

Penal Mediation Of Juvenile Delinquency

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PENAL MEDIATION FOR JUVENILE DELINQUENCY

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ABSTRACT

The existing juvenile trial which emphasizes on retributive justice should have been reexamined and replaced by a new paradigm with restorative justice. In this regard, penal mediation is one of the attempts to actualize that notion. This research is aimed at: 1) investigating various factors that contribute to the juvenile delinquency and 2) creating an appropriate penal mediation model as an alternative in resolving the juvenile delinquency. The approach employed in this study was phenomenology in which multifaceted social phenomena related to the juvenile delinquency were examined. In this context, the data were utilized as the basis of instrument in analyzing the issues. The analysis used was socio-legal theory from Roscoe Pound stating that law is a social engineering theory. The results of this study demonstrated that: 1) juvenile delinquencies are triggered by a number of factors encompassing economic, education, social, environment factors and the lack of religious value implementation, 2) the widely used penal mediation in some areas in Indonesia is consensus agreement involving families of both parties (victim and offender), community leaders and police officers that is in accordance with the model developed in Australia and New Zealand.

Keywords: Juvenile delinquency; penal mediation

INTRODUCTION

Juvenile delinquency should obtain special treatment, attention, consideration, service, care and protection as what has been regulated in the international instrument of Beijing Rules, Law Number 3 of 1997 regarding juvenile delinquency and Law Number 23 of 2002 concerning child's protection (Ainal Mardiah, 2012). An alternative dispute resolution is not a completely new discourse in Indonesian as the traditional society here have undertaken this way since a long time ago (Hilman Hadikusuma, 1992:247).

Mediation or an alternative dispute resolution in Indonesia has rooted in various social life aspects and became the culture in traditional society and the state philosophy, Pancasila with the value of consensus agreement. It indicates that mediation is a feasible, simple and efficient way used by Indonesians to resolve a dispute including in criminal cases.

Children are the actors of change in this country in the upcoming era. Therefore, the protection for their future is profoundly necessary. There must be a sense of priority and a sense of justice in resolving the criminal cases involving children. If the values are not implemented, their future would be disastrous in the trial which subsequently influences the future of this country.

The police has socialized and made a one-step forward innovation in terms of "Criminal Mediation (Penal Mediation)". Since 2005 the decree of police chief 737/X/2005 about the policy and strategy of police in the society has been implemented to resolve particular criminal cases through alternative ways. In that decree, the agents of social law enforcement (known in Indonesian as *Babinkamtibmas/Bhabinkamtibmas*) in a particular village/sub-district/area have the authority altogether with society to reconcile a number of criminal cases in order to maintain peace and avoid wider social conflicts. In 2008, social police strategic policy was consolidated with the decree of police chief number 7/2008. The national police attempted to consolidate "Penal Mediation" through the decree number Pol.: B/3022/XII/2009/Sdeops on 14 December 2009 regarding the handling of cases through Alternative Dispute Resolution (ADR) viz the criminal cases with minor lost and agreed by the related parties through consensus agreement that involves RT/RW (neighborhood associations) and the society, respects legal, social/custom norms and upholds justice for all parties.

Related to juvenile delinquency, the national police has prioritized the reconciliation through ADR namely consensus agreement or without any legal procedure so that the value of justice and purpose will be upheld. The problems formulated in this research are: What are the factors influencing juvenile delinquency; and What is the most appropriate penal mediation model to resolve juvenile delinquency?

RESEARCH METHOD

This is qualitative research with normative-empirical approach in that statute, concept and case approaches were employed (Marzuki, 2005 and Ibrahim 2005). Primary and secondary data were collected in this study. Furthermore, the research subjects were interviewed with snow ball and purposive sampling technique. The primary data were flexibly collected and subsequently analyzed with descriptive qualitative principles in order to find the relationship among dimensions questioned in this research.

