

The Implementation of Substantive Justice in the Imposition of Criminal Fine against Children for Criminal Acts (Criminal Case Study in Child Courts in Klas Ia Kupang State Court)

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Abstract: The application of fines for children is made with the aim of having a deterrent effect on children and for parents who pay fines to pay more attention to children's behavior in society. The question is what if they (children who commit crimes) have capable parents and are sentenced to a fine, because every time they violate the law, their parents are able to pay the fine for their actions. This is very contrary to the purpose of giving criminal penalties to children because there will be no deterrent effect on their actions. In the case mentioned above, the author wants to examine and discuss the problems to be studied, namely identifying what factors are the basis for judges' considerations in determining criminal penalties for children and whether substantive justice can be used as the basis for judges' considerations in imposing criminal fines for crimes committed by children. minors. With the formulation of the problem that was built by the researcher using the juridical-normative research method as an approach in analyzing the data obtained and discussing it according to the results of the study. Related to the results of the study, it was found that the factors that became the basis for the considerations of the Juvenile Court judges at the Kupang District Court were: juridical factors, philosophical factors, sociological factors, psychological factors. The imposition of fines other than based on the considerations above, is related to several cases that are subject to fines because these children have committed a crime for the first time, so that the application of fines is appropriate to be given to those who are truly seen from a psychological and sociological perspective. Juridical and non-juridical factors deserve a fine. The consideration of being sentenced to imprisonment or confinement by the Kupang District Court judge is in the hope that while in the Child Correctional Institution, the child will receive guidance and education from the correctional supervisor. The child was sentenced to imprisonment also with the consideration to keep the child away from the environment that has the potential to make the child repeat his actions because the pattern of personality development of a person who is still said to be a child is from the family and the environment. It was also found that substantive justice can also be applied to criminal fines for minors who commit crimes so that it reflects the principle of justice.

Keywords: Criminal Imposition, Fines, Child Crime, Substantive Justice

A. Introduction

The criminal justice system based on Law no. 8 of 1981 concerning the Criminal Procedure Code, in the applicative stage or its implementation includes 3 (three) stages, namely before trial (pre-adjudication), trial (adjudication) and after court (post-adjudication). This stage is an interconnected process in the context of criminal law enforcement to determine the truth of a criminal event.

The perception of law enforcement officers regarding legal protection for children who are in conflict with the law in the criminal justice process is closely related to the objective world that surrounds them in addition to their subjective interpretation as individuals. As a result, any procedural regulations concerning legal protection for children who are in conflict with the law in the criminal justice process are often considered to slow down the process. Thus, it is necessary to increase the knowledge and understanding of law enforcement officers on the provisions of human rights, especially children's rights as formulated in the constitution and international instruments. Increasing the professionalism and morale of law enforcement officers to build sensitivity to things that are felt by justice seekers including children who are in conflict with the law in the criminal justice process is very necessary.

Alternative punishments imposed on children have been specifically determined with the aim that the punishments imposed on children as perpetrators of criminal acts do not destroy the child's future but through punishment or actions given and supported by professional guidance, it is hoped that it can improve children's behavior to achieve their future. which is still long.

Choosing the type of punishment is certainly influenced by various conditions or circumstances obtained at the trial which are based on the reality of the previous process and the decision handed down must be taken into account with the future development of the child.

The application of fines for children is made with the aim of having a deterrent effect on children and for parents who pay fines to pay more attention to children's behavior in society. The question is what if they (children who commit crimes) have capable parents and are sentenced to a fine, because every time they violate the law, their parents are able to pay the fine for their actions. This is very Contrary to the purpose of giving criminal penalties to children because there will be no deterrent effect on their actions.

Based on this, the writer wants to examine more deeply related to the application of substantive justice in the imposition of fines against children who commit crimes.

B. Problem Formulation

- a. What factors are the basis for the judge's consideration in determining the criminal fine for children?
- b. Is substantive justice the basis for judges' considerations in imposing fines for crimes committed by minors?

C. Discussion

1. Factors that become the basis for judges' considerations in the application of fines for children. The development of cases of children dealing with the law from time to time is increasing varied. The forms of actions carried out by children can not only be classified as delinquency However, it is already a criminal act so that inevitably a criminal approach is forced to be carried out on children.

