

EDUCATIVE PUNISHMENT MODEL FOR CHILDREN AS JUVENILE DELINQUENCY

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ABSTRACT

Punishment Model in Indonesia until now sometimes still treats children who are involved in criminal action as an offender who are punished as an offender of a criminal action that is conducted by adults. The Children are placed in a position as villains that deserve to get the same punishment as adults and it is legal in this country. On the other hand, the Punishment itself is more oriented to individuals as an offender and it is commonly called individual responsibility that the offender was considered as an individual who are able to responsible completely against their action they have committed. Mean while children are considered as individuals who have not yet realized the action they have done, it is because children are individuals who have not mature enough in the way of thinking. Educative Punishment model, in the future that will be appropriate for children as criminal offender is not by giving them criminal punishment and putting them in to prison. The sanction is not the main objective for punishing the children, because an imprisonment is ultimum remedium. Giving sanction educationally should have been the main consideration of the judges in imposing sanctions.

Keywords: *educative punishment model, juvenile delinquency*

INTRODUCTION

Special Courts for children (juvenile courts) was held in order to solve the problem of criminal acts committed by those who belong to the children, all who are living in a judicial hearing is mandatory for children in the courts in the judicial environment. The law on the juvenile court will provide a legal basis for the protection of national laws through a judicial order. In addition to Act No. 3 of 1997 concerning the juvenile court which is updated by law No. 11 year 2012 about the criminal justice system for juvenile delinquency, which is intended as a legal device which is more steady and sufficient in carrying out construction and providing legal protection of children as well as law enforcement is problematic with the rights of the child and the child law to embody the principle of the best interests of the child (the best interest of the child). Existing provisions in the law concerning the juvenile court has been partly refers to the signs of this kind. Children as immature individuals need to get legal protection/juridical (legal protection) in order to secure his interests as a member of the community. Based on the background of the problems can be formulated as follows: How is the right punishment model for children as criminal offender?

RESEARCH METHOD

Approach

Method approach which is used in this study is the method of Juridical Sociological approach. This method is used because this study is emphasized on the science of law and review of the legal norms applies in the community relating to punishment model against children as criminal offender. It is one alternative in dealing with children' cases, by using versioned and the concept of Restorative justice which also analyses the implementation on the reality. The concept of Restorative justice should be a reconsideration in handling cases of children because this concept involves all parties in order to repair the morality of children so that the children will not repeat the deed but do not feel to be felons that might affect the mental development of the children. Educative punishment model should be the main priority of the judges in deciding the verdict. Putting the children in prison should always be the last alternative and it should last in a short periode of term. Putting them in some institutions that offer the benefits and social functions as well as improvements to the child is better, but it is also expected that those institutions can provide them care, protection, education and the specific skills that are useful so it can educate with. Therefore, that will help them to play roles that are socially constructive and productive in society. The location of the research study was conducted in Prison Kutoarjo.

FINDING AND DISCUSSION

Educative Punishment Model For Juvenile Delinquency

Punishment Model on Children as Criminal Offender in Indonesia at this time as it sets in Juvenile Court Kutoarjo Practice, is handling the Juvenile Delinquency based on law No. 3 of 1997. The punishment tends to be punitive. Children as offenders should get special attention in the juvenile prison, but as a matter of fact, they are put in the same prison together with adults' prisoner. The judges as the last institution who determine the fate of the children prefer to punish by putting the children into Prisons rather than providing an alternative verdict. In fact putting children into the Prison are not the only best way for moral improvement and behavior of the children.

Custody before the Court ruling set out often put together with adult prisoners. Article 45, paragraph (3) and paragraph (4) of Act No. 3 of 1997 states that the place of detention of children should be separated from adults and since the children are arrested, the

children' need for physical, spiritual, and social should be remain full filled. The number of children special detention house in Indonesia has still not complied. The Strategy that should be accomplished to protect children who are forced to be placed in adult PRISONS is to put them in different rooms separate from adult prisoners. This is to avoid negative consequences because we need to be aware of the bad experiences that may happen to the children so it will affect their mental development. On the contrary, due to the limitations of the detention rooms for children, which eventually result a problem, that is putting the children into PRISON which actually intended for adults, with the separation base on gender.

But the blending children custody with adult prisoners are very dangerous. Beside it does not reflect the children protection. The children could have been learned of some experiences of committing a crime they have ever known before and moreover children can be the victim of sexual abuse while in custody. At the moment by the existence of Act No. 3 of 1997 concerning to the juvenile court has not been able to be a consideration of the judges in giving an alternative penalty as written in Article 24.

The penalty of criminal action must be accounted for and beneficial for the child. This is to avoid the unexpected consequences for the children, so the ethical basis for punishment is putting Justice as the only basis of giving punishment. The criminal punishment should be educative, constructive, and not destructive. It should meet the interests of the children. The granting of a penalty to the children, by giving them punishment should follow the guidance and moral attitudes, conducted by religion institutions. Education and working training still get minimum attention from the judges at the moment.

