

DIVERSION IN THE JUVENILE JUSTICE SYSTEM AS AN EFFORT OVERCOME JUVENILE DELINQUENCY

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ABSTRACT

Juvenile Delinquency is not the same as adult crime. The prevention of juvenile delinquency must begin with right understanding. This understanding is based, primarily, by looking at the causes of why children become naughty. This paper attempts to review the efforts to prevent juvenile delinquency by applying criminology approach. There are three criminology theories which are used as the knife analysis, namely the Theory of Differential Association, Theory of Social Control and the Theory of Labeling. The diversion which is known in the Juvenile Justice System acts as juvenile delinquency prevention efforts. Diversion prevents children from learning malicious behavior, improves the children relationship with the community, and hinders bad stigmatization/labelling to the children. These things explains that diversion is a Juvenile Delinquency prevention effort from criminology perspective.

Key words : Diversion, Juvenile Delinquency, Restorative Justice

Introduction

In general delinkuen behaviors (delinquency) children, interpreted as a form of behavior that does not comply with the norms of living in society. The behavior of children who do not conform to the norm, also referred to as socially handicapped children (Kartini Kartono, 1986: 7), then by public mischief was identified with crime. It seems too extreme a child who do mischief, said to be the villain.

While what happened is a natural process, which should not be not every man should experience the shock during the approaching maturity (Wagiati Soetodjo, 2010: 12). Therefore, a thing that is not right, if delinquency (delinquency) carried the child, equated with evil adults. Nonetheless, the response to the unruly behavior of children, should still be pursued. Children (actors) remain accountable for mischievous deeds, but not to ruin his future.

Prevention of delinquency (juvenile delinquency) have to depart from the proper diagnosis (Kusno Adi, 2009: 120). Understanding the factors that cause delinquency, may be able to give the right answer anyway, in the fight against delinquency. Psychiatric and mental condition of the child, which is still in its infancy (A.Qirom Syamsudin Meliala and E. Sumaryono, 1985: 31), should also be taken into consideration. Physical, mental and social development, it is not the same as adults. Based on the review of the substance of these issues, it needed a proper prevention efforts, in terms of the child's account mischievous deeds. Without having to confront them (children), with the criminal justice system. Diversion is one of the alternatives mentioned.

The concept of diversion that can be interpreted as a diversion, seeks to resolve a criminal case a child outside of the formal criminal justice pathways (Setya Wahyudi, 2011: 15). Diversion expected to be the right effort, in the prevention of delinquency. The formulation of the problem to be addressed, as the restriction of the discussion in this paper, namely:

1. What are the factors that cause delinquency (juvenile delinquency)?
2. Why diversion (diversion) can be used as the response to the delinquency (juvenile delinquency)?

2. Causes Factor of Juvenile Delinquency

Delinquency is taken from a foreign term juvenile delinquency. Juvenile means young, children, young people, traits characteristics on youth, distinctive properties in the period of adolescence, while delinquency means doing wrong, neglect/ignore, which was later expanded it means to be an evil, a-social, criminal offenders, maker of longing, vandals, , can not be repaired anymore, wicked, worthless and others (Wagiati Soetodjo, 2010: 8-9). Children are referred to in this article is the one who has aged twelve (12) years, but not yet the age of 18 (eighteen) years who allegedly committed the crime (based on the Criminal Justice System Law No. 11 of 2012 children).

Various approaches have been tried is applied, to understand the behavior of the deviation (delinquency) children, ranging from efforts to approach the legal (criminal) and the approach criminology (Paul Hadisuprpto, 2004: 9). In this paper the authors try to use the approach of criminology in order to understand the behavior of naughty child. There are three theories of criminology which will be used : differential association theory, social control theory, and the theory of labeling.

The *first* theory, the theory of differential association. This theory was put forward by Edwin H. Sutherland. In differential association, Sutherland explains that the effect of group behavior on the person's attitude by interacting through a learning process (Paul Hadisuprpto, 2004: 9). In detail Sutherland filed 9 (nine) in his theory propositions: first, "criminal behavior is learned", in this case the malicious behavior or criminal behavior occurs because of learned, not innate, it is not inherited behavior.

Second, criminal behavior is learned in interaction with others in a process of communication, either through verbal communication and gestures. *Third*, the fundamental part of the learning process of criminal behavior occurs in an intimate relationship or a close personal relationship with the group. *Fourth*, criminal behavior can be studied include techniques of committing a crime (from a simple technique to complex engineering), and also learn about the special briefing regarding the motive, desire, rationalization, and attitude. *Fifth*, a special briefing on the motive and stimulation or encouragement to learn from the provisions of law that fun or profitable or unpleasant (unfavorable) (Sarwirini, 2011: 246).

