

THE URGENCY OF JUDICIAL SUPERVISION TO JUVENILE OFFENDER IN THE RENEWAL OF CHILDREN CRIMINAL LAW

Ni Nyoman Juwita Arsawati

ABSTRACT

Children are an integral part of human survival and the state, so that children are able to be responsible for the survival of the nation and the state is necessary to provide the widest possible opportunity to grow and develop in an optimal physical, mental, and social. State, government, communities, families and parents are required to provide protection and ensure the fulfillment of children's rights in accordance with the duties and responsibilities. The statement raises the question as juvenile offender imposed imprisonment, due to the fact that imprisonment is not able to prevent crime in quantity and quality, giving rise to criticism. The imposition of imprisonment of children in conflict with the law has not been able to provide protection for children and contrary to the principle of best interests for children. The imposition of imprisonment much cause harm either to the offender or the community. The loss in question is deprivation of liberty children and criminological stigmatizing or label/stamp carried in the life beyond. It is certainly contrary to the values contained in Pancasila, especially in the 2nd principle, "humanitarian", because children as children of the nation at some point to be useful for their families, communities and nation. The face of this, the Indonesian government criminal law reform with criminal specifics and alternative form of judicial supervision by Act No. 11 of 2012 on Child Criminal Justice System. So that through judicial supervision is expected to be more effective than imprisonment because the criminal oversight of children's rights is still protected through guidance and rehabilitation.

Key words: judicial supervision, juvenile offender, criminal law, renewal.

1. INTRODUCTION

News reports about children as perpetrators increasingly prevalent with various types of crimes committed. Based on the results of the Indonesian Child Protection Commission (KPAI) of Republic of Indonesia, children in Correctional Institution until 2014 amounted to 6,717, of the number of cases of theft is high at 4,211, persecution 663, drug 548, domestic violence 544, gambling 239, public order 163, and 353 decency, conducted mostly by boys, ages 13-18 years, even up to under 10 years, with 30% of primary school, junior high school 64% and 6%. The records indicate that the judge in deciding the case of children tend to use imprisonment than other criminal sanctions.

Indeed, when it is viewed from the aspect of protection or the interests of society, a punishment is said to be effective, if the punishment as far as possible to prevent or reduce crime, because the criteria lies in how far imprisonment in preventing people not to commit a crime. Supposedly, the imposition of imprisonment can reduce the level of crime in the community, for the purpose of sentences is that the perpetrator was a deterrent, but it seems there is no effect of the imposition of imprisonment by decreasing the amount of crime.

The imposition of imprisonment is very detrimental, because in quantity and quality cannot change the child's behavior. The imposition of imprisonment may lead to a "stamp / label" or "stigma" in children. Based on the results of research in Children Correctional Institution in Tangerang, the imposition of imprisonment cannot change behavior for the better; on the contrary, children become more virulent after undergoing imprisonment. Children will experience the pressures of emotions in dealing with officials in prison, and each prison officers in social interaction with the inmates of children, whether consciously or not prison officers have placed the convict them as a child who is serving his sentence. The situation is contrary to The Beijing Rules "Resolution No.40 / 33 November 29, 1985 (Standard Minimum Rules of the United Nations Concerning the Administration of Justice for Children), which in principle determines the "placement of the child in an institution is the last option to run the shortest possible time", as well as parole as far as possible use by authorities decent".

The juvenile justice system was developed a century ago with rehabilitation and protection as its central tenets. The adult criminal justice system, on the other hand, is designed to mete out punishment for crimes, with retribution and incapacitation as central objectives. The goals of the two systems are different by design, a clear acknowledgement that youth crime is fundamentally different from adult crime.¹ Most people take the existence of the formal criminal justice system for granted. They do not realize that this method of handling deviant activity has not been the norm throughout history.² Related to the above, the

¹ Elizabeth Cauffman, Caitlin Cavanagh, Sachiko Donley, and April Gile Thomas. "A Developmental Perspective on Adolescent Risk- Taking and Criminal Behavior". Alex R. Piquero (ed.). (2016). *The Handbook of Criminological Theory*, West Sussex: Wiley, p. 108.

² William G. Doerner and Steven P. Lab. (2012). *Victimology Sixth Edition*, Burlington: Elsevier, p. 1.

government of Indonesia through the Act of Republic of Indonesia No. 11 of 2012 on Child Criminal Justice System has determined one of the alternative punishment stipulated in Article 77 paragraph (1) and (2) in the form of judicial supervision for a minimum period of 3 (three) months and a maximum of 2 (two) years against juvenile offender under the judicial supervision of the prosecutor.