THEORETICAL FRAMEWORK

From the outcome of previous study it was known that the jury for a juvenile delinquency of ABH in Banda Aceh, the district court had initiated a penal mediation to manifest the paradigm of restorative justice. This mediation was in line with the meaning and purpose of Article 16 Law Number 23 of 2002 regarding juvenile protection for the betterment, both the victim and the offender. With that implementation, there has been a paradigm shift from the characteristic of private law to public law and it became the legal breakthrough initiated by the jury (Ainal Mardiah et al, 2012).

According to Agus Raharjo (2008), the model of criminal case resolution through non-litigation (penal mediation) can reduce the perplexing issues of criminal justice by resolving criminal cases through the civil cases. On the other hand, the mediation of juvenile delinquency in Purwokerto has not fully implemented the restorative justice because its target tends to avoid the investigation in the level of prosecution and trial (Angkasa dkk, 2009). In general, the practice of juvenile law enforcement in Indonesia is still far from the target with the progressive law approach. In most cases, imprisonment dominates the jury decision (Setyo Wahyudi, 2009).

The elaboration above indicates that the resolution for delinquency has not been fulfilled and consistent with the value of juvenile welfare. In fact, the ultimate objective of juvenile court is to accommodate their best interest including physical, mental and social aspects.

The Age of Criminal Responsibility

In juvenile delinquency, the eligible age should be after 8 (eight) and before 18 (eighteen) years old and have not been married. In other words, the age limitation is from 8 (eight) to 18 (eighteen) years old (Article 1 Clause (2) of Law Number 3/1997). In law number 11 of 2012 about the juvenile criminal delinquency, the age regulated here is 12 (twelve) years old to 18 (eighteen) years old. From some definitions of age limitation related to this study, Law Number 3/1997 becomes the reference here since the new regulation has not been enacted.

The age of criminal responsibility in some countries in the world is different depending on the background and culture of each state. In Yugoslavia, the limitation is relatively higher than in Indonesia viz:

- a. Children under 14 (fourteen) years old (article 65:1) could not be included in the juvenile delinquency.
- b. Children aged 14 years old up to 16 years old (junior juvenile) could not be imprisoned but they may receive educative sanction (article 66:1)
- c. Children aged 16 years old to 18 years old (senior juvenile) may be imprisoned and sanctioned (article 66:2) (Barda Nawawi Arief, 2002:99-100).

In Indonesia, the juvenile trial is in effect for children aged 8 (eight) years old to 18 (eighteen) years old and they have not been married.

Factors Influencing Juvenile Delinquency

Juvenile comes from Latin word, *juvenilis* meaning children, teenager, characteristics of youth and particular traits of young generation. Meanwhile delinquent comes from Latin word, *delinquere* meaning abandoned and abandoning which is extended to misbehaving, anti social, criminal and etc. Juvenile delinquency can be defined as the misbehavior of children and youth and the indication of social misconduct (pathology) due to a social abandonment so that they develop deviating activities. The term refers to a wide range of behaviors which is unacceptable in society. Factors influencing juvenile delinquency are:

Identity

During teenage, the youths have to deal with identity issues. The biological and social change result in two integrations in their identity: firstly, the feeling which is in line with their life and secondly, the accomplishment of role identity by combining their possessed motivation, value, ability and style with a self-made demand in order to show their existence. To search their identity, teenagers sometimes made mistakes.

Self control

Juvenile delinquency is often characterized as the failure to develop sufficient self control in children/teenager's behavior. Some of them fail to maintain essential values possessed during their growth. They actually have learned the difference between acceptable and unacceptable behaviors but the delinquent juveniles are unable to recognize those principles. Besides that, they probably fail to develop self control as the guidance of their behavior.

Self identity

Boys tend to perform anti social behaviors compared to girls. In this regard, the probability for boys to commit gang delinquency is 50 times higher than girls.