Related to criminal acts committed by children in accordance with the provisions of Article 71 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, which are as follows:

1) The main crime consisting of

- a. warning penalty;
- b. conditional punishment (guidance in institutions, community services, supervision);
- c. work training;
- d. coaching in institutions and prisons;

2) Additional punishment in the form of confiscation of profits obtained from criminal acts, fulfillment of customary obligations.

If in material law a child in conflict with the law is threatened with cumulative punishment in the form of imprisonment and a fine, the fine shall be replaced with job training for a minimum of 3 months and a maximum of 1 year. The punishment for restricting freedom imposed on children is a maximum of of the maximum imprisonment that is threatened against adults (Article 79 paragraph 2 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System), while the special minimum provisions for imprisonment do not apply to children.

Giving a decision against a child by a judge is a form of applying criminal sanctions against perpetrators of criminal acts. The more diverse criminal sanctions and actions provided for law enforcement officers, the better. Because Criminal Law views criminal acts more focuses on the perpetrator, so that there must be individualization and differentiation in punishment, namely punishment that is in accordance with the circumstances and the person of the perpetrator of the crime.

The imposition of criminal decisions based on case data in 2020 recorded 15 cases of children, of the 15 cases of children who were sentenced to cumulative imprisonment and fined only 7 cases and the remaining 8 cases were sentenced to a single crime and namely imprisonment. In 2021 there were 5 cases of children, out of 5 cases of children who were sentenced to a cumulative crime, namely imprisonment and a fine of 3 cases and the remaining 2 cases were sentenced to a single crime, namely imprisonment.

The decision is the final stage and is the final goal of every case examination. It is this decision that determines whether or not the defendant is a naughty child. In the event that the decision is made by a single judge, of course, deliberation is not required, but in the case of the composition of the judges, the deliberation panel is obligatory. As is known, the decision is the crown of a judge, meaning that it is from the decision that it can actually be known how a judge actually examines, hears and decides a case.

The decision is not a conclusion because the decision is based on in-depth considerations of each case. This consideration is obtained from the facts revealed in court. A decision containing a sanction is preceded by a statement that a person is legally and convincingly proven guilty of a certain crime.

With regard to sanctions on naughty children, it can be in the form of criminal acts or actions as stipulated in Law no. 11 of 2012. The basis for in-depth considerations carried out by judges in the context of

imposing criminal sanctions on naughty children can be categorized into several factors, namely: (1) Juridical Factors (2) Non-Juridical Factors.

In imposing criminal sanctions on naughty children, judges cannot just rely on juridical factors if they don't want to be trapped in legislation that is rigid and never achieves justice. Therefore, the juridical and non-juridical factors are considered by the judges together in one unit.

a. Juridical Factor.

The juridical factor is based on the legal facts revealed in court. Legal facts obtained during the trial process are based on the suitability of witness statements, defendants' statements and evidence which is a series. This legal fact by the judge becomes the basis for consideration related to whether the actions of a child have fulfilled all the elements of the criminal offense charged with him. These elements will indicate the type of crime the naughty child has committed.

Furthermore, in addition to the type of crime, the juridical factor is also related to the criminal liability of naughty children. Here the judge will consider whether the actions that have been carried out by the naughty child can be held accountable to the child. Is there an element of blame on the naughty child for the alleged act.

In addition, this juridical factor is also related to the severity of the sentence imposed, the length of the criminal threat and the form of the type of crime that has been committed.

b. Non Juridical Factors.

Non-juridical studies as the basis for judges' considerations regarding the imposition of sanctions on naughty children here consist of several factors, namely:

1. Philosophical.

Philosophical factors are used as the basis for important considerations from judges in imposing sanctions on naughty children. With this factor, the judge will not lose his orientation based on the objectives that have been outlined by the relevant Law.

In the context of imposing sanctions on naughty children, the philosophical basis for the imposition is none other than in the best interests of the child as stipulated in Law no. 11 of 2012.