Children who were in against the law are the children who alleged, charged with or convicted guilty of violating criminal law. Juvenile Delinquency has become the major issue in a number of big countries in the world for a long time. The immersed of Beijing Rules has been the objective and spirit of the judicial system of children throughout the world. It becomes the basic common principles to be achieved in carrying out children judicial. What is stated and written in it is the minimum condition considered worthy by the United Nations in dealing with the offender of criminal acts in any system. If we look at the Standard Minimum Rules issued by the United Nations about its Administrative Child Justice (the Beijing Rules) and passed through the UN Assembly resolution No. 40/33 on 29 November 1985, has the General principles regarding:

- a. the age of Criminal Liability : not too low, considering the maturity of emotional, mental and intellectual
- b. objectives of the judiciary : balance between offences with offenders
- c. Discretion Scope Allowed in the entire stage of the judiciary
- d. children's rights : presumption of innocence, the right to be notified will be prosecuted against him, the right to remain silent, the right to a lawyer, the right to the presence of the parent or guardian, the right to confront and cross-examine penalties, right of appeal
- e. protection of privacy : no inappropriate publications, not There is a process of stigmatization.

On (Rule 14-18); The United Nations Standard Minimum Rules For The Administration of Juvenile Justice (Beijing Rules) mentioned that the placement of children in institutions of correction (prison) should be placed as a last resort, and even then only for the short term. The detention of children solely for reasons of trial delays avoided. (Rule 21-23); after the children pass through the process of trial, in the end they can be placed in the institution or may be outside of the institution to be built.

The implementation of the children management outside the institute should be prepared well a by involving one independent institution that is, e.g. parole probation, institutions that aware of children welfare with qualified officers, and supported with adequate facilities within the framework of the rehabilitation of children. Juvenile detention is not the only way in order to repair morals of children. An imprisonment of against children' independent only gives the trauma effect deeply on the mind of the children. The most relevant here is about criminal prison, according to Beijing Rules should be applied after considering two basic pillars:

- (a) as a last resort: or as the effort and cannot be avoided any longer (due to the seriousness of the act committed by a child); and
- (b) For the minimum necessary period, or in the shortest period of time.

Therefore, the punishment which is decided by the judge was not merely punishment, but such penalties should also concern to the interests of the children, that the children are not only deterrent but also has benefits for the child's development in the future that is education. As mentioned in formularization draft KUHP (Draft Penal Code) about the purpose of punishment. Article 50 draft KUHP determining that the purpose of punishment is:

- (1) to prevent criminal offense by enforcing the norm of the law for the society protection;
- (2) to civilized the offender by giving the right guidance, therefore they will become good and useful people;
- (3) to resolve the conflict caused by a criminal offense, to restore the balance, and to maintain peace in the society;
- (4) to release guilt in an inmate.

Punishment formulation which focuses on education should be noticed and considered by the law enforcement agencies. As noted in Chapter 24 Act No. 3 of 1997 concerning the juvenile court, the action is accused to the children is not only returned to the parents, guardians or foster parents because occurrence of child delinquency is usually affected by the surrounding environment. Crime as a social problem that requires a dynamic symptom is always growing and related to symptoms and other societal structures are very complex, which is a socio-political problem.

In the explanation of Act No. 3 of 1997 mentioned several factors caused by a child dealing with legal authorities, they are the social/environment factors, the growth of development, the current globalization communication and information, the progress of

science and technology as well as changes in style and way of life of the elderly, has brought fundamental social changes in the lives of people which influence the moral values and behavior of the children. Driven back to the parents, guardians or foster parents does not able to guarantee that these children will be better. Just handed over to the State, the Department of social or social organization, without any clear and well-planned program, it will be useless.

The guidance patterns should be well designed. The organization of the guidance should be able to form the children's character (moral and behavior) and to train them to become creative and productive individuals and not only counter-productive, it is because to educate a child will require a lot of patience. Based on the results of the seminar by Prayuna Child Protection Centre May 30, 1997, there are two formulations about child protection, they are:

A. All of conscious efforts by any person or government institution and private organization, aimed to produce secure for the society, work operation, the fulfillment of physical well-being, mental, and social children and teenagers in accordance with the interests and human rights.

B. All of conscious efforts by any individuals in collaboration with family, society, or government institution and private organization, aimed to produce secure, and fulfillment spiritual welfare and physical for children under 0-21 years old, not or never being married; in accordance with the rights and interests therefore they are able to develop themselves maximally.

For the protection of privacy as stated in the Beijing Rules, the general principle should also be observed by law enforcement officials, especially judges. The trial should have been done openly although in the Juvenile Court Act in article 8 paragraph (1) mentions that the judge investigates the children in the closed trial, however, in paragraph (2) also describes, in terms of a particular occasion, a trial can also be conducted openly. This of course would give negative effect to the child, because the publication of such cases will make the children even more discredited. Not to mention the stigma which will be given by the community towards the children as perpetrators of crime will affect their mental development.