Substantively, arrangements of judicial supervision is certainly a new step, even in various countries including Indonesia have tried to find other ways of imposition of imprisonment which include increased criminalization of non-institutional. In accordance with the purpose of teaching of "social defense" is about to eliminate the danger to the community by holding social reintegration of the offender. Because criminal law is maintained as one means to "social defense" in the sense of protecting the public against crime by repairing or restoring (rehabilitation) the offender without reducing the individual balance (the offender) and the public. However, problem arises when society cannot accept that judicial supervision is not a punishment for the execution of the sentence is not in prison.

2. PROBLEM QUESTIONS

Based on the above, later in this paper the author formulates two (2) issues as follows:

1. How should the judicial supervision arrangements of juvenile offender in the renewal of legal system in Indonesia?
2. Is the judicial supervision of juvenile offender relevant to the purpose of punishment in Indonesia?

3. RESULT AND DISCUSSION

A. Basic Idea of Constituent Lists Judicial supervision as Alternative against Juvenile offender.

1. Judicial Supervision in Criminal Punishment System

The issue of punishment in criminal law cannot be separated with the philosophical thought of punishment, because the philosophy of punishment contained the basic ideas of punishment that serves as the foundation and normative principles as well as a guideline, criterion or paradigm to the problem of crime and punishment. The sociological study of punishment examines the relationship between crime, punishment and society. It looks at punishment as a social phenomenon and, in particular, the role of punishment in social life. While punishment occurs in a variety of different contexts – in the home, at school and at work, for instance – the focus here is on the legal punishment of offenders. This legal punishment is a complex process that involves the making of laws, the trial, conviction and sentencing of offenders, and the administration of particular penalties.³ It is related to the idea of the passing of Act No.11 of 2012 on the Criminal Justice System Child, which adopts a double track system that regulates the types of criminal sanctions and the sanctions in the form of action. In 1973, the Texas Legislature enacted Title 3 of the Family Code, which formed the statutory basis for juvenile law in this state.⁴

Criminal law is always associated with punishment. Even on a practical level, the difference between criminal and often act a bit sketchy, but at the level of the basic idea both have fundamental differences. Criminal punishment rooted in the idea of "why held convictions" while the sanctions, the opposite of the idea of "to what was held convictions that" in other words, the criminal sanction is more focused on action through the imposition of suffering so concerned is a deterrent, while the sanctions, the focus on a quilt so that the perpetrators can be changed.⁵ Criminal sanctions are in retaliation against perpetrators fault, while the action is for the protection of society and guidance to the offender.

Criminal punishment should be based on the fundamentals of justification as to avoid retaliation, didactic, and has the function of maintaining peace. Judicial supervision is based on the best interests of the child principle. This principle is contained in Article 3 Convention on The Rights of The Child. The article states:

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- (2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- (3) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

³ Ian Marsh, et.al. (2014). *Criminal Justice An introduction to philosophies, theories and practice*, London: Routledge, p. 1.

⁴ The Attorney General. (2016). *Juvenile Justice Handbook*, Texas: The Attorney General Texas, p. 1.

⁵ Nashrina. (2012). *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, Jakarta: Raja Grafindo Persada, p.81

The formulation of judicial supervision in the Act of Republic of Indonesia No. 11 of 2012 on Child Criminal Justice System that imposed against the child, of course, that the sentence imposed is more humane. A light punishment is done to alleviate the suffering caused in the process of restoring offenders into society, in order to achieve a useful system of criminal law and have practical usability. Useful is intended not only for the community, but more importantly is beneficial for children as perpetrators, while easier practical application of criminal law without requiring complicated procedures but does not deviate from the principles of law applicable.

2. The purpose of judicial supervision to the juvenile offender

When author associates with the idea of inclusion of judicial supervision mentioned in the formulation of academic texts of Draft of the Act of Republic of Indonesia 11 of 2012 on the Child Criminal Justice System, "children need to be given special protection, because before the maturity of the child both physically and spiritually, then one of their need of guarantee and special care, including appropriate legal protection before as well as after birth." The formulation in the academic text, obviously the aim is, children under any circumstances (including juvenile offender) still require to obtain protection, because philosophically as a dignified nation and uphold religious values, the issue of juvenile offender should be given the best priorities for the child, because the law should help people to be able to develop in accordance with the nature of upholding human dignity, fair, ensure commonality and freedom, advance the interests and general welfare.⁶

