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THE CONSTRUCTION OF SOCIAL WORK CRIMINAL SANCTIONS IN INDONESIAN CRIMINAL LAW: FORMULATION AND ORIENTATION IN INDONESIAN CRIMINAL LAW

Adwi Mulvana Hadi

Bandung College of Law adwimulyanah@gmail.com

Yaris Adhial Fajrin

Muhammadiyah University Malang yaris@umm.ac.id

Ade Sathya Sanathana Ishwara

University of Mataram adesathya20@gmail.com

ABSTRACT

Social work criminal sanctions are one of the types of sanctions formulated in the New Criminal Code (NCC). Social work criminal sanctions are oriented towards providing a deterrent effect and educating convicts so that they do not repeat the crimes they have committed. This study focuses on the analysis of the construction of social work criminal sanctions in Indonesian criminal law. This type of research is normative legal research that emphasizes conceptual and statutory approaches. The results of the study show that the concept of the formulation of social work criminal sanctions in the NCC is actually based on the theory of punishment which is retributive in nature, namely it aims to provide a deterrent effect for perpetrators of criminal acts. Social work criminal sanctions in the NCC are also an implementation of an integrative punishment system that emphasizes the human dimension and is oriented towards making convicts part of society. The orientation of social work criminal sanctions in the NCC should be carried out while guaranteeing convicts' rights and community participation to oversee the implementation of social work criminal sanctions. Suggestions from this study are the need for guidelines and technical guidelines for the implementation of social work criminal sanctions so that they can guide law enforcement officials in carrying out social work criminal sanctions.

Keywords: Criminal Law, Social Work, Criminal Sanctions.

INTRODUCTION

Sanctions are one of the important aspects in criminal law reform. Sanctions are important as one of the instruments in criminal law enforcement so that criminals are prevented from repeating their activities. The philosophy of punishment selected by a country influences one sort of sanction in a country's criminal code. If a country adheres to a penal theory that places crime in retaliation, then the types of sanctions that exist generally have a retaliatory character, for example such as the imposition of the death penalty for murderers. What is different is when a country adheres to a retributive theory of punishment, where the orientation of

¹Faisal Faisal, Derita Prapti Rahayu, and Yokotani Yokotani, (2022), "Criminal Sanctions' Reformulation in the Reclamation of the Mining Community," Fiat Justisia: Jurnal Ilmu Hukum 16, no. 1: 11-30, https://doi.org/10.25041/fiatjustisia. v16no1.2222.

sanctions is to try to make the perpetrator convert and potentially not repeat similar crimes in the future.² The adoption of Law No. 1 of 2023 about the Criminal Code (New Criminal Code or NCC), which reforms Indonesian criminal law, has a different penalty substance than the Old Criminal Code. One of the changes in the substance of punishments is impacted by the NCC's retributive retribution paradigm. The NCC's retributive theory is a form of crystallization of the development of Indonesian criminal law that emphasizes strengthening a more substantive criminal law based on Pancasila values, as well as a form of accommodating the global development of criminal law.³

The interesting thing about the suspension of the NCC is the regulation of social work criminal sanctions. Social criminal sanctions are one of the new sanction's orientations in the NCC as stipulated in Article 85 paragraph (1) of the NCC. This social criminal sanction has an orientation to sensitize and deter perpetrators of criminal acts, so that it is hoped that perpetrators will not repeat the criminal acts committed.⁴ The purpose of this research is to examine the formation of social work criminal punishments in Indonesian criminal law. Several prior academics did study on the subject of social work criminal punishments in Indonesia. Some of the research on social work criminal sanctions include: first, research conducted by Widyastuti (2020) with his analysis that focuses on analyzing social work crimes from a sociological perspective of law. The novelty of the research conducted by Widyastuti (2020) is that viewed from the perspective of legal sociology, social work criminal sanctions are considered more effective and in accordance with the purpose of criminal law to provide a deterrent effect to perpetrators of criminal acts.⁵

The second research was conducted by Zuraidah (2022) who looked at the urgency of implementing social work criminal sanctions in corruption crimes. The novelty of the research conducted by Zuraidah (2022) is that the application of social work criminal sanctions in corruption crimes is considered more effective than in the form of returning assets that have been corrupted to the state. The next study, which is the third research conducted by Mulyono and Latifah (2023), discusses the application of social work crimes to traffic crimes.⁷ The novelty of this study is that social work criminal sanctions are considered more effective in tackling traffic crimes, especially in an effort to cause a deterrent effect.