Expectation for education and values developed at schools

Juveniles who commit delinquency frequently have low expectation for their education at school. To their view, the benefit of school is considerably limited so that their score tends to be dissatisfying. Moreover, they do not nurture any motivation to study and frequently skip classes.

Family process

Family has a significant contribution for the emergence of juvenile delinquency. The lack of family's support such as discipline, parental supervision and care can become a triggering factor in children/teenager's misbehavior. Dispute or stress occurred in the family also links directly to delinquency. Not to mention, genetic factor can evoke the negative behavior though the percentage is very few.

Influence from friends

Friends committed misconducts can increase the risk of juvenile delinquency. According to a study conducted for 500 delinquent teenagers and 500 average ones, they who befriend with troublesome friends have higher possibility to commit delinquency.

Quality of surrounding

Community also plays a significant role in triggering juvenile delinquency. The society with high criminal records may allow children/teenagers to observe, commit criminality and obtain reward for that activity. This type of society is often characterized by poverty, unemployment and marginality from the middle and high group. The quality of school, activities inside and outside supervision are also linked directly to the juvenile delinquency.

Penal Mediation

Penal Mediation is frequently known in various terms including mediation in criminal cases of mediation in penal matters. Since this mediation accommodates the meeting between the offender and the victim, it is also called as Victim-Offender Mediation (VOM), Täter-Opfer-Ausgleich (TOA), or Offender-Victim Arrangement (OVA).

Penal mediation is regulated in the decree of police chief number Pol: B/3022/XII/2009/SDEOPS on 14 December 2009 regarding the case handling through alternative dispute resolution (ADR) and Indonesian national police chief regulation number 7 of 2008 about the guideline of basis of strategy and the implementation and the providence of police duty. It regulates the handling of criminal cases through ADR when the material lost is insignificant, agreed by both parties, conducted by discussion consensus agreement principle, respecting the social norm/custom, upholding the principle of justice and if ADR is selected, the offender would not be prosecuted.

Models of Criminal Mediation:

Stated "Explanatory memorandum" from the recommendation of European Council Number R (99) 19 about Mediation in Penal Matters, there are some models of penal mediation as follow:

a. Informal Mediation Model

This model is implemented by the criminal justice personnels in their normal duty in which it can be initiated by the general prosecutor by inviting related parties to informally reconcile the dispute.

b. Traditional Village or Tribal Moots Model

According to this model, all society meet to resolve a disastrous conflict happened among them.

c. Victim-Offender Mediation Model

This model involves all parties and a designated mediator to attend a meeting. There are a number of variations in this model. The mediation may come from formal official, independent one or combination of both. It can be implemented in every process starting from the law enforcement by the policy, before the prosecution or after the court decision.

d. Reparation Negotiation Program Model

This model is merely intended for estimating/assessing the compensation or restoration paid by the offender to the victim which is usually undertaken during the investigation at the court.

e. Community Panels or Courts Model

This model is a program for directing criminal cases from the prosecution or trial to the social procedure which is more flexible, informal and frequently involving mediation or negotiation elements.

f. Family and Community Group Conference Model

It involves the participation of society in the criminal justice in which the victim, the offender, the family of offender, other members of society, particular officials (such as police and juvenile jury) and the supporters of the victim are included. The offender and his/her family is expected to make a comprehensive agreement, satisfy the victim and help the offender from the legal problem/difficulty.

