is done by limiting the submission of cases of offenses with minor threats to the court, thus it does not cause over-capacity," said Indriyanto. The criminal sanction of social work has indeed been included in the revision of the Criminal Code. But the sentence is not aimed at crimes such as corruption, terrorism and drugs, which are indeed extraordinary crimes. "This (social work punishment) is for delictions that face criminal penalties under 6 months. I think to reduce the overcapacity, the design of the threat under 6 months is adjusted to the current conditions," said Indriyanto²

However, in this context, The Organizing Agency of Criminal Sanction of Social Work has a broad spectrum in achieving legal objectives that are essential in preventing corruption. From the aspect of legal certainty that The Organizing Agency of Criminal Sanction of Social Work in the Corruption Crime System by the Corruption Bill will provide an adequate legal basis for the implementation of legal certainty. On the other hand, from the aspect of justice that the operationalization of The Organizing Agency of Criminal Sanction of Social Work through reintegrative shaming via the placement of convicted corruptors in places of public facilities and social facilities in prison will involve the core elements of the legal problems faced including over capacity of prison and the time span of criminal execution, and prison budget, with the existence of the The Organizing Agency of Criminal Sanction of Social Work will still guarantee substantive justice. Then the last from the aspect of legal benefit that the The Organizing Agency of Criminal Sanction of Social Work has given space to think and act to the law enforcement officers to be more efficient, effective, economic and maximum in providing legal benefits for all parties involved in this legal problem. Then for the convict, it gives an opportunity for contemplation of the actions that had been done. This is in line with the views of Jeremy Bentham and John Stuart Mill regarding the law can provide assurance of happiness to individuals, then to the many people. "The greatest happiness of the greatest number" (the happiness which is obtained from many people). Therefore, the diversion through The Organizing Agency of Criminal Sanction of Social Work will have to be empowered towards:

1. *To provide subsistence;*
2. *To provide abundance ;*
3. *To provide security; and*
4. *To attain equity.*

The criminal sanction of social work which is aimed at initiating behind reparations is to place the perpetrators, victims and the community back to their original position before the violation is committed. Although this concept is common in ancient times, and certainly seen in many customary laws, this is a relatively new addition to the purpose of punishment in modern Indonesian criminal law. Considering that this is very new, there are several obstacles on judges that consider this choice in preparing a criminal sentence. However, one can see this principle working in the provisions of the Criminal Code restitution.³

The theory behind the purpose of this punishment is that encouraging the perpetrator to acknowledge the loss of the victim and the community will reduce the possibility of the perpetrator to commit a crime in the future because they feel ashamed and repent. This punishment which includes community service, or speaks openly about the unfortunate consequences of the perpetrator's actions, will consider this goal. Therefore, with the addition of these three final goals, the focus has been to move away from locking up criminals in prison and throwing away keys, and trying to find a balance between protecting people and working with individual

¹ <https://news.detik.com/berita/d-3494800/bukan-untuk-koruptor-atau-teroris-ini-syarat-pidana-kerja-sosial>

² *Ibid.*

³ *Ibid.*

perpetrator to make a punishment that will help prevent corruptors from committing future crimes. This balancing action is continued by another punishment principle that must be decided by the judge.¹

PKS is based on rehabilitation theory.² The main purpose of this theory is to integrate actors with the community after serving their sentence period and to change the content or form of punishment to achieve it. The rehabilitation focuses on modifying the perpetrator's tendency towards criminal behavior through intervention and shaping it into a more pro-community tendency towards rational thought, processes and responsible action abilities. Through a combination of treatment, education and training they may easily return to society as individuals who are useful and live in more productive ways of life than situations that lead them to criminal acts.

The purpose of PKS is rehabilitation, retribution and reparation. As rehabilitative, this action gives the actor positive experience through community work and this in turn must encourage the development of empathy and consideration of others in addition to regaining confidence and confidence through social experience and constructive social relations. Fourth, as a punishment, CSOs revoke an offender from his spare time and thirdly, as a form of reparation PKS gives the perpetrator an opportunity to correct mistakes or losses caused by such behavior of violations through service to the community.³

These three goals seen by some people cause confusion. This is because probation officers, judges, courts revoke, and community service providers may have different views about their objectives. Pease, (1985) argues that the confusion exists primarily with reparative goals, which for him, must be strictly limited to deal with victims and PKS should not be considered reparative with purpose. This is because it is misleading to inculcate the idea of reparations into community service by gathering the real victims of crime with symbolic victims of crime in abstraction from society as a whole (Pease 1985: 59). Pease views that PKS is not a restitution or compensation for victims. Instead it is retributive (Pease, 1985: 60). Pease then uses Short's (1983: 562) definition of which retribution allows PKS to be accompanied by fines. This is seen as the best retributive sentence available. The short definition is as follows: "The retributive position argues that justice requires criminals to receive the punishment they deserve and that punishment is appropriate because the person who violates the rules has an unfair advantage over those who live among them.

The function of punishment is to restore the balance of business and profits that are included in citizenship." (Pendek, 1983: 562 in Pease, 1985: 60). According to Pease the 'balance of business and profit' in community service show a movement to the restoration and is an recognition of the work done and a feeling of reconciliation due to the work concerned, that if the PKS is successful.

4. Conclusion

Criminal sanction of social work is not yet a positive law in Indonesia because it is still in the Draft of Penal Code (*ius constuendum*). The application of PKS to corruptors as an additional criminal sentence can be implemented immediately by revising the PTPK Law. The majority of Indonesian criminal law experts approve their application because of the over-capacity of prison, achievements of rehabilitation and restitution results and deterrent effect of corruptors do not show maximum results so far. PKS must be established beyond the system of imprisonment by granting their authority to the Ministry of Social Affairs. The application of PKS through institutionalization in the criminal law system especially the eradication of corruption criminal act can accelerate the achievement of other criminal law objectives besides legal certainty, justice and also the benefits of law, and the prevention of corruption.

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¹ *Ibid.*

² Asmah Othman *op.cit* hlm. 36-40.

³Ang, B.L, (2003). 'Community Rehabilitation of Offenders in Singapore'. Visiting Experts' paper presented at 121st International Training Course, "Enhancement of Community based Alternative to Incarceration at all stages of the Criminal Justice Process" Annual Report for 2002 and Resource Material Series No.61. September 2003, Japan : UNAFEI, pp. 168.

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