

A Fiqh Jinayah Review on the Implementation of Social Work Criminal in Law Number 1 of 2023

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Abstract: The reform of the criminal law through Law Number 1 of 2023 concerning the New Criminal Code presents the social work penalty as a non-prison principal crime that is oriented towards rehabilitation and restoration, while responding to the problem of over-capacity of correctional institutions in Indonesia. This research aims to answer three primary problems: first, how social work crimes are regulated in the New Criminal Code as an alternative punishment; second, what mechanisms and fundamental challenges exist in its implementation within the national criminal system; and third, how social work penalties are reviewed from the perspective of fiqh jinayah. Employing a normative juridical method supported by legislative, conceptual, legal policy, and comparative approaches, this study analyzes primary and secondary legal materials descriptively and analytically. The results reveal that Article 65 jo. Article 85 regulates social work crimes in relative detail, covering imposition conditions and technical aspects. However, its implementation across pre-adjudication, adjudication, and post-adjudication stages faces critical challenges, including weak informed consent standards, unclear parameters of legitimate reasons in criminal conversion, limited institutional capacity of Bapas, a prison-oriented legal culture, the absence of standardized sentencing guidelines, and a lack of implementing regulations, alongside the systemic risk of net widening. From a fiqh jinayah perspective, social work penalties cannot be fully equated with ta'zīr as a strict legal category, yet they demonstrate profound functional harmony with the core goals of 'uqūbah namely iṣlāḥ, zājir, and ta'dīb. This study concludes that the normative strength of social work penalties lacks adequate technical implementation readiness, making the strengthening of implementing regulations and deeper empirical studies an urgent necessity for the long-term sustainability of this policy.

Keywords: Social Work Crime; New Criminal Code; Fiqh Jinayah; Ta'zīr, Maqāṣid al-'Uqūbah.

Abstrak: Pembaruan hukum pidana melalui Undang-Undang Nomor 1 Tahun 2023 tentang KUHP Baru menghadirkan pidana kerja sosial sebagai pidana pokok non-penjara yang berorientasi rehabilitatif dan restoratif, sekaligus merespons persoalan overkapasitas lembaga pemasyarakatan di Indonesia. Penelitian ini bertujuan, menjawab tiga permasalahan; pertama, bagaimana pengaturan pidana kerja sosial dalam Undang-Undang Nomor 1 Tahun 2023 sebagai alternatif pemidanaan, kedua, bagaimana mekanisme serta tantangan implementasinya dalam sistem pemidanaan di Indonesia, ketiga, bagaimana implementasi pidana kerja sosial ditinjau dari perspektif fiqh jinayah. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kebijakan hukum, yang didukung secara suplementer oleh pendekatan perbandingan hukum, dengan bahan hukum primer dan

sekunder yang dianalisis secara deskriptif-analitis. Hasil penelitian menunjukkan bahwa Pasal 65 jo. Pasal 85 KUHP Baru mengatur pidana kerja sosial secara relatif rinci, baik syarat penjatuan maupun aspek teknis pelaksanaannya. Namun, mekanisme implementasinya yang terbagi atas tahap pra-ajudikasi, adjudikasi, dan pasca adjudikasi masih menghadapi sejumlah tantangan mendasar, meliputi lemahnya standar informed consent, ketidakjelasan parameter "alasan yang sah" dalam konversi pidana, keterbatasan kapasitas kelembagaan Bapas, resistensi budaya hukum yang masih berorientasi penjara, absennya pedoman pemidanaan yang terstandardisasi, kekosongan peraturan pelaksana. Di luar keenam tantangan tersebut, implementasinya juga masih dibayangi risiko net widening. Dari perspektif fiqh jinayah, pidana kerja sosial tidak dapat disamakan sepenuhnya dengan ta'zīr sebagai kategori hukum, tetapi menunjukkan keselarasan fungsional dengan tujuan 'uqūbah, yakni iṣlāḥ, zājir, dan ta'dīb. Penelitian ini menyimpulkan bahwa kekuatan normatif pidana kerja sosial belum diimbangi kesiapan implementasi di tingkat teknis, sehingga penguatan regulasi pelaksana dan pendalaman melalui kajian empiris menjadi kebutuhan mendesak bagi keberlanjutan kebijakan ini.

Kata Kunci: Pidana Kerja Sosial; KUHP Baru; Fiqh Jinayah; Ta'zīr; Maqāṣid al-'Uqūbah.

Introduction

Modern criminal law worldwide reflects a paradigm shift from a retributive approach toward a more humanistic approach, namely rehabilitative and restorative.¹ This shift is inseparable from criticisms against the dominance of imprisonment, which has long been considered the primary instrument in the penal system, yet in practice often fails to achieve the objectives of offender rehabilitation and the restoration of social relationships.² Imprisonment generates various new problems, such as correctional institution overcapacity, rising recidivism, and the suboptimal social reintegration process of prisoners.³ In a global context, this tendency is responded to through the development of non-custodial sanctions that are more oriented toward utility and restoration, as mandated in the 1990 Tokyo Rules (United Nations Standard Minimum Rules for Non Custodial Measures).⁴

In the national context, Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) marks a fundamental change in Indonesia's sentencing system. This New Criminal Code not only replaces the colonial legacy (*Wetboek van Strafrecht*), which

¹ Listiyanto Apri, Panggabean Mompang L, dan Siregar Rospita Adelina, "Pidana Kerja Sosial dalam KUHP Baru : Tantangan dan Harapan Perwujudan Keadilan Restoratif di Indonesia," *Jurnal Hukum Mimbar Justitia* Vol. 11, No. 1 (2025), p. 233.

² Iskandar Wibawa, "Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia," *Jurnal Media Hukum* Vol. 24, no. 2 (2017), pp. 107-108.

³ Apri, Mompang L, dan Adelina, "Pidana Kerja Sosial dalam KUHP Baru", pp. 232-236.

⁴ Wibawa, "Pidana Kerja Sosial Dan Restitusi," pp. 108.

is considered no longer relevant to Indonesian national values,⁵ but also adopts a more progressive sentencing paradigm by emphasizing a balance between the interests of the offender, the victim, and society, as reflected in the formulation of sentencing objectives which include public protection, prisoner rehabilitation, resolution of conflicts arising from criminal acts, and fostering a sense of remorse in the offender.⁶ One concrete form of this change is the introduction of non-prison alternative penalties, including social work penalties, which are normatively directed to support offender rehabilitation and reduce dependency on imprisonment.