The judge's decision to send the criminal to jail and put the children in children correctional facility is supposed to be the last option by considering that it really is the last effort that is the best way in rehabilitating children. The imprisonment should also concern about the aspects that are best for the children's interests. Punishment brings the bad influence because children who live mainly in criminal correctional facility would experience the changing of environment. They will have limited space to grow, feeling stress, and lack of parental affection will create a situation which may affect the mind of the children. Therefore in many children's correctional facilities, children need to be given extra attention, so the children's interests are not compromised.

A few things should be noted in child correctional as noted in Article 26 Beijing Rules, those are:

1. The goal of guiding and training for children in institutions is to provide care, protection, education and skills, in an attempt to help them occupy a constructive and productive role in society in the future;
2. children in institutions must be separated from adult convicted person (as far as possible in separate buildings);
3. a parent or guardian of a child, for the welfare and interests of the child, should have access in the institution;
4. cooperation between the Department and the institution needs to be improved to provide skills training and education for children, with the intention that those who are in the institution are not harmed their education.

In progress, now not all of the cases should be resolved by law but it can be diverted (redirects). Diversion is diverting cases of children who are accused to have committed criminal acts from a formal process with or without prerequisites. Diversion is done on some small cases and done by involving parents/carers, schools, communities, NGOs, and Social Department, Prison. Diversion is diverting or diverging the handling of children perpetrators of criminal acts outside the ordinary law as stated in the Commentary the Rule 11 UN resolution 40/33, the UN Standard Minimum Rules for the Administration of Juvenile Justice.

CONCLUSION

In the future, educative Punishment model that is appropriate, for children, as a criminal offender is not by giving them criminal sanctions to put them into prison. Giving educational sanction should have been the main consideration of the judges in deciding the sanction, for instance by sending the children into special schools that educate the children as individuals who deserve special moral and intellectual guidance, boarding school for those who are muslim or training center for grown up. After the children has completed their undergo responsibility of his actions they can socialize well in the society without any prejudice of being ex criminal offender. The rights of children in a judicial process are conceived as an embodiment of justice. Justice in this context is when the children in a condition, capable to do their rights and obligations equally. The Government has supposed to start developing the concept of Restorative Justice, because this concept is considered as one alternative concept for Indonesian children judiciary that concern about the welfare approach and the justice approach. The targets of restorative justice concepts are reducing the number of children who are arrested, detained and sentenced to prison.

REFERENCES

- Arief, Barda Nawawi. (2003). *Kumpulan Materi Perkuliahan Pembaharuan Hukum Pidana*.
-----.(2002). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung.PT. Citra Aditya Bakti
-----.(2002). *Masalah Penegakan Hukum & Kebijakan Penanggulangan Kejahatan*. Bandung.PT. Citra Aditya Bakti,
-----.(2000). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. Semarang.
Bustanuddin Agus. (1999). *Pengembangan Ilmu-ilmu Sosial Studi Banding Antara Pandangan Ilmiah dan Ajaran Islam*. Jakarta.Gema Insani.
Gilbert dan I. Reinda Lumoinding. (1996). *Pelacuran di Balik Seragam Sekolah*. Yogyakarta.Yayasan ANDI.
Gosita, Arif. (2004). *Masalah Korban Kejahatan (Kumpulan Karangan)*. Jakarta. PT. Bhuana Ilmu Populer.
Gunawan, FX Rudy. (2000). *Refleksi atas Kelamin, Potret Seksualitas Manusia Modern*. Magelang.Indonesia Tera.

- Hadisuprpto, Hadi Paulus. (2003). *'Pemberian Malu Reintegratif' sebagai Sarana Non Penal Penanggulangan Perilaku Delikueni Anak*. Disertasi Program Doktor Ilmu Hukum UNDIP.
- Joni, Muhammad dan Zulchaina Z.Tanamas. (1999). *Aspek Hukum Perlindungan Anak Dalam Perspektif Konvensi Hak Anak*. Bandung.PT. Citra Aditya Bakti.
- Muladi, dan Barda Nawawi Arief. (1992). *Teori-teori dan Kebijakan Pidana*. Bandung.Penerbit Alumni.
- Muladi. (2002). *Demokratisasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*. The Jakarta.Habibie Center.
- Nasution, S, dan M.Thomas. (1988). *Buku Penuntun Membuat Tesis, Skripsi, Disertasi, Makalah*. Bumi Aksara.
- Program Internasional Penghapusan Pekerja Anak. (2004). *Perdagangan Anak Untuk Tujuan Pelacuran di Jawa Tengah dan Jawa Timur*. Jakarta.
- Soemitro, Ronny Hanitijo. (1994). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta. Ghalia Indonesia.
- Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum*. Jakarta.UI-Press.
- Sudarto. (1986). *Kapita Selekta Hukum Pidana*. Bandung.Alumni.
- Sularto. (2000). *Seandainya Aku Bukan Anakmu, Potret Kehidupan Anak Indonesia*. Jakarta.
- Wahid, Abdul, dan Muhammad Irfan. (2001). *Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi Atas Hak Asasi perempuan)*. Bandung.Refika Aditama.

Rule of Law:

- Kitab Undang-Undang Hukum Pidana
Undang-Undang Perlindungan Anak (Undang-Undang Nomor 23 Tahun 2002)
Undang-undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak