

Community Services as an Alternative Forms of Penalty for Children in the Renewal of Children in Indonesia Criminal System

Endang Tirtana

Hasanuddin University, Jl. Perintis Kemerdekaan Km.10 Makassar, 90245., Sulawesi Selatan, Indonesia

Abstract

Criminal sentencing of a juvenile offender should be adjusted to the special need and requirement of a juvenile or a minor, because despite being an offender, s/he is still a child, hopefully with a future and hence s/he has a special characteristic that is inherent to him/her that is not found in an adult offender. The recent development in criminal law reveals a growing international trend to seek an alternative to replace the more common method of incarceration, specifically in cases involving juvenile offender. This conviction stemmed from the notion that the concept of imprisonment is getting less popular, whether it is viewed from humane consideration, sentencing philosophy or economic consideration. Community service order (CSO) is one of the alternatives to incarceration to a juvenile offender that is non-institutionalized and it is recommended in an international instrument the United Nation Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The concept of community service sentencing for juvenile offender has been entered into the draft reform of the Indonesian Criminal Code (RKUHP) and the Law for Juvenile Criminal Procedure System (UU Sistem Peradilan Pidana Anak). This study is a judicial normative research supported by a field research in the form of interviews with competent respondents. From the result of the study, the author concludes that community service is highly supportive to the objectives of sentencing and education of a juvenile offender both from the perspective of sentencing in general or sentencing objectives that are integrative in nature. The relevance between community service sentencing and the juvenile criminal system reform may be interpreted that community service sentencing is perceived within the context of a policy on managing criminal offenders; therefore, community service sentencing may play its intended role as a social-control instrument to support the policy of managing criminal acts committed by juveniles in Indonesia. The existing draft on community service sentencing as contained in the draft for the Law for Juvenile Criminal Procedure System (UU SPP Anak) still needs to be improved since it is still too broad in nature. Community service sentencing has the prospect and possibility to be applied in Indonesia's juvenile criminal court, considering the huge benefits that may be reaped from such application.

Keywords: Community service sentencing, Juvenile Criminal System Reform, the Law for Juvenile Criminal Procedure System (UU SPP Anak).

1. Introduction

1.1. Background

One of the issues of child protection in Indonesia is the high number of children in conflict with the law (ABH). Conceptually, children in conflict with the law (children in conflict with the law) is defined as a person under the age of 18 who are dealing with the criminal justice system is concerned because the suspected or accused of committing a crime (UNICEF, 2006: 19). Data children in conflict with the law were discovered by the National Commission for Child Protection (Komnas PA) during the middle of 2010 there were 1,471 children (National Child Protection Commission, 2010). Furthermore, the data on Indonesian Child Protection Commission (KPAI), for example, each year about 150 complaints from the public in the form of complaints ABH. January to August 2010, for example, of 1,100 public complaints, 130 (11%) were complaints about the ABH (Indonesian Child Protection Commission, 2010). According to the research paper KPAI and monitoring, there are at least 3 (three) as the main cause of the number of children in Indonesia against the law, namely: First, there is a very strong doctrine of life in our society, with the view that all children one should be punished, and the punishment referred to the judicial means to be processed as an adult.

Second, the culture of law enforcement in Indonesia who prefer formal justice process in children, rather than the other way is actually also possible through the process of restorative justice (fairness in relation recovery methods) and diversion (diversion sentence). Thirdly, there are state regulations that indeed criminalize child, the juvenile justice provisions as reflected in Law No. 3 of 1997 on Juvenile Justice. Children in conflict with the law (violates criminal law) which is then processed meant he had to deal with the criminal justice process, which is a continuum (continuum) which describes the events that developed regularly: from the investigation, arrest, detention, prosecution, checked by courts, decided by a judge, convicted and eventually return to the community (Mardjono Reksodiputro, 2007: 93). The emergence of stigma not only make it difficult for children to do resocialization, but also will hinder the development of the child and even the ideals and hopes of children in the future.

Based on data from the Directorate General of Corrections of the Ministry of Justice and Human Rights, the number of inmates of children (pupils correctional) increased from 5,630 children in March 2008 to 6308 children in early 2010 (Kompas, April 6, 2010). These conditions are not only extremely poor, but also very worrying because it illustrates that the actual handling of children in conflict with the law have not actually reflect the perspective of child protection. Various improvement efforts have been made, but the situation has not much changed. Children in conflict with the law are always resolved by imprisonment. Whatever the reason, imprisonment and detention contrary to the principle of the protection of children as life in prison, but can turn off the development of the child, full of violence and discrimination, become media internalization of higher crime, the potential to cause psychological trauma, as well menstigmasi or are labeling the lives of children throughout his life , In addition, according to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules) Rule 19.1 states, "The placement of a juvenile in a Institution shall always be a disposition of last resort and for the minimum Necessary period "(placement of a child in the penitentiary or prison is the last option and for a very limited time). From the above description, came the idea to look for alternative forms of punishment for children in conflict with the law in addition to imprisonment. In Beijing Rules, there are several types of measures to avoid as far as possible sanctions that are institutional (prisons or prison) as referred to in Rule 18.1, which is one form of community service orders (community service orders).