Article 65 of the New Criminal Code establishes the social work penalty as a distinct principal punishment. Definitively, the social work penalty is an alternative out of prison punishment for minor criminal offenders.⁷ The convict is obligated to perform certain social activities as a form of accountability for the criminal act committed. Further provisions regarding the conditions for imposing social work penalties, including their duration and implementation locations, are regulated in detail in Article 85 of the New Criminal Code. These criteria and mechanisms affirm the nature of the social work penalty as a flexible, proportional sanction oriented toward tangible benefits for society, rather than merely an instrument of punishment.

However, in its implementation, the social work penalty still faces a gap between legal norms and the reality of its execution. Several studies indicate the absence of a clear operational mechanism and the lack of a specialized institution responsible for carrying out social work penalties, which has the potential to cause legal uncertainty at the implementation level.⁸ In addition, institutional readiness and the legal culture of law enforcement officers, which remain prison-oriented, constitute inhibiting factors in the implementation of this policy.⁹ This situation reflects the existence of a legal gap, both in the form of technical norm vacuums and disharmony between sentencing objectives and law enforcement practices.¹⁰

From the perspective of *fiqh jinayah* (Islamic criminal law), punishment is not solely oriented toward retribution, but also toward public interest (*maṣlahah*) and the offender's reformation. The concept of *ta'zīr* as a form of sanction whose measure is delegated to the judicial authority according to the offender's condition and public interest along with the objectives of punishment in *fiqh jinayah* (*maqāṣid al-'uqūbah*), which

⁵ I Nengah Susrama Ni Komang Sutrisni, "Konsep Ideal Penerapan Pidana Kerja Sosial dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Melalui Sistem Kolaborasi," *Jurnal Hukum Saraswati (JHS)*, Vol. 5, No. 2 (2023), pp. 413-414.

⁶ Indonesia, "Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana" (2023), Pasal 51.

⁷ *Ibid.*, Pasal 65 ayat (1) huruf e.

⁸ Sutrisni, "Konsep Ideal Penerapan Pidana Kerja Sosial," pp. 409-417.

⁹ Apri, Mompang L, dan Adelina, "Pidana Kerja Sosial dalam KUHP Baru," pp. 240-241.

¹⁰ Sutrisni, "Konsep Ideal Penerapan Pidana Kerja Sosial," pp. 240-241.

encompass *zajr* (deterrence), *iṣlāḥ* (reformation), and *ta'dīb* (education),¹¹ serves as the analytical knife in this study to examine the extent to which social work penalties align with Islamic legal principles. This framework is used not to equate social work penalties with *ta'zīr* as a legal category, but to assess the conformity of their functions and objectives with the orientation of punishment in Islam.

Studies on social work penalties in the New Criminal Code have been widely conducted; however, as far as literature searches show, existing research tends to be divided into two separate directions that run independently without intersecting. On the one hand, a number of studies highlight the regulation and implementation challenges of social work penalties from a positive-juridical perspective, such as those conducted by Listiyanto, Panggabean, and Siregar, who studied the institutional readiness of the Correctional Bureau (*Bapas*),¹² Ni Komang Sutrisni, who proposed an inter institutional collaboration model,¹³ and Imam Syafei, who examined technical aspects of its implementation in the field.¹⁴ These studies provide a rich mapping of norms and practices, but consistency stops at the framework of national criminal law without addressing its alignment with the *fiqh jinayah* perspective. On the other hand, studies on *ta'zīr* and *maqāṣid asy-syarī'ah* as flexible instruments have developed broadly, such as Darsi's discussion on the scope of *ta'zīr*,¹⁵ Wilda Lestari's work on the basis and types of its punishment measures,¹⁶ and Cut Nurita's study on restorative justice in Islamic criminal law linking the principles of *iṣlāḥ*, *diyāt*, and *'afw* with restorative justice practices in the Indonesian criminal justice system.¹⁷ These *fiqh jinayah* studies enrich conceptual understanding regarding the flexibility of *ta'zīr*, but are not directed at testing a specific criminal norm. Nevertheless, not many studies have comprehensively combined the normative-juridical analysis of national social work penalty regulations with the philosophical review of *fiqh jinayah*, particularly in examining the functional intersection between modern sentencing objectives and the concept of *'uqūbah*.

The difference between this article and previous research lies in the integration of these two frameworks. The theoretical contribution of this study is the demonstration that the national sentencing system and *fiqh jinayah* principles, despite originating from different legal genealogies, can meet at the same functional rationality in tackling crime

¹¹ Halil Husairi Darsi Darsi, "Ta'zir dalam Perspektif Fiqh Jinayat," *AL-QISTHU Jurnal Kajian Ilmu-Ilmu Hukum*, Vol. 16, No. 2 (2019), pp. 60-62.

¹² Apri, Mompang L, dan Rospita Adelina, "Pidana Kerja Sosial dalam KUHP Baru : Tantangan dan Harapan Perwujudan Keadilan Restoratif di Indonesia."

¹³ Ni Komang Sutrisni, "Konsep Ideal Penerapan Pidana Kerja Sosial dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Melalui Sistem Kolaborasi."

¹⁴ Imam Syafei, "pelaksanaan pidana kerja sosial berdasarkan UU Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.," vol. 5, 2026.

¹⁵ Darsi Darsi, "Ta'zir dalam Perspektif Fiqh Jinayat."

¹⁶ Wilda Lestari, "Ta'zir Crimes in Islamic Criminal Law : Definition Legal Basis Types and Punishments," *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* Vol. 05, no. 1 (2024).

¹⁷ Cut Nurita, "Konsep Keadilan Restoratif dalam Jinayah Islam dan Implementasinya pada Sistem Peradilan Indonesia," *ARBITER: Jurnal Ilmiah Magister Hukum* Vol. 8, no. 1 (2026).

without degrading human dignity. This study fills the gap at the intersection of these two research directions: the extent to which the social work penalty norm in Article 65 jo. Article 85 of the New Criminal Code, with all its conditions and technical mechanisms, can be examined through the framework of *ta'zīr* and sentencing objectives (*maqāṣid al-'uqūbah*).

Based on this elaboration, this study becomes relevant to fill the gap in normative critical studies concerning the implementation of social work penalties from a *fiqh jinayah* perspective. This research aims to examine and analyze the regulation and implementation of social work penalties in the New Criminal Code, while identifying the intersection and substantive-philosophical relevance between the national legal system and *fiqh jinayah* principles. Thus, this study is expected to provide a theoretical contribution to the development of a more integrative, humanistic criminal law based on public interest (*maṣlahah*) values.

Method

This study is a normative legal research to examine the implementation of social work penalties in Law Number 1 of 2023 viewed from the perspective of *fiqh jinayah*. The approaches used are the statute approach, conceptual approach, and policy approach, supported supplementally by the comparative legal approach to strengthen argumentation through references to practices in other countries. The legal materials used consist of primary legal materials in the form of legislation and secondary legal materials in the form of books, journals, and relevant literature collected through library research, then analyzed qualitatively using a descriptive-analytical method to formulate legal arguments regarding the regulation, implementation, and relevance of social work penalties in national criminal law and *fiqh jinayah*.