2. Sociological

Sociological factors are useful for assessing the social background of why a child commits a crime. The basis for the judge's consideration in imposing sanctions on these naughty children was obtained from community reports obtained from BAPAS. This community report contains data on individual children, families, education and social life as well as conclusions from community advisors. In the Juvenile Court Law, this community report becomes the judge's consideration in imposing sanctions. This sociological factor also becomes the basis for the judge's consideration of the influence of the form of sanctions imposed in the future on naughty children, so that the form of sanctions taken will be carefully considered.

3. Psychological.

Imposition of sanctions, psychological factors are important factors as a basis for consideration of imposing sanctions on naughty children. With psychological factors, it will be useful to examine the psychological condition of the child when the child commits a crime and after serving the crime. For this reason, psychological considerations are taken into consideration by judges in terms of imposing criminal sanctions because understanding this psychological aspect allows a description of the judge's perception of the naughty child. In the context of imposing criminal sanctions, judges obtain community reports from BAPAS as well as opinions from BAPAS in court and are known from the behavior of children during child trials.

4. Criminologist.

Criminological factors are needed to examine the causes of a child committing a crime and how the attitude and behavior of a child who commits a crime. Based on these criminological factors, judges in the context of imposing sanctions consider the motives of naughty children in committing criminal acts which will affect the form of imposing sanctions on naughty children. Although juridical factors and non-juridical factors are the basis for judges' considerations in imposing sanctions on naughty children, in reality, the crime of deprivation of liberty remains a central position in the criminal sanctions system. Most judges tend to impose imprisonment on children even though the child has committed a crime for the first time. This can be seen from the number of criminal applications fines against children compared to the implementation of imprisonment in 2020-2021.

The imposition of prison shows that punishment is only seen as an effort to tackle crime, even if there is a view that punishment is seen as retaliation. This can be seen from the judge's considerations in imposing imprisonment in general, in matters that are aggravating every case of a naughty child, a crime committed by a child is quite disturbing to the community.

According to Fransiskus W. Mamo, SH., MH who is one of the juvenile judges at the Kupang District Court, that in every criminal conviction, the judge must consider whether the decision is beneficial for the convict, including in juvenile criminal cases. Even in imposing a crime against a child, judges usually consider 3 things, namely:

1. The psychological state of the child when committing a crime

Judges must know the background and factors that cause children to commit crimes. For example, the child commits the crime because he wants to defend himself, the child is in an emotional state, because of environmental or social factors and other factors that are considered by judges in making decisions on children.

2. The psychological state of the child after being sentenced

Judges must also think about the impact or consequences on children after being convicted. Because in essence the punishment of a child is not only aimed at convicting a child, but also to make a child aware so that they do not commit the same crime or other criminal acts after serving their criminal period, both imprisonment and confinement.

The development of the child's soul after serving the sentence he handed down will also be an important concern by the judge in imposing a sentence. If this is not the case, then it is feared that the mental development of the child after being sentenced will not get better but even get worse. In other words, the judge must be able to predict the psychological state of the child after being sentenced later.

3. The psychological state of the judge in making a decision

The DC judge must consider the severity of the delinquency committed by the child. If the child's delinquency is considered to be very severe and detrimental to many people, the judge is obliged to impose a sentence on the child so that it is a deterrent to his actions. However, if the child's delinquency is considered light and does not harm many people, the judge will return the child to his parents or guardian to be educated and it is hoped that the parent/guardian can understand and make the child aware of his actions that can harm himself and even others.

The imposition of fines other than based on the considerations above, is related to several cases that are subject to fines because these children have committed a crime for the first time, so that the application of fines is appropriately given to those who are truly seen from a psychological and sociological perspective. juridical and non-juridical factors deserve a fine.

Imprisonment is caused because fines are considered ineffective for the development of children's behavior patterns to become better, and it is confinement and imprisonment that are considered appropriate for a child to be educated on their behavior patterns. Apart from that, according to him, "if a child is sentenced to a fine, children, especially in the city of Kupang, who are typical of strong characters will not be deterred and will repeat crimes even more evil. They feel that if they commit a crime, they will be subject to a fine, and paid for by their parents. This will not educate them, because in other words it can be concluded that with parents' money, children are not afraid to commit crimes."