Definition of community service order (CSO) in the American Bar Association: (Norval Morris and Michael Tonry, 1991: 152):

A community service program is a program through which convicted offenders are placed in unpaid positions with non-profit or tax-supported agencies to serve a specified number of hours performing work or service within a given time limit as a sentencing option or condition.

Penal Reform International defines community service order (CSO) as:

Community service is an order of the court whereby by offender is offered the opportunity of compensating society for the wrong s/he has done by performing work for the benefit of the community, instead of going to prison.

The term community service order itself in several countries of the Criminal Code is used in various forms. For example, the term "community service order" is used by the state of Denmark, Germany, Britain, France, the Netherlands, Latvia and Peru. While the state of Azerbaijan, Belyorusia use the term "social work". State of Georgia and Kazakhstan to use the term "Socially useful work". Furthermore, the Russian state to use the term "obligatory work". While the term "work in community service" used by the Hungarian state (Widodo, 2009: 162-164.).

For Indonesia which is currently reform criminal law, juvenile criminal law in particular, some kind of action for children as set forth in the Beijing Rules can be a very valuable contribution. One type of such action even been incorporated into the draft reform of the Indonesian criminal law is also in the concept of juvenile criminal law reform in Indonesia. This can be seen with the inclusion of Community Service Order has (CSO) in the concept or design of the Indonesian Penal Code (RKUHP). In Article 65 paragraph (1) and Article 116 paragraph (1) b stated that one of the main criminal for adults and children is a criminal social work (community service order). In addition, the draft Law on Criminal Justice System Child (Children's Bill SPP), which will replace Law No. 3 of 1997 on Juvenile Justice, have included forms of punishment in the form of community service. In Article 69 paragraph (1) Kids SPP Bill mentioned that one of the principal forms of punishment for children is a criminal with the proviso that one form of community service.

1.2. Main Issues

Community Service Order (CSO), which in this study use the term criminal community service, is one form of punishment which is based on both theoretical and practical studies carried out by European countries can be an alternative to criminal deprivation of liberty, the intention is that the criminal community service as the first choice (first choice), especially for convicted child. The inclusion of criminal community service in the Indonesian criminal justice system is inseparable from the determination to make the Indonesian criminal law, juvenile criminal law in particular, which not only works-oriented but also oriented to the actors as well (daad dader Strafrecht). In addition, the inclusion of the criminal community service is also an effort to make criminal law more functional and humane, in addition to very relevant to the philosophy of punishment which is now embraced that philosophy of coaching (treatment philosophy).

Starting from the coaching philosophy, the criminal community service is expected to be a kind of alternative effective criminal without losing the essence of the crime itself. With the criminal community service as a first choice (first choice), expected negative impact of the application of criminal deprivation of liberty for children such as stigmatization, dehumanization and other negative impacts can be avoided. Thus, convicted child still has a chance to become a man of "intact" without having to lose confidence in himself as a provision in the process of further development. Based on the above, the writer interested to study the application of community

service punishment for convicted child. This is because as a new form of punishment in juvenile criminal law, criminal community service has not been understood by the public. The main problem is detailed in a number of research questions as follows: 1. What is the appropriate punishment community service or support and coaching for the purpose of criminal prosecution convict boy? 2. How does the criminal relevance of community service with children criminal system reform in Indonesia?

2. Research Methods

This study uses descriptive normative approach to law (statute approach), approaches the concept (conceptual approach) to understand the concepts related to criminal punishment of community service, as well as the comparative approach (comparative approach). While the source of data derived from primary data through field studies (field research) and secondary data through library (documentary research). Field studies conducted through interviews with several sources, among others, prosecutor, judge, Academics and Practitioners.