Legal materials are classified into primary and secondary legal materials. Primary legal materials include Law Number 1 of 2023 as well as court decision documents that have actually imposed social work sanctions, namely Banda Aceh District Court Decision Number 34/Pid.Sus/2026/PN Bna and Decision Number 64/Pid.B/2026/PN Bna. Secondary legal materials consist of books, journals, and *fiqh jinayah* study literature. To ensure the validity and reliability of the research, data validation was carried out through legal material triangulation techniques. Cross-checking was conducted between legislative norms, application in judge decisions, and the doctrines of criminal law and *fiqh jinayah*. These legal materials were analyzed qualitatively using a descriptive analytical method to formulate comprehensive legal argumentation.

Discussion

A. Regulation of Social Work Penalties in Law Number 1 of 2023 as an Alternative Punishment

The development of modern criminal law shows a significant paradigm shift, particularly in understanding the nature and objectives of punishment. Punishment is no longer understood as a means of retribution for the offender's wrong doing, but is understood broadly as a means of public protection as well as an effort to restore and rehabilitate the offender.¹⁸ The integrative sentencing theory becomes relevant to be understood as a foundational mindset in analyzing contemporary sentencing systems. Integrative sentencing theory proposed by Muladi states that punishment does not have just one single purpose. Punishment must encompass multiple things simultaneously: preventing crime, protecting and maintaining societal solidarity, and providing proportional punishment. Punishment is not the ultimate goal, but a tool to achieve balanced justice and common welfare.¹⁹ Thus, the integrative approach rejects the perspective that considers retribution as the sole justification for punishment, pushing the criminal law system toward a more constructive and future-oriented orientation.

In the practice of the Indonesian criminal judiciary, the prevailing sentencing system is still heavily dominated by imprisonment. Short-term imprisonment, which theoretically should provide both a deterrent effect and rehabilitation, in reality often runs counter to the objectives of punishment. Petty criminals undergoing imprisonment are at risk of experiencing social stigmatization, losing employment, becoming cut off from their family environment, and potentially being exposed to negative influences from inmates with higher levels of criminality.²⁰ On the other hand, correctional institutions experience prolonged overcapacity so that the rehabilitation function does not run optimally. This condition reflects the failure of a sentencing system that overly relies on incarceration.

The Indonesian criminal law system is actually not entirely unfamiliar with the concept of non-institutional punishment. The old Criminal Code (*Wetboek van Strafrecht*) recognized conditional sentencing through Article 14a, which allowed judges to suspend the execution of imprisonment with a probationary period.²¹ However, conditional

¹⁸ Arga Chon Feriandref, Eka Ermala, Othman Ballan, Mubaraq, dan Duwi Aryadi "Transformasi Tujuan Pemidanaan di Indonesia: Systematic Literature Review Mengenai Perkembangan Teori, Kebijakan, Dan Implementasi Keadilan Restoratif di Era Baru Hukum Pidana," *Juris Studia: Jurnal Kajian Hukum*, Vol. 7, No. 1 (2026), p. 25.

¹⁹ Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung: Alumni, 1992), 192, dikutip dalam Fauziah Lubis Muhammad Idris Nasution, Muhammad Ali, "Pembaruan Sistem Pemidanaan di Indonesia : Kajian Literatur atas KUHP Baru," *Judge : Jurnal Hukum* Vol. 05, no. 01 (2024), P. 19.

²⁰ Jamilah dan Hari Sutra Disemadi, "Pidana Kerja Sosial: Kebijakan Penanggulangan Overcrowding Penjara," *Jurnal IUS: Kajian Hukum dan Keadilan* Vol. 8, No. 1 (2020), sebagaimana dikutip dalam Muhammad Idris Nasution, Muhammad Ali, "Pembaruan Sistem Pemidanaan di Indonesia : Kajian Literatur atas KUHP Baru," p. 17.

²¹ P.A.F . Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Sinar Grafika, 2014).

sentencing is not an independent principal punishment; the threat of imprisonment still hovers over the convict during the probationary period, and there is no obligation of productive contribution to society as found in social work penalties. Therefore, the position of the social work penalty as a distinct principal punishment in Article 65 of the New Criminal Code represents a significant legal reform, rather than merely a continuation of the old mechanism.²²

The birth of Law Number 1 of 2023 concerning the New Criminal Code addresses these weaknesses by shifting the sentencing orientation from a repressive-retributive approach toward a rehabilitative-reintegrative one. The regulation of social work penalties as a principal punishment in Article 65 of the New Criminal Code serves as a concrete manifestation of this shift,²³ marking a transformation in Indonesia's criminal law politics that no longer makes imprisonment the sole instrument for case resolution, but rather develops a form of sentencing that is proportional, humanistic, and oriented toward rehabilitation and social reintegration.

Juridically, Article 85 paragraph (1) of the New Criminal Code stipulates that social work penalties may be imposed on perpetrators of criminal acts punishable by a maximum imprisonment of 5 (five) years, provided that the judge imposes actual imprisonment of at most 6 (six) months or a fine of at most category II.²⁴ This restriction reflects the principles of proportionality and selectivity in sentencing, ensuring that only criminal acts with a relatively low level of seriousness can be resolved through non-prison mechanisms. Thus, social work penalties are intended as an alternative punishment to replace short-term imprisonment, as well as a form of sentencing differentiation adjusted to the degree of culpability, the offender's character, and the impact of the criminal act committed.

The limitation of the imprisonment threat to a maximum of 5 (five) years in Article 85 paragraph (1) can be viewed as a manifestation of the lawmakers' prudence in maintaining the principle of proportionality; however, this article also raises an important question regarding how broad the scope of criminal acts actually eligible to benefit from social work penalties is. The cumulative requirements of a maximum 5 year threat and a maximum 6-month actual sentence mean that social work penalties can only be applied to offenses of relatively low seriousness, thereby limiting the potential for significant reduction in correctional institution overcrowding compared to the magnitude of the overcapacity problem.²⁵ This restriction protects the principle of balance between the

²² Muhammad Arafat, "Paradigma Pemidanaan Baru dalam KUHP 2023: Alternatif Sanksi dan Transformasi Sistem Peradilan Pidana Indonesia," *jurnal Ilmu hukum* Vol. 2, No. 1 (2025), p. 38.

²³ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 65.

²⁴ *Ibid.*, Pasal 85 ayat (1).