The three previous studies above actually focused on the application of social work criminal sanctions to be applied to certain aspects such as corruption and traffic crimes. This further emphasizes that the research that the author did is original because the analysis of social work criminal sanctions in the perspective of the NCC has not received serious attention from the previous three previous studies.

²Hajairin Hajairin et al., (2022), "Kebijakan Pidana Pengawasan Dalam Pembaharuan Hukum Pidana Indonesia," *Iblam* Law Review 2, no. 2: 165-74, https://doi.org/10.52249/ilr.v2i2.81.

³Teafani Kaunang Slat, (2020), "Sanksi Pidana Kerja Sosial Terhadap Tindak Pidana Ringan Sebagai Upaya Pembaharuan Hukum Pidana Nasional," Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan 4, no. 2: 352, https://doi. org/10.17977/um019v4i2p352-360.

⁴Luna Dezeana Ticoalu, Relys Sandi Ariani, and Herlin Sri Wahyuni, (2021), "Konsep Kerja Sosial Sebagai Alternatif Pidana Pokok Berperspektif Social Defence Dan Budaya Moral Dalam Upaya Penegakan Hukum Tindak Pidana Korupsi Di Indonesia," Jurnal Hukum Lex Generalis 2, no. 7: 555-67, https://doi.org/10.56370/jhlg.v2i7.88.

⁵Bheti Widyastuti, (2020), "Kajian Pidana Kerja Sosial Ditinjau Dari Segi Sosiologi Hukum," *Pascasarjana Hukum UNS* 8, no. 2: 56-63.

⁶Zuraidah, (2022), "Pidana Kerja Sosial Sebagai Pembaharuan Hukum Pidana Dalam Perkara Tindak Pidana Korupsi," Presumption of Law 4, no. 1: 1–18.

Latifah Fakultas Galih Puji Mulyono, "Pemidanaan Kerja Sosial Dalam Perspektif Pembaharuan Hukum Lalu Lintas Di Indonesia," Yurispruden 6, no. 1 (2023): 52–66, https://doi.org/10.33474/yur.v6i1.16915.

METHOD

This type of research that discusses the analysis of the construction of social work criminal sanctions in the NCC is normative legal research whose orientation coherently examines legal concepts and theories as an analysis of a positive legal provision. The primary legal materials in this study are the 1945 NRI Constitution and the NCC. Secondary legal material consists of recent journal articles (5-10 years earlier) that specifically discuss social work criminal sanctions supported by books, proceedings, and various research results that discuss Indonesian criminal law. Non-legal material is a dictionary of languages. The analysis in this study puts forward conceptual and legislative approaches.

ANALYSIS AND DISCUSSION

The Concept of Formulation of Social Work Criminal Sanctions in the New Criminal Code

The issue of the type of sanctions of criminal law is one of the important discourses in the development of criminal law in the world, including in Indonesia. Sanctions are a vital aspect of criminal law and with these sanctions, criminal law has a means of coercion so that criminal law norms can be obeyed by society. One of the developments of discourse on sanctions in criminal law is the orientation to optimally minimize the existence of sanctions that are imprisonment or that emphasize the derogation or deprivation of individual freedom rights such as prison sanctions to the imposition of alternative sanctions that are considered more humane and have an orientation to educate prisoners.

The orientation to establish an alternative sanction that is humane in nature and has an orientation to educate prisoners in the context of criminal law is at least influenced by three aspects, namely: First, the development of the idea of human rights protection. The massive idea of optimally implementing human rights protection, one of which has implications for minimizing corporal punishment or punishment that is in nature shackles the human rights of each individual. In the perspective of human rights, the provision of a criminal sanction must emphasize the purpose of punishment to make perpetrators of criminal acts become converted to their actions while guaranteeing human rights. Second, there is an orientation towards the development of retributive criminal goals that emphasizes two aspects, namely the educational dimension for criminal offenders and the restorative orientation (healing) to victims of criminal acts. This orientation also has a direction to minimize the existence of prison sanctions so that other alternative sanctions can be pursued to continue to show educative aspects for criminal offenders. Third, there is a fact in the form of problems in the Penitentiary (Lapas) that prisons on the one hand actually become "schools" or places where prisoners are increasingly free to carry out their actions. In the prison of the prison of their actions.