Sixth, one becomes delinkuen because of the presence of an excess (consequence or impact) provisions pleasant or favorable than the terms that are not favorable to have violated the law. This is the principle of differential association, which is applicable for both criminal association and non-criminal. People become criminals because of the relationship (contact) with patterns of criminal and because of the separation of the anti-criminal patterns. *Seventh*, the differential associations vary in frequency, time, priority, and intensity. *Eighth*, the learning process through their association with criminal behavior patterns of crime and anti-crime includes mechanisms that occur in other learning processes. That is, the process of learning criminal behavior does not occur solely in imitation, but through direct observation and learning. *Ninth* or last, criminal behavior can not be explained by the values and needs of the public, because the act was an expression non-criminal and values and the same needs.

The essence intended by Edwin H. Sutherland, the differential association theory, that influence group behavior in a person's attitude that by interacting through the learning process. If a child is associated with deviant behavior, then the child is not deviant behavior is inherited. However, according to the differential association theory, deviant behavior of children is something that can be learned, as a result of interaction with the environment. Placing children in the criminal justice system, is not something appropriate action. The act of placing the child in the criminal justice system, it will only create opportunities for children to learn "real crime".

This can be explained, that the criminal justice system of criminal consisting of four (4) components, police, prosecutors, courts and prisons (Mardjono Reksodiputro, 2007: 85), tend to be bureaucratic, procedural and tight. The criminal justice system is implemented within four (4) sub-system of the power of investigation, powers of prosecution, power prosecute / convict, and the power of execution / implementation of the criminal (Barda Nawawi, 2007: 9), it is feared it will provide learning bad for children's growth.

In some cases, it is not rare children who are placed in the formal criminal justice, especially that ended with convictions in the Penitentiary, it has the skills criminal remarkable, once out of prison because of the association with his fellow prisoners as well as adults (Elfina Sahetapy, 2012: 300). Criminal exceptional skill, certainly not something that is expected to develop in children. Deviant behavior which was originally only as delinquency, crime has the potential to be a real, if the child is confronted with the formal criminal justice process.

Interaction with others to bring education to children, thus affecting the attitudes and his behavior. That matter can make a child delinquent behavior, become evil behavior like other adults. The second theory, which is used to understand the factors that cause delinquency, namely the theory of social control. Social control theory, for the very first systematized by Travis Hirschi (JE Sahetapy, 2005: 39).

Social control theory, based on the different questions in the explanation explores why children are involved mischief. Typically departing from the basic question, "why a child committed a crime?", While Hirschi departing from the basic question, "why would someone obedient child norm?". Basic point is not to "deviant child behavior", but on "child adherence to norms" (Paul Hadisuprpto, 2012: 255). Studies then developed and focused on variables underlying adherence to the norms of the child, which he called "social ties" (social bound). Formula Hirschi, "the more children tied to their communities, less likely involved mischief, otherwise if the child bond with the community is weak or interrupted, then the child will be free to do mischief." Social ties by Hirschi translated into four (4) elements, namely the "attachment", "commitment", "involvement" and "beliefs".

Discussing the causes of delinquency by using the theory of social control, further confirms that community (social) is very influential in controlling the behavior of a person (child). Therefore, a child who commit irregularities, should not be separated from society. Placing children in the criminal justice process, not a right thing in the prevention of delinquency. Formal criminal justice process, which was originally expected as businesses cope with delinquency, will only make a separate child with society. This is understandable, that not rarely seen children suspected of having committed a criminal offense, has to deal with law enforcement officials.

Since the process of inquiry / investigation, prosecution, examination before the court, to undergo the judge's decision. The series of this process, of course, will make the separation between the child and his environment. Based on the theory of social control, the presence of the distance between actors (children) with the social environment, has the potential to make a person evil (mischievous). If the bond principal (the child) with the community is weak or interrupted, then the child will be free to do mischief.

Society certainly is not able to monitor the development of children's behavior, due to the formal justice process undertaken. Social bonds needed by the child to control the behavior, not acceptable, thus potentially shifting the mischievous behavior of the child, into evil behavior like an adult because without community control. The third theory, which is used to understand the factors that cause delinquency, namely the theory of labeling theory. Many experts criminology labeling theory linking this with the book Frank Tannenbaum (Romli Atmasasmita, 2010: 49).

Based on the perspective of labeling theory, perversity devian (perpetrator) is not in itself significant, it is precisely the social reaction was significant (Topo Santoso and Eva A Zulfa, 2004: 98). Labeling theory would like to discuss how the community reacts to the perpetrator (devian) (JE Sahetapy, 2005: 32). Labeling theory departs from the assumption that the deviation is a relative notion. Deviations arise because of the reaction of the other party in the form of labeling certain offenders and perpetrators of irregularities. Reaction social / community in the form of malicious stamp / stigma, they cause someone to be real criminals.

