

### APPLICATION OF COMMUNITY SERVICE SENTENCES AFTER ENACTMENT OF LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE (NATIONAL CRIMINAL CODE)

<sup>1</sup>Carissa Nuramallia Prihatna, <sup>2</sup>Beniharmoni Harefa

Faculty of Law, National Development University Veteran, Jakarta, Indonesia

Correspondent email: <sup>1</sup>[2210611225@mahasiswa.upnvj.ac.id](mailto:2210611225@mahasiswa.upnvj.ac.id), <sup>2</sup>[beniharefa@upnvj.ac.id](mailto:beniharefa@upnvj.ac.id)

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#### Abstract

*The implementation of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) introduces several new main punishments, one of which is social service, which is further regulated in Article 85 of the National Criminal Code. This research aims to examine how social service punishment is regulated in the National Criminal Code and how future criminal procedure law should be adjusted to align with the National Criminal Code in its implementation. The research method used in this research is normative juridical, with a statute, historical, and conceptual approach, and the existing data are analyzed qualitatively using descriptive writing techniques. This research found that the successful implementation of social services depends on the readiness of future regulatory implementing regulations, particularly the supervision process carried out by Prosecutors and the guidance provided by Social Workers, and on how Judges obtain data on the social history of defendants when considering sentencing. The establishment of implementing regulations in the form of a Government Regulation (PP) is urgently needed as an absolute requirement to ensure the imposition and implementation of social service punishment are practical, measurable, and capable of overcoming the problem of criminalization in Indonesia.*

*Keywords: National Criminal Code, Social Service Punishment, Criminal Procedure Law*

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## A. INTRODUCTION

Society is a group of individuals living in the same territory who share values, norms, and ways of interacting. Each individual has distinct characteristics that can lead to conflict and instability within society. From this, it is understood that society requires social control, which gives rise to law as an instrument to regulate all forms of individual behavior to achieve social stability and avoid conflict.

Law as social control is a formal system that explicitly sets out rules of behavior. Society is governed by applicable laws, accompanied by planned sanctions for violations, to create compliance with the existing regulations. The implementation of law involves several authorized officials whose task is to interpret the rules and impose sanctions on violators.<sup>1</sup>

Law is then further divided into several branches, one of which is criminal law. In practice, criminal law is often referred to as law with “special sanctions” because the punishments imposed in criminal law cause suffering.<sup>2</sup> Criminal law emerges in society as a tool to regulate and organize life, thereby maintaining public order. The functioning of criminal law is guided by two primary sources: substantive criminal law and procedural criminal law.

The primary sources of criminal law are divided into two sources: material (substantive) criminal law, which determines which acts constitute violations of the law and are punishable, and formal (procedural) criminal law, which regulates how the sanctions stipulated in substantive criminal law are to be implemented. In Indonesia, the source of material criminal law is the Criminal Code (KUHP), while the source of formal criminal law is the Criminal Procedure Code (KUHAP).<sup>3</sup>

Indonesia’s Criminal Code was enacted in 1946 as Law Number 1 of 1946. For decades, Indonesia used this Criminal Code as its material criminal law, until in 2023 the House of Representatives (DPR RI) officially passed Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), replacing the old Criminal Code. The old Criminal Code largely contained provisions inherited from Dutch colonial law and was considered no longer in line with current societal developments.<sup>4</sup>

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<sup>1</sup> Dian Aries Mujiburohman, *Pengantar Ilmu Hukum* (Yogyakarta: STPN Press, 2023).

<sup>2</sup> oly Viana Agustine, *Sistem Peradilan Pidana* (Depok: PT. Rajagrafindo, 2019).

<sup>3</sup> Agustine.

<sup>4</sup> Hasianna Maria D.K Turnip Parera, “Pidana Kerja Sosial Dalam Pembaharuan Hukum Pidana Indonesia Menurut Perspektif Historis Dan Perbandingan Hukum Pidana,” *Innovative: Journal Of Social Science Research* 4, no. 3 (2024): 2309–24, <https://doi.org/https://doi.org/10.31004/innovative.v4i3.10763>.