RESULTS AND DISCUSSION

Factors influencing juvenile delinquency

Juvenile delinquency comes from Latin word, *juvenilis* meaning children, teenager, characteristics of youth and particular traits of young generation whereas delinquent comes from Latin word, *delinquere* meaning abandoned and abandoning which is extended to misbehaving, anti social, criminal and etc. Juvenile delinquency is misbehaviors of children and youth and the indication of social misconduct (pathology) due to a social ignorance so that they develop deviating activities. The term refers to a wide range of behaviors which is unacceptable in society. It can be emphasized that the delinquency committed by youth/children aged less than 17 years old tends to be negative and creates damage or lost for themselves and others. Factors influencing that tendency include the identity issue and self control. Regarding their identity, biological and social change result in two integrations: firstly, the feeling in line with their life and secondly, the accomplishment of role identity by integrating possessed motivation, value, skill and style with the self-created demand. In searching their identity, they sometimes make mistakes. In regard to self-control, the delinquency can be described as the failure to develop sufficient that ability. Some of them fail to maintain essential values possessed during their growth. They actually have learned the difference between acceptable and unacceptable behaviors but the delinquent teenagers are unable to recognize those principles. They probably fail to develop self control as the guidance of their behavior.

Besides that, there are some factors influencing juvenile delinquency namely family, surrounding and economic factors. Three of them can commutatively become the cause of a delinquency or one of them may become the most dominant factor of misbehaviors committed by juvenile.

The first factor is family. Issues such as the unharmonious situation and conflicts observed by children may make them find another attention outside the home. In fact, there are various negative influences that may disturb their mental and behavior. The unharmonious situation may occur due to parents' divorce, overtime work, discriminative treatment and minimum acknowledgment for children and etc. Consequently, the children feel that their family is not supportive or attentive in solving their problems at school or surrounding. Besides that, they do not see any exemplary role model and get equal treatment at home. In sociological perspective, it is common and acceptable when the factor of unharmonious family could trigger the rule or norm violation by committed by children as elaborated above. Nevertheless, if the misconduct is triggered, supported, conditioned, coordinated by parents or elderly, the situation will be more disastrous.

The second factor is environment. After family, the place for children to socialize is the environment at school and the place where they play. Without any doubt, what children/youths learn at school and who their friends are will influence their delinquency. Not all children from unharmonious family become the offender because some offenders come from harmonious family. It happens because the influence of their negative surroundings and friends.

Children from unharmonious background definitely will have higher possibility for finding new environment that can accept them. If the place is positive, the children will receive support and help to overcome their problems. On the other hand, if the environment is negative, the children will be likely involved in misconducts including the activities violating law such as stealing, pick-pocketing, brawling with friends at school and even using or distributing drugs. The group activity or known as gang at school and at society should receive special attention from parents, teachers and social figures. A gang membership or community is usually deemed as negative. Regarding the high solidarity among its members, the children who crave for an acknowledgment for their existence due to lack of attention from parents or school will neglect the judgment of right or wrong. They may perform unacceptable behavior as long as they are accepted unconditionally in that gang.

The third factor is economy. Since the beginning of criminology, economic demand has become a classic motive of delinquency. The intention for juvenile delinquency may vary from the desire to receive more pocket money or to fulfill the need of their family.

Three factors above are only a part of the trigger for juvenile delinquency. Three institutions, viz family, school and environment should give special attention for the tendency of juvenile delinquency. Parents should provide an extra care for their children as well as their friends. Schools should undertake maximum supervision though the juvenile will just study temporarily there. They may prevent the existence of ill-mannered gangs at school and students' brawl. Lastly, the other important factor is social control from the social or religious figures and the role of government as well as the private enterprise to provide a room for juvenile to play in their environment so that they will not play at streets and create a negative community.

According to a study conducted at the area of Rembang police district commands, the background of delinquency there is due to juvenile education and socialization. Most of the offenders still attend junior and senior high school in which previously the negative socialization and the lack of supervision result in criminal behavior. Besides that, their religious value has not been implemented fully in a day to day basis. The social economic status of their parents also influences the delinquency in that the parents' low income may trigger juvenile misconduct (An interview with Mrs. Rukmini, the first police adjunct officer on 3 August 2013). From that interview, it can be emphasized that some factors influencing juvenile delinquency have different potency. They include: 1) negative socialization; 2) lack of parents' supervision; 3) low education background of parents and children; 4) low economic status of parents (poor); and 5) lack of religious value implementation performed by children.