The labeling theorists regard, the perpetrators are not people who are evil (evil) which is involved in deeds are wrong. But they are individuals, who previously had the status of a rogue (evil), as the administration of the criminal justice system and society at large. Similarly, if attributable to the delinquency, the social reaction / public form of evil stamp / stigma on delinquency, potentially large, they cause a child to be real criminals, like adults. The criminal justice system affecting social reaction to the offender (kids), so that it becomes something that legitimize deviant act the perpetrator (child).

Stigma / stamp received nasty brat, inherent in him. Labeling evil given by the people around toward the child, greatly influenced the development of mental, thoughts and behavior. By the time the child was about to play like other children, because of the stigma / stamp of evil, the attitude of people around will be different in response to the child (perpetrator). This will form the mental, mind and evil behavior, that he was really nasty and difficult to repair.

If this continues, then the stigma / stamp evil given the bad boy, as if to legitimize (certify) naughty behavior as malicious behavior. Thereby potentially shift the behavior of children who originally naughty, into the behavior of children who were really into evil like other adults. Children do not hesitate anymore to deliberately do evil, because the label attached to him that is a villain. Thus some theories (differential association, social control, labeling) as a knife analysis, which is used in dissecting the causes of delinquency. In addition to some of the above theory, would need to consider other factors that cause delinquency. Dysfunctional families (broken home), is also expected to be one of the most frequent causes of delinquency appears (Well Edward L. and Joseph H. Rankin, 1991: 87-88)

Another opinion that nearly matching is also delivered by Clemens Bartollas, in his juvenile delinquency that the lack of positive activities undertaken and lack the knowledge to achieve success in the future, causing the child difficulty to live their lives and eventually criminal activities (Clemens Bartollas, 1985: 64). Of the various factors that cause delinquency above, it is clear that children who do mischief inappropriate if seen as criminals. Moreover, if the perpetrator (child), is equated with other adult offenders. Understand that the factors causing the delinquency does not come from within the child alone, further confirms that we need a breakthrough in terms of tackling the delinquency. The participation of various parties, especially those around the child (family, society), greatly affect children's behavior. The basic attitude of a child who likes to learn new things, quickly replicate and easy to be affected, it should be considered that children should receive special attention.

The child's relationship with the people around (family, community), also presumably also try to awake and uninterrupted. It is a control or control over the attitudes and behavior of naughty child. Labeling as well as the evil child, be a factor for a repeat child do mischief. From understanding the factors that cause delinquency above, is very helpful in offering appropriate action, to combat delinquency. Placing children in the formal criminal justice process, not an appropriate action for the reduction of delinquency (juvenile delinquency). Therefore, it takes an effort to divert children from the criminal justice system, namely diversion.

3. Diversion As Juvenile Delinquency Prevention Efforts

Crime prevention essentially a rational effort of the community in tackling crime (Sudarto, 1982: 38). As a rational efforts of the community, prevention of crime or delinquency committed child (juvenile delinquency) have to start from a proper diagnosis. Crime as a human phenomenon that exist among men and made by humans anyway, history has proven that even eliminate altogether the existence of evil in society, is a mere illusion (Soedjono, 1976: 44). Nevertheless, the country still trying to cope with crime, if it is not able to eliminate at least reduce or suppress increasing crime itself. Likewise with delinquency, if not able to eliminate, at least reduce or suppress the increase in delinquency, becomes a form of mitigation efforts.

Understanding the factors that cause delinquency, presumably could offer the right concept. The juvenile delinquency had an explicitly welfare-oriented philosophy and stated that juveniles who violated the law were not to be treated as "criminal offenders," but rather as "misdirected and Misguided" children, "needing aid, encouragement, help and assistance" (Nicholas Bala and Julian V. Roberts, 2010: 38). This means, tackling delinquency, by looking carefully contributing factor. Understand the philosophy of the delinquency that children who commit violations of the law are not treated as "criminals" but as "misguided child", so it needs help, encouragement in order to restore them (children).

Children who misbehave should be avoided from the formal criminal justice process (Beniharmoni, 2015: 353). The transfer of the child from the formal criminal justice process is believed to be a proper prevention efforts. Diversion is the diversion. There are three (3) reasons, diversion as appropriate measures, in tackling delinquency (juvenile delinquency). First, diversion for the

reduction of delinquency, due to diversion (diversion) prevent children from learning malicious behavior. Ie rogue behavior is malicious behavior, potentially replicable child during the formal criminal justice process.