²⁵ Ester Blay and Miranda Boone Gill McIvor, Kristel Beyens, "Community service in Belgium, the Netherlands, Scotland and Spain: a comparative perspective," *European Journal of Probation* Vol. 2, No. 1 (2010), p. 1.

offender's interests and the sense of justice of the victim and society. On the other hand, excessively strict restrictions risk making social work penalties an instrument that quantitatively has little impact on the initial objectives of national criminal law reform. Therefore, the long-term effectiveness of this regulation will ultimately depend on periodic evaluations regarding the scope of offenses deemed worthy of social work penalties.

In addition to imposition conditions, the New Criminal Code also regulates in detail the technical aspects of social work penalty implementation. Article 85 paragraph (4) stipulates a duration of punishment of at least 8 (eight) hours and at most 240 (two hundred and forty) hours, while paragraph (5) sets a daily restriction of a maximum of 8 (eight) hours which can be paid in installments over a period of up to 6 (six) months, taking into account the convict's livelihood.²⁶ This regulation reflects a balance between criminal accountability and the protection of the convict's socio-economic life. Article 85 paragraph (9) mandates that the verdict must clearly state the duration of imprisonment, the number of hours per day, the completion time frame, and the consequences of non-compliance an essential provision for legal certainty as well as the convict's understanding of all obligations.²⁷ Regarding location, the New Criminal Code provides flexibility by allowing execution in hospitals, schools, orphanages, nursing homes, or other social institutions, and even the type of work can be adjusted to the convict's skills. This flexibility affirms that social work penalties are not merely punishment instruments, but are oriented toward tangible benefits for society.

Social work penalties are also closely related to the sentencing objectives in Article 51 of the New Criminal Code, which affirms that punishment does not merely inflict suffering on the offender, but also encompasses crime prevention, offender rehabilitation, conflict resolution between the offender and the victim, restoration of societal balance, and the creation of a safe and peaceful environment.²⁸ Within the framework of those sentencing objectives, social work penalties place the offender as an active part of social life, without completely isolating them through incarceration, thereby containing educational and rehabilitative aspects that align with integrative sentencing goals.

Aside from having a philosophical foundation in national sentencing objectives, the regulation of social work penalties in the New Criminal Code also demonstrates the influence of international criminal law developments. This is in line with the principles in the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) adopted by the UN General Assembly in 1990. The Tokyo Rules explicitly encourage member states to develop alternative punishments other than imprisonment, with the aim of reducing the excessive use of deprivation of liberty sanctions and

²⁶ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85 ayat (4) dan (5).

²⁷ *Ibid.*, ayat (9).

²⁸ *Ibid.*, Pasal 51.

increasing community involvement in the sentencing process.²⁹ By adopting social work penalties as a principal punishment, Indonesia demonstrates its seriousness in harmonizing the national criminal law system with contemporary criminal law thought developments that emphasize the effectiveness of punishment through non-prison approaches and offender social reintegration.

The relevance of social work penalties in the New Criminal Code is further reinforced by comparison with the Netherlands, which has implemented *werkstraf* since 1981 as a response to correctional institution overcapacity resulting from the proliferation of short-term prison sentences.³⁰ Carried out under the supervision of the national probation service in various non-profit institutions, with a maximum limit of 240 hours of unpaid work, *werkstraf* comprises two main forms: direct social work and education orders in the form of specific training. Indonesia's New Criminal Code shares similar characteristics with the Dutch model, particularly regarding the maximum limit of 240 (two hundred and forty) hours, deincarceration orientation, and status as a principal punishment. The success of the Netherlands is inseparable from the support of a well established probation service as both implementer and supervisor.³¹ This serves as an important note for Indonesia in building the institutional readiness to implement social work penalties going forward.

Beyond philosophical and international foundations, the application of social work penalties in the field has shown results down to the regional district court level. The city of Banda Aceh is one of the regions that has implemented social work penalties. The Banda Aceh District Court has thus far handed down two social work penalty rulings based on the New Criminal Code. The first ruling, Number 34/Pid.Sus/2026/PN Bna, imposed a 100 (one hundred) hour social work penalty on a perpetrator of child abandonment, executed at the Jami Al-Hidayah Mosque, Syiah Kuala District, with a scheme of 5 (five) hours per day for 10 (ten) working days each month under the supervision of the Banda Aceh District Attorney's Office.³² The second ruling, Number 64/Pid.B/2026/PN Bna, imposed a 150 (one hundred and fifty) hour social work penalty on a civil servant proven guilty of fraud in a house construction project valued at IDR 150 Million after the victim's losses were fully restored through a restorative justice mechanism; the sentence was served at Dayah Raudhatul Hikmah Al-Waliyyah, Ulee Kareng

²⁹ United Nations General Assembly, "United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)," 1990 sec. 1.5.

³⁰ Ove Syaifudin Abdullah et al., *Orientasi Implementasi Pidana Kerja Sosial sebagai Alternatif Pidana Non-Pemenjaraan dalam KUHP 2023* (Jakarta selatan: Institute for Criminal Justice Reform, 2024), p. 23.

³¹ *Ibid.*, pp. 24-25.

³² "Pengadilan Negeri Banda Aceh, Putusan Nomor 34/Pid.Sus/2026/PN Bna, diakses melalui "Ayah Telantarkan Anak, PN Banda Aceh Jatuhkan Hukuman kerja Sosial 100 Jam." *kompas.com*, 2026, <https://regional.kompas.com/read/2026/06/29/154500078/ayah-telantarkan-anak-pn-banda-aceh-jatuhkan-hukuman-kerja-sosial-100-jam>.

District, with the same supervision scheme.³³ Both rulings affirm that social work penalties are not merely norms on paper, but have begun to operate down to the district court level, although the scope of cases remains limited. Their application can also reduce the state's burden regarding rising correctional costs caused by prison overcapacity, while minimizing the negative impacts of short-term imprisonment such as the severance of the offender's economic and social relations, social stigma, and prisonization.

From this explanation, it can be understood that Law Number 1 of 2023 has positioned social work penalties as a principal punishment with relatively detailed conditions and technical mechanisms, as stipulated in Article 65 jo. Article 85 of the New Criminal Code. However, the completeness of these norms on paper does not necessarily reflect their effectiveness in practice, because the success of a non-prison sentencing policy is ultimately determined by the extent to which such mechanisms can be consistently executed by the apparatus and institutions supporting them.

B. Mechanisms and Challenges in the Implementation of Social Work Penalties within the Indonesian Criminal System

Social work penalties in the New Criminal Code not only emerge as a regulatory reform, but also demand concrete implementation mechanisms and adequate institutional infrastructure. The use of such non-custodial penalties aligns with the principle of minimum intervention in international standards,³⁴ and reinforces the principle of *ultimum remedium* in national criminal law policy the principle that imprisonment should be the last resort when other sanctions are deemed inadequate.³⁵ Conceptually, social work penalties are a non-imprisonment policy instrument directed at addressing correctional institution overcapacity while retaining elements of criminal accountability, yet oriented toward the offender's social reintegration so that prisonization effects can be minimized.

