

INDEPENDENCE OF JUDGES IN IMPOSTING COMMUNITY SERVICE CRIMINALS IN CHILD CRIMINAL CASES

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Abstract: Children are the next generation of the nation, where a child who is involved in a crime must still be protected by the state. The imposition of a community service crime is an alternative type of punishment to a crime of deprivation of liberty or imprisonment which has the aim of preventing children from the negative effects of applying prison sentences. After the birth of Government Regulation Number 58 of 2022 concerning Forms and Procedures for Implementation of Crime and Actions Against Children, there are several obstacles such as the inconsistency of these regulations with the The Juvenile Justice System Law and the Judicial Powers Law, which gives rise to the independence of judges in deciding juvenile criminal cases, besides this it is still the limited resources of competent judges and the lack of infrastructure are obstacles to imposing community service crimes for child cases. The thesis will discuss what are the obstacles in making community service decisions and how to overcome these obstacles. This research method uses normative juridical research methods, which use a qualitative approach. Furthermore, it is known that there is a need for normalization of the implementing regulations for the Juvenile Justice System Law, training for Judge Resources through certification, and the importance of The Ministry of Law and Human Rights having an MOU with government and private institutions for the certainty *of community service criminal places for judges in deciding cases.*

Keywords: The independence of judges; Child Crime; Society service.

1. INTRODUCTION

Children are a mandate and a gift from God Almighty, who has dignity and worth as a whole human beings, that to maintain their dignity, children are entitled to special

protection, especially protection in the juvenile justice system as stated in the formulation of Law Number 11 of 2012 concerning the Justice System Child Crime.

Children need to receive protection from the negative impacts of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, as well as changes in the style and way of life of raising children by some parents which are seen as factors that bring about fundamental social change in the life of a society that is very influence the values and behavior of children. Deviations in behavior or unlawful acts committed by children due to factors outside the child's self.

The factors above make children inevitably have to deal with the law, to protect children who are in conflict with the law, ensure that children get their rights during the judicial process and so that children can continue their long future, a regulation that is legalized is accommodated. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is expected to be able to return children to become better individuals and be accepted in society in the future.

Overall, according to data released by the Indonesian Child Protection Commission in the last 3 (three) years, namely from 2020 to November 2022, there were at least 12,715 cases regarding child protection. The report on child protection consists of various types of cases such as children who are victims of sexual crimes, children who are victims of physical and/or psychological violence, children who are exploited economically and/or sexually, children who are victims of pornography and cyber crime and cases that are criminal cases. of children dealing with the law as perpetrators of criminal acts. As reported from the kpai.go.id website the number of cases of children in conflict with the law as perpetrators of criminal acts have fluctuated in the last 3 (three) years, for example in 2020 there were 199 cases (R.N, 2021), in 2021 there were 126 cases recorded and until November 2022 there were 187 cases recorded children face the law as perpetrators of criminal acts.

According to the theory of sentencing objectives, namely the relative theory or objective theory, criminal law aims to prevent and reduce crime, where crime must be intended to change the behavior of criminals and other people who tend to commit

crimes (Huda, 2006). Talking about legal objectives, of course, cannot be separated from the necessity of a good legal system. Lawrence M. Friedman argues that 3 elements can affect the implementation of law enforcement, namely the legal structure, legal substance, and Legal culture.

Community service punishment is an alternative type of crime to imprisonment for deprivation of liberty or imprisonment. Community service punishment essentially has the aim of preventing children from the negative effects of imprisonment. Community service crime has the essence of still guaranteeing children to grow and develop both physically and mentally because community service crime is a form of non-institutional crime (outside the institution) (Journal, March 2022).

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, we find "community service" in Articles 10 and 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 10 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, regulates "community service" which is an option in a peace agreement between children and victims, while Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates service crimes. society as the main type of punishment in the punishment with conditions.

Community service punishment is a crime intended to educate children by increasing their awareness of activities that have a positive impact on society. By giving children an option not to be subject to imprisonment, this type of punishment is also expected to be able to build and reshape the character of children who have committed crimes so that a deterrent effect arises and makes children's empathy for society arise by providing positive activities (Wihyono, 2015);

Arrangements regarding community service can be found in Article 71 and Article 10 of Law Number 11 of 2012 concerning the Criminal Justice System indicating that the existence of arrangements regarding community service has an important position (diversion efforts and principal punishment) in the Juvenile Criminal Justice System. This shows how legislature dan executive as a legislature-making institution agrees to "community service" as a choice of sanctions/punishment which is expected to be able to build and reshape the character of children in Indonesia.