The malicious behavior or bad behavior, was introduced to the child when beginning the process of investigation / investigation, prosecution, trial until after the verdict. Arrest, detention of children and placing children in prisons, as if giving the opportunity for children to learn to behave like other adult criminals. This is certainly to be avoided, so that the delinquency is not even learn the real crime, like adult criminals. Diversion is a way to avoid the possibility of appearing "school of crime", parse the risk of recidivism, avoiding more costly legal fees, and help integrate offenders (child). The existence of diversion (diversion) is an appropriate reduction efforts in tackling delinquency, due to prevent children from learning malicious behavior.

Second, diversion (diversion) is able to improve relations actors (children) and the public. A relationship that was damaged due to the perversity of children, can be improved by diversion, so that social control remains. Perversity children still have to be accounted for, without having to separate the child with the community. This is understandable, that through the diversion would be more concerned with the recovery of losses suffered either by the perpetrator, the victim and the community. The recoverable losses, not only physical harm, but also non-physical losses. At the time of the perpetrator (children) do something naughty, then at the same time could damage the balance of society. Balance disrupted social order must be restored to its original state (*restitutio in integrum*) or returned to its original state (Sudikno Mertokusumo, 1999: 3).

The idea of diversion intends to build a state that is recovering or curing, of the state that had disturbed them. Diversion recovery requires offenders (child) with the victim and the community so that the society back into balance. It is different when applying the formal criminal justice process, the relationship the child (perpetrator) to the victim as well as society becomes damaged. If the child's relationship with society becomes damaged, the loss of social control over the child. It then becomes a factor or factors causing child criminogen back doing mischief. In fact, not just naughty again, it leads to other crimes like adult criminals.

Therefore, diversion for the reduction of delinquency (juvenile delinquency) is considered very appropriate, because maintaining (improving) the child's relationship with the victim and the community. Conflicts between actors (children) and the victims could be created, due to the unruly behavior of children, with diversion (diversion) sought to be resolved. Mediation as a form of diversion, would bring together offenders, victims and the community will memulihkan relationship of all parties, so that the social control of the child remains.

Third, diversion for the reduction of delinquency (juvenile delinquency) because of the diversion (diversion) then avoid stigmatization in children. Stigmatization very harmful to a child's future. Children receive stigmatization / evil stamp of the surrounding environment, it would be bad for the child. Evil labeling received by children, will form the mental, thoughts and behavior become real criminals. Stamp the evil received, the potential to make a child, consider themselves as the real criminals. It is as if the delinquency and potentially legitimize the children in a real villain. Because of the stigma / stamp of evil received, a child as if life as a criminal who must live a life different from the other children.

This is certainly not expected, because it would violate the rights of children as the future generation. Best interests of the child must be a primary consideration. Therefore, the presence of diversion (diversion), to break the vicious cycle of stigmatization, violence, humiliation potentially received by children, when confronted directly with the criminal justice system. Diversion (diversion) is believed to prevent children from stigma / stamp evil. Child (perpetrator) rogue, will continue to grow and develop as other children, without having to give a stamp / evil stigma against themselves. Delinquency who already do not need to be labeled as crimes like other adult criminals.

Of the three reasons diversion for the reduction of delinquency, confirms that delinquency should not be allowed. Delinquency remains to be addressed, but with laying the groundwork thinking (paradigm) is right about the delinquency. Delinquency prevention efforts, should not depart from the understanding approach retaliation justice (retributive). However, prevention of delinquency (juvenile delinquency) more appropriate, using the approach of restorative justice (restorative justice).

4. Conclusion

Based on the above we can conclude several things related to the diversion as the prevention of delinquency (juvenile delinquency) criminology perspective. First, that the understanding of the causes of delinquency, very helpful in the fight against delinquency (juvenile delinquency), as for some of the theories used to understand the factors causing juvenile delinquency, the differential association theory, social control theory and the theory of labeling. In addition to other factors like dysfunctional families (broken home), the absence of positive activity, and so forth. Understanding of the causal factors, into consideration in finding appropriate prevention efforts.

Second, diversion (diversion) for the reduction of delinquency (juvenile delinquency) is appropriate. As for some reason the first, as the child learns to avoid diversion of malicious behavior. Second, the diversion (diversion), the relationship actors (children) and the public is maintained, so that social control remains, and the third or the last, with the diversion (diversion), then to avoid stigmatization in children. Diversion is also in accordance with the approach of restorative justice (restorative justice), where the punishment the child should not be based on retaliation (retributive), but with the recovery of the best interests of the child (the best interest of the child).

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