This can be seen from the prison where narcotics prisoners where drug crimes still exist and are carried out in Lapas. This fact shows that efforts to provide criminal sanctions actually

⁸I Made Pasek Diantha, Metodologi Penelitian Hukum Normatif, Cetakan ke (Jakarta: Prenadamedia Group, 2017).

⁹Fahmi Fahmi, Rai Iqsandri, and Rizana Rizana, (2022), "The Use Of The Concept Of Restorative Justice Against The Criminal Act Of Murse In The Policepekanbaru City Resort," *Jurnal Gagasan Hukum* 4, no. 01: 42–49, https://doi.org/10.31849/jgh.v4i01.10165.

¹⁰Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, (2022), "Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia," *Journal of Human Rights, Culture and Legal System* 2, no. 1: 66–77, https://doi.org/10.53955/jhcls.v2i1.31.

¹¹Nur Rochaeti et al., (2023), "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1: 87–104, https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104.

¹²Idham Idham and Lenny Nadriana, (2022), "Diskriptif Sistem Pembinaan Narapidana Di Lembaga Pemasyarakatan Dalam Tindak Pidana Narkotika (Studi Di Lembaga Pemasyarakatan Narkotika Kelas Ii A Bandar Lampung)," *Audi Et AP : Jurnal Penelitian Hukum* 1, no. 2: 108–16, https://doi.org/10.24967/jaeap.v1i02.1672.

cause problems and not every criminal act is relevant to the existence of criminal sanctions. The problem regarding prison sanctions then made the formation of the NCC in Indonesia formulate a new criminal sanction in the form of social work sanctions or in other terms referred to as community service order. ¹³ Social work criminal sanctions are new sanctions that are part of the national criminal law policy. In Sudarto's view, criminal law policy is classified in three aspects, namely: narrowly, broadly, and broadest.¹⁴ Narrowly, criminal law policy is only concerned with aspects of placing certain legal principles as a guide to criminal law. Broadly speaking, criminal law policy includes the sacrifice of law enforcement officials in order to implement new legal provisions in criminal law. Most broadly, criminal law policy is carried out with positive legal changes relating to criminal law.¹⁵

According Sudarto, it can be concluded that social work criminal sanctions are part of the national criminal law policy with the reform of criminal law through the establishment of the NCC. One of the important orientations of the adoption of the form of social work criminal sanctions is related to the reformulation of Indonesian criminal law which not only focuses on aspects of legal acts or actions, but also based on perpetrators. Criminal law that only refers to legal acts or actions is considered to only solve problems formally, so even if there are criminal sanctions there is no guarantee that criminal offenders do not repeat their actions. Criminal law that focuses on perpetrators is a progressive orientation in the NCC so that perpetrators who commit crimes are considered to need to be educated so as not to repeat their actions. 16 Another orientation of the formulation of social work sanctions is an attempt to apply a penal philosophy whose orientation is to provide guidance to perpetrators of criminal acts.¹⁷ This orientation in the form of coaching is a progressive effort because it sees criminal sanctions as a place for prisoners to learn and change their behavior to be positive.

After the criminal sanctions are completed, the prisoner is expected to return as a human being as usual. This orientation in the form of coaching is generally expected to minimize the negative impact of punishment so far, which in the social context actually causes stigmatization in society.¹⁸ This makes criminal offenders unable to socialize after completing criminal sanctions and even the potential to repeat criminal acts committed is also quite high. Referring to Marc Ancel's view, social work sanctions are actually criminal control based on societal orientation.¹⁹ This confirms that in social work sanctions, an inmate is oriented to do work that is social in nature and provides benefits to society. Related to social work sanctions, this also has relevance to the conception of integrative punishment as proposed by Muladi. Muladi believes that the optimal penal system in Indonesia is an integrative penal system, which emphasizes the humanitarian dimension as well as other values listed in Pancasila.²⁰

According to Muladi, the integrative penal system based on Pancasila values places each prisoner not as a "bad person", but a person who "made a mistake" so that he must provide

¹³Rd Dewi Asri Yustia, (2021), "Implementasi Model Pidana Kerja Sosial Berbasis Nilai-Nilai Hukum Adat Sunda," *Lit*igasi 22, no. 2: 272-86.