The National Criminal Code, which would come into force in 2026, features several differences from the old Code, one of which concerns the categories of principal punishments. Under the old Criminal Code, the main punishments included the death penalty, imprisonment, confinement, fines, and custodial sentences. The National Criminal Code revises the main punishments to be more oriented toward social restoration and human rights protection,<sup>5</sup> in the form of imprisonment, custodial sentences, supervision, fines, and community service.<sup>6</sup>

Community service is a non-custodial sanction imposed on offenders who commit minor offenses. Recognition of community service sanctions was first introduced through United Nations General Assembly Resolution No. 45/110 of December 14, 1990, concerning the Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).<sup>7</sup>

The Tokyo Rules state that imprisonment should be used as a last resort in sentencing, prioritizing non-custodial measures that balance the rights of the offender, the rights of the victim, and the interests of society. These rules on community-based sanctions may subsequently be incorporated into each state's national law. Indonesia adopts community service sanctions through Article 85 of the National Criminal Code.<sup>8</sup>

Article 85 of the National Criminal Code sets out the framework for community service punishment in nine paragraphs. Community service may be imposed only as an alternative to short-term imprisonment (less than five years) or to a lighter fine, and only with the offender's consent. The punishment is carried out in several settings, such as hospitals, orphanages, nursing homes, and other social institutions, depending on the offender's profession.<sup>9</sup> However, implementing community service carries the risk of practical issues in the future. Article 85, paragraph (2) of the National Criminal Code stipulates that the court must obtain the social background of the defendant to assess their background and readiness to undergo a community service sentence.<sup>10</sup> A potential issue that may arise is who or which institution is

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<sup>5</sup> Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 837–44, <https://doi.org/10.37680/almanhaj.v5i1.2815>.

<sup>6</sup> Beniharmoni Harefa and Abdul Kholiq, *Hukum Pidana* (Depok: PT. Rajagrafindo, 2024).

<sup>7</sup> Maria Ulfah, "Pidana Kerja Sosial, Tokyo Rules, Serta Tantangannya Di Masa Mendatang," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (2021): 517, <https://doi.org/10.24843/jmhu.2021.v10.i03.p07>.

<sup>8</sup> Ulfah.

<sup>9</sup> "Undang-Undang Nomor. 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," Pub. L. No. 1 (2023).

<sup>10</sup> Undang-Undang Nomor. 1 tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

responsible for carrying out such an assessment, whether it is the Judge directly or another institution acting on the Judge's order.

Based on this explanation, this research will raise this issue as the subject of a final research project. Therefore, the title chosen is "Application of Community Service Sentences After the Enactment of Law Number 1 of 2023 Concerning the Criminal Code (New Criminal Code)."

This research will explain how social service punishment is regulated in the National Criminal Code and how it will be adjusted when this kind of punishment is applied in future criminal proceedings. There have been several previous researches that is discussing about social service punishment, but there were some differences compared to this research which are the earlier studies are only concerned about the role of the supervision by the Prosecutor and its positive impacts, while this research will also discuss about the aspects of the judicial consideration in the sentencing process and the possible forms of supervision that will applied

## B. RESEARCH METHODS

Normative juridical research method is used in this research, namely by examining and analyzing law as norms, rules, and legal principles in positive law, using legal materials such as legislation, court decisions, contracts/agreements, legal principles, theories, and legal scholars' opinions.<sup>11</sup> The three main approaches employed are the statutory approach (statute approach), which works by reviewing all laws and regulations related to the topic studied. In this research, the author analyzes the National Criminal Code regarding the imposition of community service sanctions. The second approach the author uses in this research is the historical approach, which examines the background to the formation of specific legislation and its impact on society.<sup>12</sup> Through the historical approach, the author reviews the background and aims of introducing community service sanctions, so that future procedural law can properly implement these provisions. Lastly, a conceptual approach examines the doctrines and principles of punishment to understand the rationality and position of social work punishment, and whether it is in line with the objectives of modern punishment.