3. Discussion and Result of Research

3.1. Criminal community service in supporting the goals of punishment and coaching for convicted child

Community service order (CSO) or the criminal community service is one form of alternative sanctions of criminal deprivation of liberty or imprisonment. Criminal community service in essence has the aim that children avoid the negative impact of the application of imprisonment. Criminal community service can be used as an alternative form of punishment that really imprisonment as an alternative punishment last. Criminal essential public services have remained ensure children grow and develop, both physically and mentally, because the criminal community service is a form of criminal non-institutional (outside agency). Below will be noted how far the criminal aspects of the public service to meet the objectives of punishment for children, so therefore relevant criminal community service is defined as a form of punishment in the criminal system reform children in Indonesia. The succession will be presented how the criminal relevance with the public service aspect of the purpose of punishment for children as follows:

1. Criminal community service is intended to avoid the child from the application of criminal deprivation of liberty or imprisonment which often gives a bitter experience prolonged form of stigmatization, dehumanization and prevent children from the possibility of being a means of transfer prisonisasi crimes against children. Likewise, the purpose of punishment for children is to continue to provide assurance to the children to grow and develop both physically and mentally.
2. Deprivation of liberty of children, in which case imprisonment gives a traumatic experience for the child, so the child interrupted the development and growth of the soul. Bitter experience of contact with the world of the prison will be the dark shadow the lives of children who are not easy to forget.
3. When viewed theoretically from the concept of the purpose of punishment, the criminal community service would seem relevant as follows:
 - a. In general, the purpose of punishment is essentially composed of an effort to protect the people on the one hand and protecting individuals (actors) on the other side. Relevance criminal community service to two key aspects of the sentencing objectives, namely the protection aspects of society and the protection of individual aspects can be explained as follows:
 - 1) With the criminal community service, then the child will be protected from the application of criminal deprivation of liberty or imprisonment. The negative impact of the application of criminal deprivation of liberty or imprisonment, including to children, will give birth to stigmatization and dehumanisation that it can be a factor kriminogen. Thus, to avoid the child from the application of criminal deprivation of liberty or imprisonment precisely to avoid any kriminogen factor, means also prevent children from the possibility of being nasty back (recidivists), therefore also means avoiding the public of the possibility of becoming victims of crime.
 - 2) With the criminal community service will also provide two advantages at once for the individual child. First, with the child's criminal community service will still be able to communicate with its environment, and thus there's no need social re-adaptation after the occurrence of crime. Second, with the child's criminal community service will avoid the possibility of a negative impact prisonisasi which is often a means of "transfer" crime. Understanding prisonisasi by Clemmer is: (Edwin H. Sutherland and Donald R. Cressey, 1960: 498) The general process by the which a child is taught the behavior of his group is called "socialization" and the somewhat comparable process Among inmates has been named "prizonization" (common process, if a child is taught to behave of a group called the "socialization", and The process is a little more going on in the process among inmates in prison, which is called prisonisasi). According to Made Sadhi Astuti, in prisonisasi new inmate should get used to the rules prevailing in society inmates, studying the beliefs, behaviors, and values of the society (Made Sadhi Astuti, 1997: 147). Further confirmed that the prison did not change the crime, even a crime to train so that criminal deprivation of a negative impact on the convict.

- b. Criminal community service is also very relevant to the philosophy espoused punishment in general, ie the philosophy of coaching (philosophy treatment). Thus, the criminal community service also have relevance to the conceptual transformation in the penal system and punishment is happening in the world at large of conception levy towards the conception of reform (Asshiddiqie, 1996: 167).

Guidance that can be given to inmates of children not only can be done in the Penitentiary alone, but it is also possible to be implemented outside the Penitentiary. According Loebby Loqman, a correctional treatment process can be realized in two patterns of development, as described in the manual Corrections Inmate Development and Learners (based on Government Regulation No. 31 of 1999 on Development and Mentoring prisoners), namely: a) Guidance on in Penitentiary; b) Guidance outside Penitentiary. In this case, as an alternative coaching outside the penitentiary, Loebby Loqman associating with criminal social work or criminal community service (Loebby Loqman, 2002: 75-104).

Criminal community service has a positive correlation in terms of providing guidance to the inmates of children outside the Penitentiary. The positive correlation can be explained as follows:

- a. Criminal community service has the goal of humanizing the children of prisoners, especially prisoners as a whole human being. Therefore, their rights as human beings be respected by giving freedom of movement without having to be limited by the environment given the parapet. With criminal community service, children can be rehabilitated in a more humane, in addition to the criminal community service also contains elements of a deterrent that is instructive. It is as outlined in UN Resolution No. 40/33 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) regarding avoidance of the imposition of criminal deprivation of liberty for child prisoners (Rule 19.1).
- b. Criminal community services facilitate the return of the child prisoners into society as good and useful (resocialization) while providing the opportunity for inmates of children to keep in touch with the community and the surrounding environment without limitation the separation wall that makes children frustrated. Thus the children of prisoners will be spared from the dehumanization and other negative effects due to the application of criminal within the institution.
- c. Criminal community service can prevent children from the negative impact prisonisasi which often become a means to "transfer" a crime that would eventually give birth to a more skilled criminals. It is given as a psychiatric background where the children during the children, will be vulnerable once the situation in their neighborhood. Children will easily and quickly learn from their environment.
- d. Criminal community service would provide better guidance and direction. Inmates children can get a good education and guidance, as well as psychologically they are not isolated by any circumstances that limit their movement so that it can make it frustrating and stressful, they also can keep learning, education and guidance of their parents. Criminal community services contained any form of responsibility of the child who has injured a sense of comfort and peace in society. They can learn to take responsibility of their actions and mistakes. They may realize that what they did was against the law at the same time contrary to the norms that exist in society. Thus, the criminal community service also has the objective of restoring relationships harmed by offenders (child) because he made a mistake or violation of law.
- e. Criminal community service can provide learning to work as the capital of their skills, and their identity can be formed from the responsibilities of the job given to them. It is easier for a child to improve himself, because children who undergo criminal community service will see the real life of the meaning of a responsibility and they do not have to lose the relationship with the surrounding community. Criminal community services can help more children have a social role that is recognized by the community. By looking at various things at the top, it can be concluded that the public service is very supportive criminal sentencing purposes and guidance to the inmates of children.