Formulation of judicial supervision in the Act of Republic of Indonesia No.11 of 2012 on the Child Criminal Justice System, an effort to make criminal punishment against children is not solely to imprisonment, for the imposition of imprisonment cannot resolve the legal issues that occur in children, but it otherwise the child crimes committed in recent decades increasing both quality and quantity. Such situation suggests that the criminal law has not become a means to prevent and solve crimes that occur. According to Barda Nawawi Arief, there are several factors that cause limitations of criminal law in combating crime, among others:

- a. The causes of crime are so complex is beyond the reach of criminal law;
- b. The criminal law is only a small part (sub-system) of the means of social control that is impossible to overcome the problem of evil as humanitarian and social issues are very complex (as socio-psychological, socio-political, socio-cultural, and so on);
- c. The use of criminal law in tackling crime is only a "*kurierenam symptom*", therefore the criminal law is only "symptomatic treatment" and not "a causative treatment";
- d. criminal law sanctions is "*remedium*" containing properties of contradictions / *pradoks* and contain the elements as well as the negative side effects;
- e. Criminal system is fragmentary and individual / personal, non-structural / functional;
- f. The limited range of criminal sanctions and criminal sanctions formulation system that is rigid and imperative;
- g. The working / functioning of the criminal law requires a means of support are more varied and more demanding "high cost".⁷

At the international level through the United Nations to the 8th congress on Crime Prevention on the context of development which was held in 1990 in Havana Cuba, identified factors conducive that cause crime among other:

- a. Poverty, unemployment, illiteracy (foolishness), lack of proper housing and education systems and training systems that do not match;
- b. The increasing number of people who do not have the prospect (hope) for the social integration process, as well as the worsening social inequalities;
- c. Weakening of social ties and family;
- d. The circumstances / conditions that make it difficult for people who emigrated to the cities or to other countries;
- e. Damage to or destruction of indigenous cultural identity, which together with their racism and discrimination caused losses / weaknesses in the areas of social welfare and in the work environment;
- f. Decreased or pullback (quality) of the urban environment that encourages an increase in crime and reduced (insufficient) services to areas of environmental facilities / neighbors;
- g. The difficulties for people in modern society to integrate properly in a community, in the family / relatives, where workers or the school environment;
- h. Abuse of alcohol, drugs and others who use also expanded due to the factors mentioned above;
- i. Widespread activity organized crime, especially drug trafficking and fencing stolen goods;
- j. Urges ideas and attitudes (especially the media) that lead to violence, inequality (right) or attitudes of intolerance.⁸

The use of criminal law in public life until today, is still a necessity that cannot be ruled out as the primary means of crime prevention, but its use must be consistent in order to provide protection both to convict and to the public especially to children in

⁶ Nasir Djamil. (2013). *Anak Bukan Untuk Dihukum, Catatan Pembahasan Undang-Undang Sistem Peradilan Pidana Anak (UU-SPPA)* Jakarta: Sinar Grafika, p.53

⁷ Barda Nawawi Arief. (2012). *Beberapa Aspek Kebijakan Penegakan dan pengembangan Hukum Pidana*, Bandung: PT.Citra Aditya Bakti, p.47.

⁸*Ibid.*, p.13-14

order to sentence imposed properly. Right to provide benefits to the child while providing protection to the rights attached to the child. On that basis, select and define the relevant judicial supervision imposed against children for a rational approach, based on certain considerations are well-grounded. Individualizes theory born from positive flow requires objective of sentencing is to change behavior, personality of the perpetrator in order to leave bad habits that are contrary to legal norms in force.

In the development of modern criminal law, punishment is directed at humanitarian approaches, which always pays attention to humanity as a whole human being and deserves to get humane treatment, directed to rehabilitation, reeducation, re-socialization, social re-adaptation, and social reintegration. It is certainly in accordance with the purpose of punishment for a child is to give child protection, for the protection and welfare of children is a fundamental right of every child. Therefore, the law must still provide protection, care, guidance and education, since the purpose of the criminal justice process for the child is not alone in his conviction, but the improvement, maintenance and protection of children and the prevention of the repetition of acts that have been carried out.

B. The arrangement of judicial supervision of the juvenile offender in the criminal justice system reform in Indonesia.

1. Weakness of Imprisonment

The principle of national development of Indonesia one of which are based on the appreciation of the attitude of law enforcers towards the rule of law, justice and the protection of human dignity. The law not only as a means, both functional and instrumental, which can be relied upon in legal life in the community, because if the law is dominant and decisive role, then there is an indication that social norms are in a state of weakness or as if it was not functioning. Likewise, it can be said, *mutatis mutandis*, if the social norms of the dominant and decisive role, the role of law as if excluded

Reform of criminal law in Indonesia is carried out by various approaches, either by adopting international legal instruments, or by exploring the legal values that exist in society. Hoping to change the law to reflect fairness and rooted in values that exist in Indonesian society, it is time to do. The 2nd United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1960 in London has been formulated that Congress recognized in many cases, imprisonment may be dangerous that the offender may be contaminated, but to abolish in practice impossible, so gradually the reduction by increasing forms of substitute or alternative other form of criminal probation, judicial supervision / probation, fines, work outside the institution and other measures that do not contain a deprivation of liberty.

In the perspective of restorative justice, the case must be changed, no longer aimed at order, but rather for the sake of the victim and its material and psychic recovery. In essence, how to avoid the perpetrators from imprisonment, but remain responsible.⁹ On humanitarian grounds, imprisonment is increasingly disliked by the public, because it not only affects the actor, also have an impact on families and the people who depend on the perpetrator, because the negative impact of imprisonment. Regarding restorative justice, Heather Strang says:

Today, the term 'restorative justice' covers a multitude of justice innovations that have taken place across the Western world over the past several decades. With roots in so many indigenous and preindustrial traditions of conflict resolution, new programs based on principles of reparation and reconciliation sprang into existence from the mid-1970s in North America in reaction to a widespread sense of dissatisfaction with the formal justice system, especially from the perspective of crime victims.¹⁰

would lose rights of his life in the form of:

1. Right to Survival (Survive Rights)
The State guarantees the continuity of the right to life for every child because it is the nature of life.
2. The Right to Protection (Protection Rights)
Protection is meant for children regarding the prohibition of discrimination, prohibition of child exploitation, and also protection in emergencies for children.
3. The right to Growth (Development Rights)
Child is entitled to access to education in all forms and levels, and standard of living adequate for the development of physical, mental, spiritual, moral and social development.¹¹

Problems arise when a child commits an offense, the sentence imposed is imprisonment, and by imprisonment actually makes children feel unhappy and not free. That means that criminal punishment against children is inappropriate and not helpful because it creates consequences unfair treatment and to increase suffering for children. This is consistent with the view of the theory of Jeremy Bentham is basically "the greatest happiness of the greatest number" (the principle of happiness as much as

⁹ Ali Zaidan. (2015). *Menuju Pembaharuan Hukum Pidana*, Jakarta: Sinar Grafika, p. 245

¹⁰ Heather Strang, "Experiments in Restorative Justice", Peter Drahos (ed.). (2017). *Regulatory Theory*, ANU, Canberra, p. 484.

¹¹ Andi Hamzah. (2016). *Sistem Pidana dan Pemidanaan Indonesia*, (Jakarta: Pradnya Paramitha. p. 81.

possible) it means, the ideal society is a society that is trying to increase happiness and minimize unhappiness, so unhappiness bit may be felt by the general public, because everyone is equal.

According to Lemert, that children who had received the stamp / label that has been attached to him, the person will be difficult to escape from the cap / label in question, so that will be identified with a stamp that has been given to her community.¹² On that basis, according to the author, the government in the effort to make changes or reform of the criminal system in Indonesia, should be able to analyze in depth and thoughtful towards the goal of punishment, because the problem of punishment cannot be separated from human rights and human dignity. Today, the issue of juvenile offender is seriously enough, and a problem that is more serious when the child is sentenced to prison. Imposition of imprisonment does not give the protection of children, and the protection is meant juridical which involves all the legal rules that directly affect the lives of children.

C. The Strength of Judicial supervision of the Juvenile offender

Jeremy Bentham with the theory of utility said that the benefits of the law is ushering people to achieve happiness in society, because of the ideal society is a society that is trying to increase happiness and minimize unhappiness, or people who try to give happiness as much as possible to the people in general, in order to cultivated as little as possible unhappiness felt by the people in general.¹³ For over a century, states have believed that the juvenile justice system was a vehicle to protect the public by providing a system that responds to children who are maturing into adulthood. In USA, states recognize that children who commit crimes are different from adults: as a class, they are less blameworthy, and they have a greater capacity for change. To respond to these differences, states have established a separate court system for juveniles, and they have created a separate, youth-based service delivery system that is different than that provided to adults.¹⁴

The child has the right to survival, growth and development, participation and the right to protection from violence, discrimination and freedom.¹⁵ Through judicial supervision imposed against children, happiness can still be felt without eliminating mistakes that have been made, because children are still given the opportunity to do an activity that have to be implemented without prejudice to the rights of children to protection from physical suffering badly when a child is imprisoned. Considering that child's life journey is still long, the solution rather than being punished, but it is improved through the development of both religious and education. Through judicial supervision penalty, children still have a chance, because the form of judicial supervision has advantages against children as criminals.