The data already collected from various sources are analyzed qualitatively and presented using a descriptive-analytical technique, explaining the problem-solving process in a detailed and systematic manner. The author in this research uses

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<sup>11</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

<sup>12</sup> Muhaimin.

descriptive qualitative data analysis by presenting the data obtained and then drawing conclusions as research findings.

### C. RESULTS AND DISCUSSIONS

#### Community Services Punishment as Regulated in The National Criminal Code

In applying criminal law, Indonesia uses the Criminal Code (KUHP) as its primary reference, with five principal punishments, including the death penalty, confinement, imprisonment, fines, and custodial sentences. In 2023, Indonesia reformed its criminal law by enacting the National Criminal Code, drafted to reflect Indonesia's conditions and prevailing norms. In addition to being deemed no longer in line with current standards, the old Criminal Code was also considered to be oriented towards retributive and restorative principles rather than the human rights principle. This can be seen in the types of main punishments that are still emphasized, the supporting of choice, and how the death penalty was still a subject of discourse, with a lot of questions raised, including whether the penalty is fair and whether it violates the human rights of those convicted.

Here is how we can see the differences between the two criminal codes: the National Criminal Code stipulates five principal punishments: imprisonment, confinement, fines, supervision, and community service. Among these, there are two new non-custodial principal punishments, one of which is community service. In practice, community service or social service has actually been used in Indonesia in the context of juvenile criminal justice. Community service for children is carried out through diversion, which, according to the Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice), refers to the authority of law enforcement officers to resolve cases without formal court proceedings. Diversion in Indonesia is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA).<sup>13</sup>

The application of diversion must consider the type of offense committed and the age of the child. Article 10 paragraph (2) of UU SPPA sets out various forms of sanctions under diversion; letter (e) mentions that one such sanction is community service for a maximum period of three months.<sup>14</sup>

<sup>13</sup> Mustaqim Almond, "Penerapan Syarat Diversi Berdasarkan Pasal 7 Angka 2 Undang-Undang Nomor 11 Tahun 2021 Tentang Sistem Peradilan Pidana Anak Di Tingkat Penyidikan (Studi Kasus Wilayah Hukum Polresta Pekanbaru)" (Universitas Indonesia, 2024).

<sup>14</sup> "Undang-Undang Nomor. 11 Tahun 2012 Tentang Sistem Peradilan Anak," Pub. L. No. 11 (2012).

With the enactment of the National Criminal Code in 2023 and its entry into force in January 2026, community or social services will no longer be limited to juvenile justice; they will apply generally across the criminal justice system. Community service is explained in Article 85 of the National Criminal Code, which contains nine paragraphs. It explains that community service may be imposed if:

- a. Someone with some conditions that is punishable by imprisonment of less than 5 (five) years due to their criminal offences;
- b. The Judge has imposed a maximum prison sentence of 6 (six) months or a fine with a maximum amount in category II.

In addition, the imposition of community service must meet several conditions of the defendants set out in paragraph (2), including:

- a. Their admission of the offense committed;
- b. Their ability to work;
- c. Their consent after receiving an explanation regarding the purpose and nature of community service;
- d. Their social background;
- e. Protection of their occupational safety;
- f. Their religion, beliefs, and political convictions; and
- g. Their ability to pay or execute fines.

Subsequent paragraphs of Article 85 provide further provisions, among others that community service activities may not be commercialized; that the community service has a duration of a minimum of 8 (eight) hours and 240 (two hundred and forty) hours in maximum; and that community service punishments must be explicitly stated in the court's decision.

The question then arises: what happens if the offender does not complete the community service without any valid reason? Article 85 paragraph (7) regulates that in such a case, the offender may be:

- a. Required to repeat the community service in whole or in part;
- b. Needed to serve the imprisonment that was initially replaced by community service in whole or in part, or
- c. Required to pay a fine as a substitute for community service in whole or in part.