¹⁴Myrna A. Safitri et al., (2021), "Urgensi Nilai-Nilai Pancasila Dalam Pengaturan Tentang Pemasyarakatan," *Pancasila*: Jurnal Keindonesiaan 01, no. 02: 247-65, https://doi.org/10.52738/pjk.v1i2.19.

⁵Fradhana Putra Disantara et al., (2022), "Enigma Pemberantasan Korupsi Di Masa Pandemi COVID-19," *JURNAL USM* LAW REVIEW 5, no. 1: 61–79, https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4135.

¹⁶Nurul Restu Azyanti Ilham Nur Pratama, (2022), "Application of Restorative Justice in the Settlement Of Corruption Crimes," Corruptio 2, no. 2: 139, https://doi.org/10.29240/negrei.v2i2.5854.

¹⁷Emaliawati Emaliawati, Bonarsius Saragih, and Aji Mulyana, (2022), "Effectiveness of Social Work Sanction as a Substitute for Imprisonment in The Perspective of Sentencing Purposes," Jurnal Penelitian Hukum De Jure 22, no. 3: 325, https:// doi.org/10.30641/dejure.2022.v22.325-336.

¹⁸Ahmad Rifai Rahawarin, (2020), "Sanksi Pidana Suatu Gagasan Tiga Sistem Sanksi (Trisisa) Hukum Pidana (Kajian Pidana Utama Khusus Pidana Penjara)," Legal Pluralism 10, no. 1: 4.

¹⁹Jamin Ginting, (2020), "Sanksi Kerja Sosial Sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum Di Indonesia," Law Review 19, no. 3: 246, https://doi.org/10.19166/lr.v19i3.2098.

²⁰Ira Alia Maerani and Siti Rodhiyah Dwi Istinah, (2022), "The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)," Jurnal Daulat Hukum 5, no. 4: 300-317.

compensation for his mistakes and promise not to repeat his mistakes again.²¹ This orientation is actually relevant to the formulation of social work sanctions which indeed place a prisoner as a person who "makes a mistake" so that it is hoped that with the social work sanctions the prisoner will not repeat his actions. The application of social work sanctions is also supported by the NCC which emphasizes the penal system in the form of a double track system. Doble track system is a penal system that emphasizes that in addition to criminal sanctions, criminal offenders can also be subject to various other actions as treatment.²² The application of the double track system along with the addition of types of criminal sanctions further strengthens the application of social work sanctions in the NCC. Social work criminal sanctions actually have three main objectives, namely: first the purpose is to protect the community.²³ In essence, the application of social work sanctions is aimed at restoring balance in society as a result of a criminal act that has been committed.

In addition to trying to restore balance in society, social work sanctions also actually place criminal offenders as part of society so that they are expected to return to society after undergoing sanctions. The next goal is the goal to protect each individual or each individual. This goal can be seen from two sides, namely individual perpetrators and individual victims of criminal acts. From the individual aspect of the perpetrator, social work criminal sanctions also protect the perpetrators from other types of sanctions that actually substantively deprive personal freedom. From the personal aspect of the victim of a crime, this actually aims to limit the perpetrator's space to commit a crime so that the potential to commit another crime can be miimalized. The next goal is an effort to protect the country. With the sanction of social work, it can ease the burden of the state to facilitate and finance the daily needs of prisoners in prison. Social work sanctions in addition to minimizing the burden of near can also succeed the role of the state to help the community, social work criminal sanctions orient criminal actors to do work that is beneficial to society.