Generally, Kupang District Court judges impose imprisonment on children who are proven legally guilty as a substitute punishment for fines and according to Kupang District Court judges imprisonment or imprisonment is more effective than fines, because children can still be guided to change attitudes.

The consideration of being sentenced to imprisonment or confinement by the Kupang District Court judge is in the hope that while in the Child Correctional Institution, the child will receive guidance and education from the correctional supervisor. The child is also sentenced to imprisonment with the consideration of keeping the child away from the environment that has the potential to make the child repeat his actions because the pattern of personality development of a child is still said to be from the family and the environment.

Oriented to the objectives as specified in Law NO. 11 of 2012 concerning the Juvenile Justice System, it does not only view children as perpetrators of criminal acts but also views children as victims (victimogens) for their actions. The disparity in sanctions imposed on naughty children is in many ways the result of different perceptions in view of the provisions of the Juvenile Court Law, the Child Protection Act and the Child Welfare Act.

Correct understanding in handling cases of naughty children can start from understanding the position and classification of children based on the age classification of children at the time of committing a crime.

Classification of age will greatly affect the imposition of sanctions imposed. Age classification has an important meaning for judges (children) because understanding age classification will be able to help judges (children) in understanding child psychology, and furthermore, a correct understanding of child age classification will help judges understand the phases of child development. This will result in a tendency for judges to also be able to understand and understand the condition of the child at the time of committing a crime.

4.2. Forms of Application of Substantive Justice as a Basis for Judges' Consideration in Imposing Fines for Crimes Committed by Minors.

The implementation of child protection, in the context of imposing sanctions on naughty children, basically also pays attention to other factors such as:

- a. Matters related to the development of truth, justice and child welfare;
- b. Other matters that must have a philosophical, ethical and legal basis;
- c. The existence of a rational view that is positive and can be accounted for;
- d. The existence of a principle of benefit which will be used by naughty children, for example, education, training and coaching that can support children's lives after getting out of legal problems;
- e. There is an understanding of the regulated interests, not the perspective of the governing interests;
- f. Actions handed down by judges must be consistent, not accidental and complementary;
- g. An understanding of the imposition of sanctions that is not only based on criminogenic factors but also on victimization factors.
- h. Understanding that the basis for imposing sanctions by judges on naughty children must be restorative (recovery) not as a means of criminal liability.

In addition to the things that have been described above, in the context of imposing sanctions, there are things that make the judge's understanding in the context of imposing criminal sanctions, namely:

- a. The view of the child not to be able to fend for himself;
- b. There is an opinion in the best interest of the child.
- c. The existence of a life cycle design for children's lives (lifecycle approach).
- d. There is an understanding of cross-sectored children.

The existence of juridical and practical problems as described above, of course in the future there must be a study that allows judges to take actions that can overcome these problems. This study covers both the substance, structure and legal culture as follows:

1. Legal Substance.

In imposing sanctions on naughty children, judges must have guidelines that regulate in detail the legal aspects that are guided by the imposition of criminal sanctions themselves. For this reason, in the context of imposing sanctions on naughty children, it is necessary to reform the law against the applicable laws and regulations.

The regulation regarding the juvenile justice system has been stated in Law Number 12 of 2012 concerning the Juvenile Justice System. This Law has contained a clear objective, namely in the context of providing the best interest of the child (the best interest of the child) but the substance regulated in this Law does not support the achievement of this goal, even in certain cases it is contradictory. It can be stated that the revocation of Articles 45, 46 and 47 of the Criminal Code is actually felt to have resulted in the punishment of naughty children in certain cases being more severe because these Articles are guidelines for punishment in the Criminal Code related to the provisions of Article 10 to Article 43 of the Criminal Code. In addition, the provisions of Article 71 of Law no. 11 of 2012, resulting in conditional, cumulative and abolition of criminal penalties. This provision has encouraged judges as punishment guidelines that have been regulated.

In connection with the application of fines to children who commit crimes, of course, it must also be considered about the merits and weaknesses of the application of fines. Every type of criminal sanction in principle contains goodness on the one hand and weakness on the other. Whether we realize it or not, often the sharp spotlight is more inclined to focus on the weaknesses/bad things than highlighting the good side. Especially when it concerns the so-called "criminal", which some circles have always described as cruel treatments. The sharp criticism and spotlight on the various negative impacts produced by imprisonment have had an influence on efforts to find alternatives to imprisonment, although here and there there is still debate about the need for imprisonment.