Furthermore, the implementation of community service is supervised by the public Prosecutor, and the offender's guidance is provided by a community supervisor, as stipulated in paragraph (8).<sup>15</sup>

The formulation of community service in the National Criminal Code is expected to effectively address ongoing problems in Indonesia's sentencing system, in particular,

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<sup>15</sup> Undang-Undang Nomor. 1 tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

prison overcrowding. Overcrowding in correctional institutions (Lapas) occurs when the number of inmates exceeds the available capacity. Data from the Correctional Database System (SDP) of the Directorate General of Corrections (Dirjen PAS) as of September 2021 show that nationally, there were 266,421 inmates, while the total capacity of correctional facilities was only 135,561. This indicates that Indonesia experienced prison overcrowding of around 97% above its capacity.<sup>16</sup>

Overcrowding in prisons not only restricts inmates' movement but also creates a range of other problems, including increased potential for disturbances of order and security, suboptimal fulfillment of inmates' rights, failure to implement rehabilitation and reintegration programs effectively, and increased burden on the state budget for prison operations.<sup>17</sup>

The presence of non-custodial punishments, such as community service, in the National Criminal Code may help alleviate these problems, as not all offenders need to be sentenced to imprisonment. Offenders who meet the criteria may instead serve community-based sanctions. Community service is also considered capable of maintaining and developing the offender's role in society during the punishment period and after their reintegration into the community.

In fact, Indonesia is not the first country to introduce community service in its criminal justice system. The Netherlands and Portugal, for example, have long used non-custodial sanctions, such as community service. In the Netherlands, community service was first proposed in the 1960s following public criticism of imprisonment, which was perceived as increasingly inhumane. Community service has been implemented in the Netherlands since 2001 by Article 9 in conjunction with Articles 22c–22k of the Dutch Criminal Code. The Dutch Criminal Code doesn't list specific offenses about the exact field of community service that might be placed, but excludes recidivists and serious violent crime offenders or sexual violence. Similarly, Portugal has provided for community service through Articles 58 and 59 of its Criminal Code, which can be imposed as a substitute for custodial sentences of no more than one (1) year.<sup>18</sup>

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<sup>16</sup> Satria Nenda Eka Saputra and Muridah Isnawati, "Overcrowding Lembaga Pemasyarakatan (Lapas) Dalam Sistem Pemidanaan Di Indonesia," *Pagaruyuang Law Journal* 6, no. 1 (2022): 52–70, <https://doi.org/10.31869/plj.v0i0.3822>.

<sup>17</sup> Asiyah Jamilah and Hari Sutra Disemadi, "Pidana Kerja Sosial: Kebijakan Penanggulangan Overcrowding Penjara," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (2020): 26, <https://doi.org/10.29303/ius.v8i1.726>.

<sup>18</sup> Chandra Magdalena Erika Islamy Yolanda, Rusmiati Elis, "Analisis Pelaksanaan Pidana Kerja Sosial Berdasarkan RKUHP 2019," *Jurnal Ilmu Hukum* 18, no. 1 (2022): 1–15.

The implementation of community service in the Netherlands and Portugal has produced significant results. In the Netherlands, community service has reduced recidivism by up to 50% in the first year of its application. Portugal, meanwhile, has managed to resolve its prison overcrowding problem, as evidenced by data showing that its prison population decreased by about 44% annually.<sup>19</sup>

Learning from how successful the implementation of community service has been in the Netherlands and Portugal, it is hoped that Indonesia will also be able to successfully adopt community service and achieve the aims of punishment in the National Criminal Code, namely restorative and rehabilitative justice. However, challenges may still arise during implementation, particularly in relation to gaps or inconsistencies in the supporting regulations. For this reason, future criminal procedural law must be carefully harmonized with the provisions of the National Criminal Code in the application of community service sentences.

*Adjusting the Application of Community Service in Future Criminal Procedure Law*

The implementation of a law cannot be separated from the existence of supporting regulations that operationalize it. These are known as implementing rules of the law. The Criminal Code itself is a source, along with the formal law, in the form of the Criminal Procedure Code (KUHAP). Following the ratification of the Criminal Code, the next step is drafting the new Criminal Procedure Code.