Juridically, the implementation mechanism of social work penalties in the New Criminal Code is formulated through three stages: pre-adjudication, adjudication, and post-adjudication phases. In the pre-adjudication phase, the Correctional Bureau (*Bapas*), through Correctional Officers, compiles a Community Research Report (*Litmas*) prior to sentencing. This report contains an overview of the defendant's social, economic, and environmental background as material consideration for prosecutors and judges in determining the defendant's eligibility to undergo social work penalties. In the adjudication phase, the judge imposes the social work penalty in the verdict. In imposing this penalty, Article 85 paragraph (2) of the New Criminal Code obligates the judge to consider the offender's confession, capacity, consent after being given an explanation

³³ "Pengadilan Negeri Banda Aceh, Putusan Nomor 64/Pid.B/2026/PN Bna, diakses melalui " Hakim PN Banda Aceh Vonis Guru Pelaku Penipuan Rumah dengan Pidana Kerja Sosial 150 Jam," The Atjeh Net, 2026, <https://www.theatjeh.net/2026/07/hakim-pn-banda-aceh-vonis-guru-pelaku.html>.

³⁴ UN General Assembly, "Tokyo Rules," Rule 2.6.

³⁵ Arafat, "Paradigma Pemidanaan Baru dalam KUHP 2023," p. 39.

regarding the objectives and consequences of social work penalties, social history, occupational safety protection aspects, religious and political beliefs, and the defendant's ability to pay a fine before handing down this penalty in the verdict.³⁶

This approach reflects the principle of individualisation of punishment, which emphasizes that sentencing must consider the personal characteristics of the offender.³⁷ Social work penalties are imposed for a minimum of 8 (eight) hours and a maximum of 240 (two hundred and forty) hours, as stipulated in Article 85 paragraph (4).³⁸ The court decision regarding social work penalties must also state the duration of imprisonment or fine imposed, the number of hours per day along with the completion time frame, and sanctions for non-compliance as regulated in Article 85 paragraph (9).³⁹ In the post adjudication phase, supervision is carried out by the prosecutor, while correctional guidance is conducted by correctional officers, as stipulated in Article 85 paragraph (8).⁴⁰

The first challenge lies in the defendant's consent as a formal requirement for social work penalties. The New Criminal Code bases this consent on the Convention for the Protection of Human Rights and Fundamental Freedoms (Treaty of Rome 1950) and the International Covenant on Civil and Political Rights (New York Convention 1996),⁴¹ yet it does not regulate the minimum standard of explanation that must be delivered before consent is given unlike the international standards serving as its philosophical reference, which explicitly mandate oral or written explanations regarding the conditions, obligations, and rights of the convict. Consent without a comprehensive understanding of the legal consequences cannot be regarded as true *informed consent*,⁴² so this norm vacuum is prone to threatening the rights of defendants from vulnerable groups, impoverished communities, those with limited education, or those without legal representation, and demands the strengthening of mechanisms through technical regulations mandating written explanations, legal representation, and confirmation of the defendant's understanding.

The second challenge is found in the conversion mechanism of social work penalties into imprisonment or fines if the convict fails to perform their obligations. Article 85 paragraph (7) stipulates that a convict who, without a legitimate reason, fails to perform all or part of the social work penalty is obligated to repeat it, undergo substitute

³⁶ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85 ayat (2).

³⁷ Umar Husin, "Formulasi Penanganan Sanksi Pidana Kerja Sosial Terhadap Pelaku Korupsi Berbasis Keadilan," *Jurnal Penelitian Hukum De Jure* Vol. 23, No. 4 (2023), p. 502.

³⁸ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85 ayat (4).

³⁹ *Ibid.*, ayat (9).

⁴⁰ *Ibid.*, ayat (8).

⁴¹ Husin, "Formulasi Penanganan Sanksi Pidana Kerja Sosial Terhadap Pelaku Korupsi Berbasis Keadilan," p. 496.

⁴² UN General Assembly, "Tokyo Rules," Rule 12.3.

imprisonment, or pay a substitute fine in full or in part.⁴³ However, the Law does not provide a clear definition or parameters regarding the phrase "legitimate reason", so this norm vacuum creates legal uncertainty because the assessment of whether a reason is legitimate depends entirely on the discretion of officials in the field, potentially giving rise to disparities in law enforcement application across regions,⁴⁴ and requiring technical regulations that explicitly categorize acceptable reasons.

The third challenge relates to the institutional capacity of the Correctional Bureau (*Bapas*), which occupies a pivotal position in the New Criminal Code such that the effectiveness of social work penalties directly depends on it. *Bapas* possesses broad authority ranging from community research, determining third-party institutions as implementation sites, supervising convict compliance, to reporting implementation to the prosecutor, as sourced from the correctional function in Law Number 22 of 2022.⁴⁵ This extensive authority makes *Bapas* a pivot institution connecting court decisions with field execution, meaning the success of social work penalties is determined not only by judicial rulings, but also by the institutional capabilities of *Bapas*.

In practice, *Bapas* faces serious structural constraints. Data from the Correctional Database System as of March 2025 indicates that the capacity of correctional institutions and detention centers in Indonesia is 142,829, while the total occupancy reaches 274,317 people, resulting in a national overcapacity of 180 percent,⁴⁶ which burdens the assessment and guidance functions carried out by Correctional Officers, while supervisory functions become the responsibility of the prosecutor pursuant to Article 85 paragraph (8).⁴⁷ Although national registration of third-party institutions has begun to be centrally initiated, the standardization of their utilization at the regional level has not run optimally. The placement of convicts in schools, hospitals, social foundations, or public service institutions still completely depends on coordination networks independently built by each regional *Bapas*, resulting in an uneven availability of social work implementation sites across regions.

In addition, Indonesia does not yet possess a monitoring system capable of effectively verifying the presence and compliance of convicts, given that social work penalties are carried out outside correctional institutions.⁴⁸ Their implementation involves at least five institutions: the Court, the Prosecutor's Office, *Bapas*, Local Government,

⁴³ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85 ayat (7).

⁴⁴ Metty Ferriska dan Karantika Surya Soviani, "Pidana Kerja Sosial dalam KUHP Baru: Alternatif Pemidanaan yang Berorientasi Pemulihan," 2026.

⁴⁵ Indonesia, "Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasarakatan" (2022).

⁴⁶ Apri, Mompang L, dan Adelina, "Pidana Kerja Sosial dalam KUHP Baru," p. 232.

⁴⁷ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, pasal 85 ayat (8).