The formulation in the NCC regarding social work criminal sanctions is actually contained in Article 85 paragraph (1) which confirms that the imposition of social work criminal sanctions is only for crimes whose criminal threat is less than five years. This indicates that social work criminal sanctions can only be applied to minor crimes. In addition to minor crimes with a characteristic criminal threat of five years or more, social work criminal sanctions cannot be imposed. Article 85 paragraph (1) of the NCC emphasizes the role of judges in determining the imposition of social work criminal sanctions which must pay attention to several parameters, such as: the defendant's work ability, the defendant's confession related to having committed a criminal act, the defendant agrees to various consequences of social work crimes, work safety for the defendant, the defendant's social history, the defendant's ability to pay fines, and the defendant's political, religious, or religious understanding or beliefs. Sanctions in the form of social work also have prohibitions such as social work crimes are prohibited from being commercialized. In addition, the time to carry out social work sanctions is also given a maximum limit of eight hours per day while still providing rest time and time to carry out worship.

In a matter of one week, the criminal sanction of social work can only be carried out a maximum of two hundred and forty hours a week. An important point in the criminal sanction of social work is its obligation to be contained in court decisions. The inclusion of social work criminal sanctions in court decisions as in the formulation of Article 85 paragraph (6)

²¹Barda Nawai Arief Muladi, (1998), *Teori-Teori Dan Kebijakan Pidana*, 2nd ed. Bandung: Alumni.

²²Erdianto Effendi, (2022), "Penjatuhan Pidana Ganti Rugi Sebagai Pidana Pokok Dalam Kejahatan Terhadap Harta Benda," *Jurnal Usm Law Review* 5, no. 2: 618, https://doi.org/10.26623/julr.v5i2.5355.

²³Muridah Isnawati, (2021), "The Urgence of Indonesian Penal Code (KUHP) Reform to Realize Humanistic-Based Imprisonment," *Borobudur Law Review* 3, no. 1: 73–83.

of the NCC that if the convicted person does not carry out social work criminal sanctions as appropriate, it is mandatory to repeat all or part of the social work criminal sanctions. In addition, due to court decisions, convicts are also required to carry out social work criminal sanctions as a result of being able to pay the amount of fines imposed on convicts. Related to the supervision of the implementation of criminal sanctions, social work is carried out by community supervisors and prosecutors. This supervision aims to ensure that criminal sanctions for social work are appropriately implemented. Based on the analysis above, it can be concluded that the concept of the formulation of social work criminal sanctions in the NCC is actually based on the theory of retributive punishment, which aims to provide a deterrent effect for criminal offenders. In addition, social work criminal sanctions in the NCC are also an implementation of an integrative penal system that emphasizes the humanitarian dimension and is oriented towards making prisoners part of society.

The Orientation of the Work Criminal Sanctions in the New Criminal Code

The formulation of social work criminal sanctions in the NCC as stipulated in Article 85 of the NCC has an orientation not to make imprisonment the only criminal sanction that can be imposed on every criminal offense. Although there have been criminal fines, the main problem with the application of fines is that not all levels of Indonesian society have the economic and financial ability to pay fines. The limitations of Indonesian society that not all criminal offenders can pay fines is what then gives rise to social work criminal sanctions in the NCC.²⁴ In relation to the penal system in Indonesia, social work criminal sanctions are actually relevant to be applied in Indonesia with three arguments. First, social work criminal sanctions are actually an integrative penal system that emphasizes prisoners are part of society and therefore must be returned to society. With the criminal sanction of social work, prisoners can contribute in the form of certain work for the benefit of society. Second, social work criminal sanctions are considered as a solution to the existence of imprisonment and fines that have caused problems in criminal law so far.

Imprisonment sanctions actually do not guarantee recovery for victims as a result of criminal acts as well as there is no guarantee for criminal offenders not to repeat their actions.²⁵ In addition, criminal sanctions also cause problems when the financial and economic capabilities of criminal offenders are insufficient to pay fines. The existence of these problems makes social work criminal sanctions actually a solution for criminal offenders who cannot pay criminal fines. Third, social work criminal sanctions can assist the state in its duties to carry out a certain activity that gets assistance from prisoners who carry out social work criminal sanctions. In addition, social work criminal sanctions can ease the state's burden related to the cost of accommodation for prisoners in prison, which with the phenomenon of ove reapacity from prisons actually swells and burdens state finances. ²⁶ From the three relevant explanations related to social work criminal sanctions in Indonesia above, it can be seen that social work criminal sanctions are actually very relevant to be applied in the penal system in Indonesia. The relevance of social work criminal sanctions to be applied in Indonesia still needs to be noted, including, first, the application of social work criminal sanctions in this case depends

²⁴Idham and Nadriana, "Diskriptif Sistem Pembinaan Narapidana Di Lembaga Pemasyarakatan Dalam Tindak Pidana Narkotika (Studi Di Lembaga Pemasyarakatan Narkotika Kelas Ii A Bandar Lampung)."