KUHAP, which has been in force in Indonesia since 1981, was welcomed by legal circles as a great piece of Indonesian legislation. KUHAP, since that time, replaced the previous criminal procedure law, namely the *Herziene Inlandsch Reglement* (HIR), which was a Dutch creation and legacy.

Although it has been in force for several decades, KUHAP has gradually revealed its weaknesses. Unfortunately, these weaknesses have been exploited by a handful of parties to benefit themselves and their groups in the criminal justice process by taking advantage of loopholes or even violations of the KUHAP that seem to occur with impunity. One of the violations of the suspect's right to legal assistance during the investigation period. If a regulation that has been recorded can be freely violated, how much easier will it be to exploit loopholes in the gray area?

The revision of KUHAP is increasingly necessary after Indonesia revised its Criminal Code to the National Criminal Code in 2023, which will later serve as a source

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<sup>19</sup> Islamy Yolanda, Rusmiati Elis.



of substantive law and require a source of formal law, namely KUHAP, for the systematic implementation of the National Criminal Code that has been passed.

After a lengthy formulation process, the new KUHAP was finally passed in November 2025 and will take effect in 2026, along with the National Criminal Code. The formulation and ratification of KUHAP were not without obstacles and controversy. Several articles have sparked controversy, including those discussing the investigation and detention process, the scope of police authority in investigations, unlimited investigative methods, restorative justice in investigations, and the lack of need for the Judge's approval for wiretapping and seizure.

The controversies have certainly drawn public protests, even though the KUHAP bill was ultimately passed into law. In addition to KUHAP serving as a reference for criminal procedure law, the implementation of criminal penalties, including community service as stipulated in the National Criminal Code, will be more regulated explicitly in other regulations outside KUHAP. Unlike laws, which are enacted by the legislature (DPR), implementing regulations are drafted and enacted by the executive (government) without legislative involvement.<sup>20</sup>

Internationally, implementing regulations are known by various terms such as delegated legislation, subordinate legislation, subsidiary legislation, legislative instruments, or statutory instruments. In Indonesia, implementing regulations include Government Regulations (PP), Presidential Regulations (Perpres), Regional Regulations (Perda), Ministerial Regulations (Permen), and rules issued by institutions such as Bank Indonesia, the Audit Board (BPK), and the House of Representatives (DPR). Each of these has different functions and authorities, but overall, they ensure that laws enacted by the DPR and approved by the President are adequately implemented.<sup>21</sup>

Government Regulations (PP) occupy a central role in implementing laws. In essence, PPs are issued to regulate the implementation and enforcement of a law to achieve the state's goals. The 1945 Constitution stipulates that PPs must be promptly enacted after a law is passed. However, in practice, many PPs are issued late or not enacted at all, causing implementation gaps.<sup>22</sup>

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<sup>20</sup> Olivia Damayanti, "Pidana Kerja Sosial: Sebuah Paradigma Baru Pemidanaan," MARINews, 2025, <https://marinews.mahkamahagung.go.id/artikel/pidana-kerja-sosial-sebuah-paradigma-baru-pemidanaan-0yv#:~:text=pemidanaan di Indonesia.-,Pasal 85 KUHP Nasional menjelaskan bahwa pidana kerja sosial dapat,kategori II sebesar Rp10.000.000%2C>.

<sup>21</sup> Damayanti.

<sup>22</sup> Parluhutan Sagala, Ilman Hadi, and Arief Fahmi Lubis, "Hukuman Pidana Tutupan Sebagai Sanksi Pidana Untuk Masa Keadaan Bahaya/Darurat," *Jurnal Intelek Insan Cendikia* 2, no. 1 (2025): 799–811, <https://doi.org/https://jicnusanantara.com/index.php/jiic/article/view/2250>.