The criminal system of fines covers all the provisions of the law that regulates how the fines are enforced/operationalized/functionalized in a concrete way so that a person is subject to criminal sanctions

(fines). As already mentioned, every type of crime always has its own characteristics. Likewise, fines, besides having characteristics that are manifested in their goodness and weaknesses, also have other prominent characteristics, namely being economical. Therefore, fines have a relative value, meaning that they are easy to change in value due to the influence of a society's economic development, both nationally and internationally.

Related to the description above, Barda Nawawi Arief proposed several criteria or guidelines in imposing a fine, which are basically as follows:

1) A new fine is imposed if:

- a. By taking into account the nature of the crime and the curriculum vitae as well as the character of the defendant, giving him a fine is sufficient to provide protection to the public;
- b. The defendant has obtained material benefits from the crime committed or the court is of the opinion that the fine itself can prevent the crime from occurring and can correct the violator;
- c. The defendant can or is able to pay and the fine imposed will not prevent the defendant from providing compensation or making repairs to the person who is the victim of the crime;

2) In determining the amount and method of payment of the fine, it is necessary to take into account the financial sources of the defendant and the burden/amount of payment to be imposed. Starting from the description above, in the end it can be stated that the policy of the criminal system of fines that is really concerned with the several factors that need to be considered above, is not only able to realize the policy of imposing individual fines, but more than that can realize the policy of the criminal system of fines. humanist, rational and functional in reality.

The application of fines by law enforcement aims to implement a justice, a form of justice as John Rawls argues in *A Theory of Justice*, justice is fairness, namely a condition that is built on the basis of the view that every individual has freedom, the initial status quo which confirms the fundamental agreement in the contract. social is fair. This is the original position of humans when joining a community called the social contract. The main idea of justice in Rawls's view is how the main institutions of society regulate basic rights and obligations and determine the distribution of welfare for social cooperation that is built.

John Rawls's thoughts on the theory of justice are interesting things to be used as a basis for examining the concept of substantive justice. This is because the concept of justice put forward by John Rawls clearly leads to substantive justice.

Substantive justice is defined as "Justice fairly administered according to rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights." This definition can at least be interpreted that substantive justice is justice that is given in accordance with the rules of substantive law, regardless of procedural errors that do not affect the substantive rights of the perpetrators of crimes and victims of criminal acts. This means that what is formally and procedurally true can be blamed materially and substantially violates justice.

Starting from the conception of justice above, according to the author, the application of fines to minors who commit crimes is a manifestation of substantive justice rather than imposing imprisonment or confinement. As the concept or idea of "criminal individualization" has several characteristics, namely:

1. Liability (criminal) is personal/individual (principle of personal);
2. The punishment given to the guilty person ("culpability principle": "no crime without guilt");
3. Criminal sanctions must be adjusted to the characteristics and conditions of the perpetrator; this means that there must be flexibility/flexibility for judges in choosing criminal sanctions (type and amount/severity of sanctions) and there must be the possibility of modifying the criminal (change/adjustment/review) in its implementation.

D. Closing

1. The factors that form the basis for consideration of the judges of the Juvenile Court at the Kupang District Court are:

- 1) Juridical factors.
- 2) Philosophical factors.
- 3) Sociological factors.
- 4) Psychological factors.

2. Juvenile Court judges in imposing sentences on criminal acts of minors have not fully reflected the principle of substantive justice.

Suggestion

a. For juvenile judges at the Kupang District Court, that in every criminal conviction, in addition to considering whether the decision is beneficial for the convict, including in child criminal cases, it is also advisable to consider 3 things, namely: the psychological state of the child when committing a crime, the psychological state of the child after being convicted and the future of the child (the child's future self-development), the judge must also consider the circumstances of the victim of a crime committed by the child. Is the criminal imposition applied can provide a sense of justice for the victim.

b. In ensuring the personality development and survival of minors who commit crimes, juvenile court judges should be obliged to give decisions that reflect substantive justice.

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