²⁵Marisa Kurnianingsih and Wiranto Tri Setiawan, (2023), "Menakar Pidana Kerja Sosial Sebagai Paradigma Baru Konsep Pemidanaan Perkara Korupsi Berbasis Determinisme Cultural," Justisi 9, no. 2: 116-32.

²⁶S. Samsu and H. M. Ŷasin, (2021), "Optimalisasi Pelaksanaan Pembinaan Residivis Narapidana Narkotika Pada Lembaga Pemasyarakatan," Al-Ishlah: Jurnal Ilmiah Hukum 24, no. 1: 18–38, https://doi.org/10.56087/aijih.v24i1.60.

heavily on the judge's discretion. This means that the integrity and professionalism of judges must be established before efforts to optimally carry out social work criminal sanctions.²⁷

This is so that social work criminal sanctions can be applied to the right people so that the purpose of punishment can be achieved. Second, the guarantee of human rights protection for prisoners who carry out criminal sanctions for social work needs attention. This is such as guaranteeing proper consumption or food for prisoners who carry out social work criminal sanctions and other rights that must be fulfilled such as the right to intercourse and the right for prisoners to rest in carrying out social work criminal sanctions. This needs attention so that the criminal sanction of social work does not become like "modern slavery" facilitated by criminal law reform. Guarantee of rights for prisoners who carry out social work criminal sanctions is important to be carried out in order to optimize the purpose of punishment to provide a deterrent effect for perpetrators and not to enslave perpetrators. Third, referring to the formulation of the NCC that supervision related to the implementation of social work criminal sanctions is carried out by prosecutors and community supervisors. In order to be more optimal and ensure public transparency, it is necessary to involve the role of the general public in supervising the implementation of social work criminal sanctions in accordance with legal provisions.

In addition, supervision of the implementation of social work criminal sanctions by involving the general public is also intended so that the time for implementing social work criminal sanctions takes place optimally and there is no excess time to implement social work criminal sanctions that can harm the rights of prisoners. Referring to the three notes related to the implementation of social work criminal sanctions above, the future orientation regarding social work criminal sanctions needs to obtain general guidelines through the establishment of Government Regulations (PP) as a follow-up to the NCC. The PP, which was formed to accommodate various provisions in the NCC, must make at least the principles and guarantees of human rights in the implementation of social work criminal sanctions, including the provision of sanctions for law enforcement officials who impose social work criminal sanctions outside the provisions of laws and regulations. It is also important to do so that law enforcement officials, especially the Prosecutor's Office and the Ministry of Law and Human Rights, are obliged to provide technical guidelines regarding the implementation of social work criminal sanctions in accordance with the mandate of the NCC.

CONCLUSION

The concept of the formulation of social work criminal sanctions in the NCC is actually based on the theory of retributive punishment, which aims to provide a deterrent effect for criminal offenders. In addition, social work criminal sanctions in the NCC are also an implementation of an integrative penal system that emphasizes the humanitarian dimension and is oriented towards making prisoners part of society. The orientation of social work criminal sanctions in the NCC should be carried out while guaranteeing the rights of prisoners, especially rights related to proper consumption in carrying out social work criminal sanctions and the right to rest and intercourse. It is also important to note regarding social work criminal sanctions in the NCC is the need for community participation to supervise the implementation of social work criminal sanctions. Therefore, there is a need for guidelines and technical guidelines for the implementation of social work criminal sanctions in order to guide law enforcement officials in carrying out social work criminal sanctions.

²⁷Itok Dwi Kurniawan Vincentius Patria Setyawan, (2021), "The Urgence Of Rechterlijk Pardon Regulation In Criminal Law Renewal," *Inovasi Penelitian* 2, no. 2: 124–34, https://doi.org/10.31857/s013116462104007x.

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