3.2. Relevance criminal community service with children criminal system reform in Indonesia

Discuss the link between criminal or relevance of community service with juvenile criminal law reform, in this case the criminal system of children, means also discuss the relevance of the criminal community service with the policy / political crime (criminal policy). This is because in a broader framework, reform of criminal law (penal reform), including juvenile criminal law reform, basically a part of the policy / political criminal. Before discussing further the relationship between the criminal community service with the criminal policy, should probably put forward first understanding the criminal policy itself. Relating to the definition of criminal policy, Sudarto presents three meanings criminal policy, namely: (Sudarto, 2006: 113-114)

1. In a narrow sense, is the overall principles and methods that became the basis of the reaction to be criminal law violations;
2. In a broad sense, is the overall functioning of law enforcement officials, including the workings of the courts and the police;

3. In its broadest sense, is the overall policy, which is done through legislation and official bodies, which aims to enforce the central norms of society.

While it is concerned with the meaning of criminal policy, Marc Ancel quoted as saying Barda Nawawi Arief, formulating criminal policy is "The rational organization of the control of crime by society". Starting from the opinions mentioned above is quite clear that criminal policy is a policy or an attempt to commit a crime countermeasures against (Barda Nawawi Arief, 2010: 32).

Crime prevention efforts can be done using the criminal law (penal effort) and without the use of criminal law (non-penal efforts). Thus, to see the extent of the criminal community service have relevance to the criminal policy in general will be seen whether the criminal community services to support crime prevention policy in Indonesia. This assertion needs to be raised because of the criminal policy in essence is "a rational effort of the community in tackling crime" (Sudarto, 1986: 38).

The linkage between the criminal community service with the criminal policies therefore need to be understood as one of the alternative "criminal sanctions", this type of crime has been widely applied in various criminal policies of countries in the world. In other words, the choice of the criminal community service is becoming an international trend or tendency. In addition, the children of Indonesia criminal law reform, in this case the criminal system of children, as seen in the Children's Bill SPP has included this type of crime became one of the main criminal form in juvenile criminal justice system in Indonesia. With the inclusion of public services in the bill criminal Kids SPP indicates, that the criminal community service need to be understood in the context of criminal policy, especially against children in Indonesia. At the most basic level links between the criminal community service with this criminal policy needs to be understood by the child as a criminal law reform in which includes efforts to reorient and reform of juvenile criminal sanctions should be a child of crime prevention efforts are integrated.

That is, the criminal community service is not only to be seen in the perspective of criminal law reform child (child criminal system), but must be seen in a broader perspective, including policies must be viewed in the perspective of the criminal. Reasons for the importance of criminal law reform in Indonesia is that the child's criminal law *keberlakuan* child can meet the demands of both juridical, sociological or philosophical as an effective legal norms. The charge was intended to juvenile criminal law can play its function as a tool of social control, especially in tackling crimes against children. Crime prevention by means of criminal law will eventually lead to the problem of choice for what sanctions can be utilized effectively to tackle crime.

This is where it seems the relationship between the criminal community service with the criminal law policy at the same time with the child and criminal policy. Hence the choice of criminal sanctions is basically a criminal law policy, ie a policy to tackle crime by means of criminal law.

4. Conclusion

1. Criminal appropriate community services or support and coaching for the purpose of criminal prosecution convict boy.
2. Relevance between criminal community service with the renewal of the system of punishment of children in Indonesia can be interpreted that the inclusion of the criminal community service as one of the main criminal form into the Draft Law on the Criminal Justice System Child (Children's Bill SPP), the criminal community service need to be understood in the context of criminal policy. That is, the criminal community service can play its function as a social control policy in supporting the prevention of crimes committed by children in Indonesia.

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