⁴⁸ Rudi Hartono Nainggolan, "Pidana Kerja Sosial Salah Satu Alternatif Mengurangi Kelebihan Kapasitas Dilembaga Pemasarakatan," *Jurnal Pemasarakatan Gevangen Menolong Warga Binaan Menjadi Orang Baik*, (2022), pp. 54-55.

and third-party institutions; however, neither the New Criminal Code nor related regulations regulate in detail the operational coordination mechanism among these institutions, including reporting procedures for violations and the relocation of convicts, making overlapping authorities and procedural confusion in the field difficult to avoid.

The fourth challenge also touches upon the dimensions of legal culture and sentencing orientation that have long been entrenched in the Indonesian criminal justice system.⁴⁹ The dominance of imprisonment for decades has caused a retributive paradigm to take deep root, both in the mindset of law enforcement officers and public perception, so that social work penalties are frequently viewed as a form of punishment that lacks a sufficient deterrent effect. This resistance is not merely a theoretical assumption: experience from the application of conditional sentencing in the old Criminal Code shows that although such instruments are normatively available, their use in court remains extremely limited, proving that the core problem is institutional resistance, rather than the absence of norms. Therefore, the success of social work penalties requires a systematic legal culture transformation strategy, encompassing law enforcement training programs and institutional incentive changes.⁵⁰

A similar experience is seen in the application of community-based sanctions in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System,⁵¹ which demonstrates that the mere availability of norms is insufficient without institutional readiness and implementing guidelines for social work penalties so that similar obstacles are not repeated. Such institutional challenges are also found in countries that implemented social work sanctions in a mature manner much earlier, such as the unpaid work (community payback) scheme in England and Wales, which despite operating for decades still faces bureaucratic barriers in staff recruitment, case backlogs, and operational disruptions during the COVID-19 pandemic that temporarily halted social work execution in the field for months.⁵² This comparison demonstrates that the issue of institutional capacity is not merely a weakness of Indonesia's newly established legal system, but a structural challenge also faced by nations with far more mature non-prison sentencing infrastructures; consequently, strengthening *Bapas* capacity moving forward must be designed as a sustainable mitigation mechanism, rather than a mere short-term technical solution.

The fifth challenge relates to the absence of operational and standardized sentencing guidelines. The New Criminal Code indeed provides a number of discretionary

⁴⁹ Indriani Sepsilia, Lies Sulistiani, dan Wanodyo Sulistyani, "Pidana Kerja Sosial dalam Hukum Pidana Indonesia : Analisis Terhadap Potensi Labeling dalam Kebijakan Pidana Kerja Sosial," *Jurnal Ilmiah Galuh Justisi* Vol. 14, No. 42 (2026), pp. 96-97.

⁵⁰ Feriandref et al., "Transformasi Tujuan Pemidanaan di Indonesia," pp. 14-19.

⁵¹ Indonesia, "Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," (2012).

⁵² By Nigel Bennett & Phil Bowen, "The Future of Unpaid Work. Payback with purpose," *Centre for Justice Innovation*, (2022).

consideration parameters for judges, but they are very general and lack clear weighting among factors, such that cases with similar characteristics have the potential to produce differing rulings across courts and reduce public trust in judicial consistency.⁵³ The formulation of sentencing guidelines that firmly regulate the criteria and weighting of judicial considerations is an urgent necessity so that disparities can be minimized without eliminating judges' discretionary authority.

The sixth challenge, which is closely intertwined with the previous challenges, is the incompleteness of implementing regulations as technical instruments for applying social work penalties. Although the New Criminal Code has formally entered into force and several agencies have issued sectoral internal guidelines, comprehensive integrative technical provisions at the Government Regulation level are still unavailable, covering execution procedures, cross-sectoral supervision standard operating procedures, inter-institutional coordination mechanisms, and criminal conversion procedures.⁵⁴ This situation creates a technical legal vacuum that can hinder law enforcement officers from applying social work penalties consistently across all regions of Indonesia.

From the perspective of criminal law policy, the existence of substantive norms without adequate technical regulation support will only yield partial and ineffective implementation. Implementing institutions lacking clear operational guidelines tend to develop their own procedures in an ad hoc manner, which further exacerbates application non-uniformity and opens avenues for potential abuse of discretion.⁵⁵ Therefore, the formulation of Government Regulations or Ministerial Regulations that comprehensively govern all technical aspects of social work penalties is a prerequisite that can no longer be delayed.

Beyond these six challenges, the implementation of social work penalties also faces the systemic risk of *net widening* a condition where alternative penalties actually expand the reach of punishment against offenders who previously would have only been sentenced to fines or conditional sentences, as argued by Cohen (1985) and widely cited in contemporary criminological literature. *Net widening* is an inherent risk of any alternative sentencing policy that is unaccompanied by strict application limits.⁵⁶

This risk is relevant in Indonesia because there is no provision that explicitly prioritizes social work penalties as a substitute for imprisonment rather than a substitute for fines or conditional sentences; thus, its application must be placed proportionally through sentencing guidelines that firmly classify the types and seriousness of offenses eligible to be reached. This gap between the normative ambitions of the New Criminal

⁵³ Arafat, "Paradigma Pemidanaan Baru dalam KUHP 2023," p. 39.

⁵⁴ Soviani, "Pidana Kerja Sosial dalam KUHP Baru: Alternatif Pemidanaan yang Berorientasi Pemulihan."

⁵⁵ Michael Tonry, "Intermediate Sanctions in Sentencing Guidelines," *Crime and Justice* Vol. 23 (1998).

⁵⁶ Elena Kantorowicz, "The 'Net-Widening' Problem and its Solutions: The Road to a Cheaper Sanctioning System," *SSRN Electronic Journal*, 2014, p. 5.

Code and the readiness of the legal system to realize them demonstrates that the legitimacy of sentencing policy is not measured solely by the completeness of its norms, but also by the actual capacity of the system to execute them consistently and fairly.

C. Jinayah Fiqh Review on the Implementation of Social Work Penalties in Law Number 1 of 2023

Social work penalties in Law Number 1 of 2023 concerning the Criminal Code can be viewed from the perspective of *fiqh jinayah*, particularly through the concept of *ta'zīr*. However, social work penalties cannot be regarded as absolutely equivalent to *ta'zīr*, as both originate from different legal bases and systems. *Ta'zīr* in *fiqh jinayah* is a form of punishment that provides space for the *ulil amri* (authorities) or judges to determine the type and measure of sanctions based on the offender's condition and public interest (*maṣlahah*).⁵⁷ Meanwhile, social work penalties constitute a modern form of punishment specifically regulated in Indonesian criminal law.⁵⁸ Therefore, the relationship between the two is more appropriately viewed from the conformity of their sentencing objectives and functions, rather than by equating them as a single legal category.