The judge is the last gate in determining the fate of children who commit crimes. In Indonesia, the freedom of judges is fully guaranteed in Law Number 48 of 2009 concerning Judicial Power, where this freedom is formulated, namely judicial power is the power of an independent state to administer justice to uphold law and justice. This freedom of judges is also included in formulating legal considerations known as legal reasoning which is carried out by a judge in deciding a case.

The freedom of judges contextually has 3 (three) essences in exercising judicial power namely (Rifai, 2012):

- a. Judges are only subject to law and justice.
- b. No one including the government can influence or direct the decision to be rendered by the judge.
- c. There are no personal consequences for the judge in carrying out his judicial duties and functions.

According to the Judicial Powers Act, the judge's considerations are the thoughts or opinions of the judge in deciding by looking at things that can lighten or burden the offender. Every judge is obliged to submit written considerations or opinions on the case being examined and becomes an integral part of the decision.

For judges, legal reasoning is useful in taking consideration in deciding a case. Before imposing a decision, a judge must pay attention and make every effort not to allow the decision to be handed down to allow new cases to emerge. The decision must be complete and not give rise to new cases. The task of the judge does not stop with making a decision, but also ends with its implementation. In every case the judge must assist justice seekers and try their best to overcome all obstacles and obstacles to achieve a simple, fast and low-cost trial (Mertokusumo, 2002).

The imposition of a decision on a child case by a judge contains a requirement to consider the results of social research from the social adviser before making a decision, which fails to take into account the results of social research, a child's decision is null and void as contained in Article 60 of Law Number 12 of 2011 on the Juvenile Criminal Justice System. Sudarto stated that every person who is brought before the court must or wherever possible be accompanied by the personal minutes of the perpetrator of the

crime in question made by the person or body authorized to do so, so that the judge can make the right decision and not just rely on assumptions that may be completely inconsistent with reality (Sudarto, 1989), However, this article does not mean that it is binding on judges to make the same decision or by the results of social research from social advisors.

The birth of Government Regulation Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crime and Actions Against Children, as implementing regulations for the Law on the Juvenile Criminal Justice System, Article 15 paragraph 1 of the regulation reads that: "In the case of a court decision in the form of community service, the prosecutor places children in public service institutions, both owned by the government and private which have been determined based on the results of community research..". creates a dilemma for Judges in imposing Community Service Criminal decisions. This is what will be studied in more depth regarding what are the obstacles to imposing service sanctions on conditional criminal decisions for children who conflict with the law after the Birth of Government Regulation Number 58 of 2022 concerning Forms and Procedures for Implementation of Crime and Actions Against Children, and how to overcome these obstacles thus creating the independence of judges in deciding criminal cases against children.

2. METHODS

This research is normative legal research (legal research) namely conducting research by reviewing and analyzing various laws and regulations relating to the imposition of conditional sentences in the form of community service by judges. The properties used in this study are analytical prescriptive. In this study, there is a blurring of norms regarding the imposition of community service criminal decisions in child cases after the issuance of Government Regulation Number 58 of 2022 concerning Forms and Procedures for Implementation of Crime and Actions Against Children. This research uses *Statute Approach*, *Conceptual Approach*, and *Case Approach*.

3. RESULTS AND DISCUSSION

3.1. THE ROLE OF JUDGES AS DECISIONS OF CHILD CRIMINAL CASES

According to the law of the Republic of Indonesia number 48 of 2009 concerning Judicial Power that what is meant by judges are judges at the Supreme Court and judges at judicial bodies under them in the general court environment, religious court environment, military court environment, state administrative court environment, and judges at special courts within the court environment.

Meanwhile, Article 1 Paragraph 8 of the Criminal Procedure Code defines a judge as a state official who is authorized by law to adjudicate. Judging is a series of judges' actions to receive, examine and decide on criminal cases based on the principles of being free, honest and impartial in court in matters according to the method regulated by law.