Like other laws, the Criminal Code also requires Government Regulations to organize its implementation. The old Criminal Code was supported by several PPs that provided procedures for implementing its provisions. One example is PP No. 8 of 1948 concerning Custodial Houses, which regulated the implementation of custodial sentences contained in the old Criminal Code. PP No. 8 of 1948 governed matters such as supervision, officers on duty, the number of persons accommodated in one custodial house, and what prison officers may or may not do.<sup>23</sup>

Article 85 paragraph (8) of the National Criminal Code provides that the authority to supervise the implementation of community service rests with the public Prosecutor. In contrast, the authority to guide offenders lies with community supervisors. This arrangement requires coordination between the two institutions. However, there is currently no regulation governing the mechanisms for coordinating, implementing, and reporting community service sentences imposed on offenders.

In addition, the form and procedures for prosecutorial supervision have not been clearly regulated. To prevent issues such as offenders failing to carry out the service as ordered, administrative supervision mechanisms should be specified—for example, the obligation for offenders to report periodically, with frequency clearly regulated to monitor their compliance.

Technical supervision also needs to be regulated, including schedules for prosecutors to conduct on-site monitoring to prevent misuse or deviation from the community service order. The frequency and form of such visits must be clearly stipulated. Furthermore, prosecutors tasked with supervision must be required to report their findings to the head of the relevant division, in line with current practice within the prosecution service. If a prosecutor fails to perform their supervisory tasks properly, sanctions should be specified for such neglect.<sup>24</sup>

Turning to the process of imposing community service, Article 85 paragraph (2) stipulates that in deciding whether to impose community service, judges must consider several factors, including the social background of the defendant. Therefore, implementing regulations are needed to govern the procedures by which judges obtain the defendant's social background:

- a. Whether local government institutions or other agencies should provide the information;

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<sup>23</sup> Parluhutan Sagala, Ilman Hadi, and Arief Fahmi Lubis.

<sup>24</sup> Fadhil Aji Nugraha, "TINJAUAN TERHADAP SANKSI PIDANA KERJA SOSIAL DALAM UNDANG-UNDANG NOMOR 1 TAHUN 2023 TENTANG KITAB UNDANG-UNDANG HUKUM PIDANA," *Universitas Islam Indonesia* (Universitas Islam Indonesia, 2024).

- b. How the coordination process is carried out; and h
- c. How the information is ultimately delivered to the court.

Without clear procedures, it will be difficult for judges to obtain reliable social background information, which is essential for assessing the suitability of community service as a punishment in individual cases.

#### D. CONCLUSION

The introduction of community service as a punishment in the National Criminal Code is not entirely new to Indonesia. In juvenile cases resolved through diversion, community service—referred to as social service—has already been applied under UU SPPA.

Community service in the National Criminal Code is regulated in Article 85, which contains nine paragraphs that set out in detail what community service is, how it is imposed, and the sanctions that apply in the event of non-compliance. This form of punishment is seen as a progressive legal breakthrough, not only because it emphasizes restorative and rehabilitative principles, but also because it is expected to help address a fundamental problem in Indonesia's criminal justice system: prison overcrowding, which has reached alarming levels.

The successful experience of the Netherlands and Portugal, both of which have reduced prison overcrowding and recidivism through community service, reinforces the potential of this punishment to bring positive change in Indonesia.

However, the success of community service depends heavily on the readiness and completeness of implementing regulations. The provisions in the National Criminal Code are still normative in nature and leave critical challenges for future criminal procedure law, including coordination between prosecutors and community supervisors in supervision and guidance, clear procedures and standards for supervision, and mechanisms for judges to obtain reliable social background information on defendants as a basis for imposing community service.

In conclusion, the formulation of Government Regulations (PP) and other detailed, comprehensive implementing regulations is an absolute prerequisite for effectively, consistently, and measurably applying community service sentences in the future.

Based on the research and the conclusions that have been conducted, the recommendation that can be given is that, before the National Criminal Code is enacted and community service is implemented, the government should immediately issue the implementing regulations so that the implementation of community service can proceed as it should. Furthermore, the implementing rules that would be place should regulate

how to establish a strict but fair monitoring system that doesn't violate the rights of convicts, regulations related to coordination between institutions to prevent friction during the implementation process, and clearly regulate how the social history of the defendant can be presented to the Judge and used in the sentencing process later on.

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