In terms of sentencing objectives, the concept of social work penalties actually bears a very close relationship with the essence of punishment or *'uqūbah* in *fiqh jinayah*. This concept aligns with the view of 'Abd al-Qādir 'Aūdah in *At-Tasyri' al-Jinā'ī al-Islāmī Muqāranan bi al-Qānūn al-Wad'ī*, which explains that punishment in Islam not only aims to provide retribution for criminal acts, but also possesses functions of deterrence (*zajr*) and offender reformation (*iṣlāḥ*).⁵⁹ Wahbah az-Zuhailī in *Al-Fiqh al-Islāmī wa Adillatuh* also places the educational function (*ta'dīb*) as one of the objectives of *'uqūbah* in *fiqh jinayah*.⁶⁰ When linked to social work penalties, these objectives are reflected in the form of punishment that does not immediately separate the offender from society through imprisonment, but imposes an obligation to perform work that has social utility. Such social work can serve as a form of accountability for the criminal act committed, while also providing an opportunity to reform their behavior. Thus, social work penalties not only entail legal consequences, but also incorporate elements of rehabilitation. Here, there is the element of *iṣlāḥ* due to the objective of reforming the offender, *zajr* because the punishment is expected to prevent the recurrence of criminal acts,

⁵⁷ Darsi Darsi, "Ta'zir dalam Perspektif Fiqh Jinayat", pp. 60-61.

⁵⁸ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 65 ayat (1) huruf e.

⁵⁹ Abdul Qadir Audah, *Sistem Hukum Pidana Islam (At-Tasyri' al-Jinā'ī al-Islāmī Muqāranan bi al-Qānūn al-Wad'ī)*, Jilid 1. terj. Temu Anwar (Jakarta: PT Lentera Basritama, 1992), p. 609.

⁶⁰ Wahbah Az-Zuhailī, *Fiqh Islam wa Adillatuhu*, Jilid 7. terj. Abdul Hayyie al-Kattani, et al. (Jakarta: Gema Insani, 2011), p. 315.

and *ta'dīb* because the offender is provided with experience and guidance through beneficial activities.⁶¹

This functional conformity is actually not a novel phenomenon emerging in modern times. Tracing back to the formative period of Islamic law (*tārīkh tasyrī'*), a sufficiently relevant precedent for the idea of punishment through work or service can be found in the decision of the Prophet Muhammad SAW after the Battle of Badar. At that time, captives who were unable to pay ransom were not subjected to corporal punishment, but were given the choice to teach reading and writing to the children of Medina until they became truly proficient.⁶² This precedent demonstrates that from the outset, Islamic law opened space for forms of punishment that are educational and oriented toward public interest, rather than purely retaliatory. This is further reinforced by the alignment of the functions of *iṣlāḥ*, *zajr*, and *ta'dīb* described previously.

The position of social work penalties as an alternative to short-term imprisonment aligns with the view of Aḥmad Fathī Bahnasī in *Syarī'ah al-Islāmiyyah* regarding the breadth of judicial *ijtihād* authority in determining non-custodial punishment alternatives.⁶³ Bahnasī emphasizes that judges are obligated to avoid imposing short term imprisonment to prevent the moral degradation of the offender. According to him, short-term imprisonment risks creating a space for contamination resulting from interaction between first time offenders and recidivists. Although Bahnasī did not specifically mention social work penalties, his ideas regarding the urgency of judicial discretion flexibility in seeking non-imprisonment alternatives provide strong theoretical legitimacy. Social work penalties can be viewed as a modern contextualization of this concept, where offenders continue to undergo legal consequences without having to be isolated from their social environment.

Functionally, social work penalties indeed act as a substitute for imprisonment. This position is interesting to explore further regarding its conformity with the category of '*uqūbah badaliyyah* (substitute punishment) as formulated by classical jurists (*fuqahā'*).⁶⁴ Research conducted by Bousaeed shows that substitute punishments ('*uqūbah badaliyyah*) in classical juristic practice were historically limited to conventional forms such as light flogging (*jald*), fines (*taghrīm mālī*), banishment (*naḥy wa taghrīb*), official summons to court (*i'lām wa istid'ā'*), and reprimand or social boycotting (*tawbīkh wa hajr*),⁶⁵ and social work was not among them. This penalty is more

⁶¹ Wilda Lestari, "Ta'zir Crimes in Islamic Criminal Law: Definition Legal Basis Types and Punishments," *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* Vol. 05, no. 1 (2024), pp. 23-24.

⁶² Sa'fiyurahman Al-Mubarakfuri, *Sirah Nabawiyah. terj. Kathur Suhardi* (Jakarta: Pustaka Al-Kautsar, 2001), p. 206.

⁶³ Ahmad Fathi Bahnasī, *Al-Siyāsah al-Jinā'iyyah fī al-Syarī'ah al-Islāmiyyah* Cet. Ke-2 (Kairo: Dār al-Syurūq, 1984), p. 143.

⁶⁴ Topo Santoso, *Asas-Asas Hukum Pidana Islam* Cet. ke-1 (Jakarta: Rajawali Pipers, 2016), p. 185.

⁶⁵ Salman Dua'ij Hamad Bousaeed, "Alternative Punishments to Imprisonment in Islamic Jurisprudence and its Contemporary Forms in the Bahraini Penal Code and Alternative Measures No. 18 of 2017," *Dirasat: Sharia and Law Sciences* 48, no. 4 (2021): 99–114.

appropriately categorized as a contemporary form of punishment (*suwar mu'āṣirah*) born from modern legal policy. In this regard, social work penalties share non-prison sanction characteristics similar to house arrest or electronic monitoring ankle bracelets compared to classical *badaliyyah* forms.⁶⁶ Thus, the alignment of social work penalties with Bahnasī's thought is functional, whereas its non-conformity with the *badaliyyah* category is historical-structural; these two aspects must be clearly distinguished to avoid conceptual ambiguity.

Although there are several conformities above, the scope of *ta'zīr* in *fiqh jinayah* is actually much broader than that of social work penalties. Al-Māwardī and 'Abd al-Qādir 'Aūdah explain that *ta'zīr* can take various forms of punishment depending on the severity of the act and the public interest to be achieved; under certain circumstances, it can even take the form of severe sanctions as long as public interest requires it.⁶⁷ This breadth serves as the basis for the *ulil amri* to formulate new forms of sanctions according to the needs of the times a principle generally reflected in the birth of social work penalties as a new form of punishment in Indonesian positive law, although the two remain distinct. *Ta'zīr* is a sphere of authority in *fiqh jinayah*, whereas social work penalties constitute a specific form of punishment whose application is strictly limited by Article 85 of Law Number 1 of 2023.⁶⁸ This difference in scope indicates that social work penalties cannot be simply equated with *ta'zīr* as a whole; what align precisely are their objectives and functions *iṣlāḥ*, *zajr*, and *ta'dīb* rather than their legal categories and bases.