To make a good decision, at least the judge's decision must contain 3 principles: the principle of legal certainty, the principle of expediency and a sense of justice. The principle of legal certainty, the aspect of certainty requires that in their decisions, judges must be guided by the provisions of laws and regulations as the principle of the State of Indonesia is a rule of law. This means a decision must be made and considered based on clear and applicable rules in Indonesia. It is forbidden for a judge to decide a case without having a legal basis or based on his own will. While the principle of expediency can be interpreted that the judge's decision not necessarily guided by the provisions of the law. But more than that, the judge must see that society and the state participate in the fulfillment of children's rights. This is a form of protection for the growth and development of children, both children in conflict with the law and child victims, by the principles of Law Number 11 of 2012, namely protection, justice, non-discrimination, the best interests of the child, respect for children's opinions, survival and development. children, fostering and guiding children, proportional, deprivation of liberty and punishment as a last resort (Wardoyo, 2015).

Meanwhile, justice is essentially abstract and relative. In criminal law, especially in a criminal case, justice is very difficult to create because there are two parties with different interests who demand the creation of justice, the two parties are perpetrators and victims, Justice for perpetrators is of course a light crime and this will certainly conflict with justice for the victim. , and vice versa, justice for the victim is the most

severe punishment for the perpetrator and this is of course opposed by the perpetrator who feels it is unfair, thus it is very difficult to determine a justice that can provide satisfaction for both parties (Wardoyo, 2015).

For this reason, a decision must contain the type of punishment to be imposed, how long the punishment will be, and where the punishment will be carried out. The following is an example of a community service criminal formula (cases, 2020):

"... 2. Dropping community service charges in the form of "the obligation to carry out service activities at the Muhammadiyah nursing home compensation institution, BANDUNG City, at Jalan Gedeage Selatan no 14A Rt/Rw.02/02 Rancabolang Village, Gedebage District, Bandung City, for 60 (six) twenty) hours, provided that it is not done more than 3 hours a day and not at night..."

Judge's decisions that do not contain the elements above, can be categorized as decisions that cannot be implemented (non-executable) or decisions that do not fulfill a sense of justice means that it is not useful for justice seekers, because the goal expected by justice seekers in proceedings in a court other than so that the law can be upheld and in that way justice can be realized, but if due to certain reasons the decision cannot be implemented, then there will be no benefit or use for the parties to the dispute (Nursobah, 2011).

Through a judge's decision becomes a gate last in determining the fate of children who commit crimes. Before imposing a decision, a judge must pay attention and make every effort not to allow the decision to be handed down to allow new cases to emerge. The decision must be complete and not give rise to new cases. The task of the judge does not stop with making a decision, but also ends with its implementation.

3.2. Independence of Judges in Decisions on Child Cases

The juridical and philosophical foundation of judicial power as an independent institution and free from all forms of outside interference, as desired in Article 24 of the 1945 Constitution, is that judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the Constitution. 1945, for the establishment of the legal state of the Republic of Indonesia. Therefore, judges as a core element in human resources who exercise judicial power in Indonesia,

in carrying out their main tasks and functions of judicial power are obliged to maintain the independence of the judiciary through the integrity of the freedom of judges to examine and decide cases as stipulated in Article 39 paragraph (4) of Law No. . 48 of 2009.

Academically, the freedom of judges can be traced back to the 1945 Constitution, the Law on Principles of Judicial Power and the Supreme Court which has been amended several times. For example, as stated in Article 32 paragraph (5) of Law No. 14 concerning the Supreme Court (which was not changed by Law Number 5 of 2004), the word freedom of judges is not given a more detailed and more technical explanation by the law. , therefore interpreting and understanding the principle of freedom of judges must be within the contextual framework of the principle of independence of judicial power. Because organizationally, judges are part of the subsystem of the judiciary, namely as officials who exercise judicial power, the freedom of judges must always be in the corridor of independence of judicial power institutions as stipulated in Article 3 of Law No. 48 of 2009 which states that, in carrying out their duties and functions, judges are obliged to maintain the independence of the judiciary.

Regarding the principle of the freedom of judges as referred to in Article 32 paragraph (5) of Law No. 14 of 1985 concerning the Supreme Court (which was not changed by Law No. 3 of 2009 concerning the Second Amendment to Law No. 14 of 1985 concerning the Supreme Court), the law does not further explain in detail, therefore the spirit of the meaning of Article 24 paragraph (1) of the 1945 Constitution must be developed in understanding the intent of the freedom of judges in Article 32 paragraph (5) of Law No. 14 of 1945 concerning the Supreme Court (which was not changed by Law No. 3 of 2009 concerning the Second Amendment to Law No. 14 of 1945 concerning the Supreme Court), that the freedom of judges must be within the framework of the principle of freedom of the judiciary. Because judges are a subsystem of the judiciary, as officials who exercise judicial power, the freedom of judges must always be within the corridor of independence of the Judicial Power, as stipulated in Article 3 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, which states

that "In carrying out their duties and functions, judges and constitutional judges are obliged to maintain the independence of the judiciary.