In addition, through the judicial supervision, children as perpetrators still receive protection without eliminating the crimes committed. Based on that, the imposition of judicial supervision not only to the interests of children as perpetrators, as well as to the public interest, because the supervision penalty included protection of the public is also against the perpetrators in the form of providing protection by doing rehabilitation. The aim of this judicial supervision is to rehabilitate offenders, protecting people and preventing the perpetrator of a criminal act further). Similarly, through judicial supervision, children's rights can already be protected, because protecting children are all activities to ensure and protect children and their rights in order to live, grow, and develop and participate optimally in accordance with human dignity, and to avoid from violence and discrimination. On that basis, the state and the government, the community, the parents and families, should provide protection to children in the form of:

- a. Respecting and ensuring the rights of every child regardless of race, religion, race, class, gender, ethnicity, culture and language, the legal status of the child, the order of the family, birth order, and physical and / or mental;
- b. Providing infrastructure support in the implementation of child protection. e.g., school, playground, sports fields, houses of worship, public health offices, the building arts, recreation, nursing areas, daycare, and special child detention;
- c. Ensuring protection, maintenance, and welfare of children with attention to the rights and duties of parents or guardians or other persons legally responsible for the child;
- d. Guaranteeing children to use their right of expression in accordance with the child's age and level of intelligence.

In connection with the criminal punishment against children that can protect the rights of the child, a judge must be more flexible in choosing the sanctions imposed both in terms of type and severity whose aim is to be able to prosper children even if their children have committed a crime. In accordance with Rule 16 of The Beijing Rules that "social research is needed in the trial of a child to be taken into consideration law enforcement".

The debate between the prosecution by legal counsel during the trials more revolves around the efforts to prove the crime (criminal act), and very few witnesses who argued about the objective conditions (physical and practical and social conditions) of

¹² Lemert in Romli Atmasasmita. (2013). *Teori dan Kapita Selektia Kriminologi*, Bandung: PT.Eresco., p.51

¹³ Achmad Ali. (2012). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Jurisprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Jakarta: Kencana Prenada MediaGroup, p. 274

¹⁴ Juvenile Law Center, "Youth in the Justice System: An Overview", <http://jlc.org/news-room/media-resources/youth-justice-system-overview>

¹⁵ Lilik Mulyadi. (2014). *Wajah Sisten Peradilan Pidana Anak Indonesia*, Bandung: PT Alumni, p. 1.

the defendant. At the stage of awarding the opinion by a guardian parent or foster parent, discretion is more demand (for example, given fairest sentence), and it is very few that explain the child's condition during this and future of children and the risks that may arise if verdict.

In that basis, the alternatives to the settlement of child case are required currently by avoiding punitive sanctions in the sense of sheer revenge, because the criminal sanction is not the only tool to punish children become a better child.

4. CONCLUSION

- A. The imposition of judicial supervision to juvenile offender is quite relevant, since the purpose of punishment inflicted on children is not solely on conviction, but the law can provide protection and services directed to rehabilitation, reeducation, re-socialization, social re-adaptation, and social reintegration. Thus, it will give birth to a more humanistic punishment that always pay attention to the whole of humanity as human beings and deserve humane treatment. Given philosophically as a dignified nation and uphold religious values, the issue of juvenile offender should be given priority is best for the child, because the law should help people to be able to develop in accordance with his nature.
- B. Imposition of imprisonment against juvenile offender has not been able to provide protection to children. On that basis, the government in an effort to renew the law against criminal system, should be able to analyze in depth and thoughtful towards the objective of sentencing, because the problem of punishment cannot be separated from human rights and human dignity. Criminal judicial supervision of children is the right step to be able to provide protection to the rights of the child, because the child can avoid the stigma or labeling. An attempt to humanize the child as a whole human being, socialized with the community can be achieved.

5. SUGGESTIONS

- A. The Government of the Republic of Indonesia for the immediate issue of the Implementing Regulations of Act No.11 of 2012 on the Criminal Justice System of the Child, to be used as a guideline by law enforcement in the juvenile justice process in order to achieve legal certainty, especially in judicial supervision against juvenile offender.
- B. In order to achieve humane judicial proceedings to juvenile offender starting from the process of investigation, prosecution and trial, the government to immediately establish a special criminal justice agencies children accompanied by law enforcement, so that justice is achieved in accordance with the purpose of protecting the rights of children in accordance with the dignity and status as the nation.

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c). **Article**

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Ni Nyoman Juwita Arsawati
Faculty of Law, Undiknas University,
Jalan Bedugul No 39 Sidakarya,
Denpasar, Bali, Indonesia.
Email: juwitaarsawatihukum@gmail.com