An issue that also warrants attention is whether the obligation to undergo social work can be termed forced labor (*sukhrīyah* or forced labor), given that an "obligation to work" within a punishment may raise such concerns. However, Article 85 of Law Number 1 of 2023 requires the defendant's consent, thereby affirming its nature as a humanistic legal instrument rather than exploitation.⁶⁹ From the perspective of *fiqh jinayah*, this formal validity aligns with the concept of *ikrāh bi ḥaqqin* coercion justified by law on the basis of authoritative action (*siyāsah syar'īyyah*). This aligns with Wahbah az-Zuhailī's view in *Fiqh Islam wa Adillatuhu*, which asserts that coercion by official authorities to uphold justice or public rights has a legally valid status and remains binding as long as such action is oriented toward the general public interest (*al-maṣlaḥah al-'āmma*).⁷⁰ In Islamic law, particularly the Maliki school, the legal essence of *ta'zīr* strongly emphasizes

⁶⁶ Pedoman Jaksa Agung Nomor 4 Tahun 2023 tentang Pengawasan Penahanan Kota dan Penahanan Rumah pada Tahap Penyidikan dan Penuntutan. (2023).

⁶⁷ Imam Al-Mawardi, *Al-Ahkam As-Sulthaniyyah*, terj. Fadhlī Bahri (Jakarta: Darul Falah, 2000), 245; Aūdah, *Sistem Hukum Pidana Islam (At-Tasyri' al-Jinā'ī al-Islāmī Muqāranan bi al-Qānūn al-Wad'ī)*, Jilid 1. terj. Temu Anwar, p. 609.

⁶⁸ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 85.

⁶⁹ *Ibid.*, ayat (2)..

⁷⁰ az-Zuhailī, *Fiqh Islam wa Adillatuhu*, Jilid 7, p. 114.

the aspects of guidance (*ta'dīb*) and reformation (*iṣlāḥ*) without degrading the human dignity of the convict.⁷¹ This spirit of restoration aligns with the concept of social work penalties adopted in Indonesian positive law (the New Criminal Code). The requirement of consent from the defendant in the Criminal Code simultaneously proves that this type of punishment is not forced labor. Thus, the integration of this value positions social work penalties as a rehabilitation instrument that provides tangible benefits to both the offender and society.

Another issue no less important to examine is the authority and discretion of judges in imposing social work penalties. The concept of *ta'zīr ghayr muqaddarah* can be used to analyze judicial authority in imposing social work penalties based on Law Number 1 of 2023. Shaykh Muhammad bin Ibrahim at-Tuwaijiri in *Mawsū'ah al-Fiqh al-Islāmī* explains that if the conditions for a punishment with a predetermined measure (*'uqūbah muḥaddadah*) are not met, the sanction shifts to *'uqūbah ghayr muqaddarah*, whose decision is delegated to the judge in order to realize public interest (*maṣlaḥah*) and prevent harm (*mafsadah*).⁷² This principle can be used to view the character of social work penalties, which provide space for judges to determine the type of activity, duration, and execution based on the case as stipulated in Article 85 of Law Number 1 of 2023. However, the principle of *ta'zīr ghayr muqaddarah* does not mean categorizing social work penalties as *ta'zīr*. The concept merely provides a basis for understanding the transfer of sanction-determination authority to the judge and the orientation toward *maṣlaḥah*. Historically, social work was not recognized as a form of *ta'zīr* in classical juristic practice. Therefore, the parallels that can be drawn are limited to the principle of judicial authority and public interest orientation, rather than equating the form of social work penalties with *ta'zīr ghayr muqaddarah* within the classical fiqh heritage.

Overall, the above elaboration demonstrates that social work penalties exhibit conformity with Islamic legal principles at the level of function and objective, rather than in legal categories or legal bases. This conformity is reflected in the orientation of *iṣlāḥ*, *zajr*, and *ta'dīb* that imbues social work penalties, in the defendant's consent requirement that keeps it within humanitarian boundaries, and in the pattern of delegating authority to judges which aligns with the principle of *ghayr muqaddarah*. All three consistently show functional harmony between social work penalties and the principle of *'uqūbah* in Islam, without needing and without being able to equate social work penalties with *ta'zīr* as an identical legal concept.

⁷¹ Ahmad Wardi Muslich, *Hukum Pidana Islam (Fiqh Jinayah)*, Cet. ke-2 (Jakarta: Sinar Gra fika, 2005), pp. 242-243.

⁷² Syaikh Muhammad bin Ibrahim at-Tuwaijiri, Muhammad bin Ibrahim At-Tuwaijiri, *Ensiklopedi Islam Al-Kamil*, terj. Achmad Munir Badjeber et al (Jakarta: Darus Sunnah, 2017), Jilid 3, Bab Jinayah (Hukuman ta'zir dan Kewenangan Peradilan).

Conclusion

The regulation of social work penalties in Law Number 1 of 2023 represents a significant shift in Indonesia's sentencing policy, by positioning social work penalties as a distinct principal punishment while marking a shift in national criminal policy toward more humanistic sentencing. However, this normative strength has not been balanced with implementation readiness; a number of provisions intentionally delegated to implementing regulations remain unfulfilled, causing this progressive norm to operate without adequate legal infrastructure. The fundamental problem lies not in the validity of the norm, but in the absence of legal certainty at the operational technical level. From the perspective of *fiqh jinayah*, the conformity of social work penalties with Islamic law does not lie in their equivalence with *ta'zīr* as a legal institution, but in their success in realizing the essence of *'uqūbah* punishment that not only punishes, but also educates (*ta'dīb*) and reforms (*iṣlāḥ*). Therefore, juxtaposing social work penalties with *ta'zīr* is not an attempt to standardize legal categories, but rather proof that national criminal law and *fiqh jinayah*, despite differing sources and systems, can meet at the same objective. The more appropriate question to pose is not "whether social work penalties are *ta'zīr*", but rather "whether their implementation in the field reflects *maqāṣid al-'uqūbah*". In lies the relevance of the implementation gap: a norm that is philosophically aligned with public interest will lose its meaning if its practice fails to guarantee proper rights and rehabilitation for the convict. It should be noted that this study is normative and needs to be deepened through empirical research, particularly regarding the vacancy of the parameter for "legitimate reasons" in the conversion mechanism of Article 85 paragraph (7). Therefore, this study should be viewed as the inception of an idea that still needs to be re-tested, rather than the conclusion of academic discourse concerning social work penalties from a *fiqh jinayah* perspective.

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