According to Sudikno Mertokusumo, the judge is free to judge according to his conscience/belief without being influenced by anyone. Judges can examine, prove and decide cases based on their conscience. Besides that, it is also free from interference from extra-judicial parties (Mertokusumo, 2002) All interference with other parties is prohibited. If the judge has had enough of examining the case submitted to him, then the time has come for him to give a decision on the case filed. In deciding the case, it is required by law that in addition to being based on evidence that has been determined by law, it must also be based on the conviction of the judge. The considerations of judges in deciding cases can be divided into two categories, namely Non-Juridical and Juridical Categories and Categories.

Obstacles in imposing community service criminal decisions by judges:

1. Law Inconsistency with Government Regulations as Implementing Regulations for The Juvenile Justice System Act.
2. No Norm Operators That Make Multi-interpretation Rules.
3. The Quality of Judge's Human Resources Needs to be Improved.
4. Means and infrastructure in deciding community service crimes.
5. Community Service Decision on Child Cases.

As for how to overcome obstacles in deciding community service crimes in child cases, as follows:

1. Align laws and regulations. Judges in resolving conflicts before them must be able to resolve them objectively based on applicable law, so in the decision-making process, judges must be independent and free from the influence of any party, including the executive. In making decisions, judges are only bound by relevant facts and legal principles which form or serve as the legal basis for their decisions. But the decision of the facts, including relevant facts and the choice of legal rules that will be used as the basis for resolving the case at hand is decided by the judge concerned himself (Adonora, 2002). Thus, it is clear that the judge or judges have great power over the parties to the dispute regarding the

problem or conflict that is before the judge or judges. However, this also means that in carrying out their duties fully they bear a great responsibility and must be aware of this responsibility, because a judge's decision can have far-reaching consequences on the lives of other people affected by the scope of the decision. An unfair judge's decision can even leave an imprint on the minds of the *yastisinbels* concerned throughout their life's journey (Lubis, 2002).

2. Provide SPPA Judge certification which contains Special Training material related to consideration of the type of punishment that is suitable to be given, to children based on the case, and the psychological development of children, the length of time the punishment is related to Juvenile Judges. Legal culture is a way or habit that exists in society towards a regulation, in this case, it also includes the attitude of law enforcement officials in carrying out the legal system. In imposing a decision, the judge must consider the future of the child, and whether the punishment will have good consequences for the child in the future, no matter how good the legal structure is to carry out the established legal rules and no matter how good the quality of the legal substance is made without the support of legal culture by the people involved, one of which is a judge as a law enforcement officer, it will be a waste.
3. Make an MOU related to community service places in an area by Bapas. In imposing a community service criminal verdict, the judge is required to write down the complete and detailed verdict. However, nowadays it is still very difficult to find the availability of facilities in the form of facilities and infrastructure for judges to carry out their decisions. The facilities and infrastructure in question are infrastructure or facilities that are used as a tool to achieve legal effectiveness. This infrastructure is a part that contributes to the smooth running of the judge's duties in deciding cases, in which case conditional punishment in the form of community service will be carried out is still limited, so based on this balance, it is best the Ministry of Law and Human Rights through BAPAS in each region starts conducting an MOU with the institution. government and private sector so that community service criminal decisions by judges can be

carried out.

4. CONCLUSIONS

The independence of judges in imposing community service criminal decisions in children's cases, i.e. there is an inconsistency between the laws and regulations in the Juvenile Criminal Justice System Law and, implementing regulations, creates the dependence on judges in deciding child cases related to the imposition of community service crimes. Also, the lack of training for human resources for judges as case breakers, as well as a lack of facilities and infrastructure that support the effectiveness of community criminal prosecution.

5. SUGGESTION

There should be an alignment between statutory regulations, namely The Juvenile Justice System Law with Government Regulations as implementing regulations. Judges should be given special training on considerations of criminal imposition as children, which includes learning regarding considerations of the period, and types of punishment (community service) that are suitable for children with the characteristics of the crimes committed (psychological science), so that judges can maturely decide on a choice of punishment right. The Ministry of Law and Human Rights in each region should have an MOU with government and private institutions regarding willingness as a place for Community Service Crimes to be carried out, and provide socialization regarding this matter to Judges.

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