Based on a research in Brebes police district commands, factors influencing juvenile delinquency are because: they are accustomed to see negative behaviors in their surrounding (environmental factor), they have low education background (attended elementary school), their socialization tends to be negative and the parents' economic and education level is low (An interview result with Budi Hermanto, a juvenile who ever committed delinquency on 2 August 2013). Meanwhile, a study carried out at Jepara police district commands disclosed that the backgrounds of juvenile delinquency are due to:

a. the previously existing delinquency, b. a broken home family (parents' divorce or separation resulted in lack of care and attention for children), c. negative surrounding for children and lack of parents' supervision for children. The low education background which is combined with negative surrounding also influences the disruptive behavior of children. In this regard, children may receive insufficient care and attention since they stay in boarding school in that the guidance from close relatives/adults there is very limited. The other factor is the local culture, the negative and strict environment that may trigger misconducts. A negative/deviating socialization also encourages children to commit delinquency (An interview result with Farid W, the second police brigadier).

From the aforementioned interview, it can be highlighted that the backgrounds or factors influencing juvenile delinquency there is almost similar to other police district commands, either in Rembang or Brebes. The delinquency happens due to juvenile's existing misconduct, parents' economic factor, negative socialization and surrounding, lack of parents' care and attention and lack of religious value implementation.

In this regard, the analysis of investigation outcomes conducted by researcher indicates that the factors influencing juvenile delinquency have something in common among three sampling areas (Rembang, Jepara and Brebes police district commands). As a result, a relatively similar approach was required in order to provide prevention and solution. To reduce the number of delinquencies, efforts may be undertaken by parents or adults are as follow:

- a. Providing sufficient attention and care for their children in each aspect.
- b. Supervising and not too restricting their children. For example, they may allow their children to do anything they like as long as the activities are normal. If according to their supervision the activities are beyond the boundaries, parents shall explain impacts and consequences of that negative behavior if the children insist on committing that delinquency.
- c. Allowing children to play with their friends whose age is 2 or 3 years older than them. If they socialize with friends whose age is significantly older in that their lifestyle is completely different, the children may imitate the style which should have not been performed yet.
- d. Monitoring the communication media such as television, internet, radio, cellphone, etc sufficiently and intensively.
- e. Particularly at school, providing counseling and guidance because children spend much time there.
- f. Providing religious study since childhood such as praying and visiting place of worship according to their belief.
- g. Supporting their hobby as long as it is positive. In this case, do not prevent them or limit their opportunity to develop their positive interest and talent because restriction may negatively influence their personality and confidence.
- h. Becoming a comfortable place to share so that children receive sufficient support and guidance to overcome their problems.

- i. Providing an apprentice for youths to make them independent in fulfilling personal need or at least to make them understand the parents' economic condition. The understanding hopefully prevents them from negative behaviors such as stealing.

Regarding factors that influence juvenile delinquency, each of them has a different influencing degree but generally they are dominant in juvenile delinquency. Therefore, rigorous prevention and monitoring for each offender are necessary from the law enforcement, parents, society or the related advocates.

The Most Appropriate Penal Mediation Model to Resolve Juvenile Cases

According to data obtained from each sampling area, it can be disclosed that when the police officer scratch juvenile criminal or receive a report from the society, they will not directly process it to litigation/trial. From the examination of such cases, they will bring those issues to a meeting involving both parties, village chief and community leader through a mediation. If the agreement is not achieved, the case will be subsequently processed to litigation. This procedure has been frequently implemented for juvenile cases which are effectively handled by certain officials from the Unit of Children and Women Protection in each police district command in Central Java including three samples in this research.

In Rembang district command, the mediation is undertaken for juvenile cases involving various parties including: 1) a village chief, 2) community leader, 3) families from both parties and 4) local police officers. Altogether they find a solution through discussion consensus agreement (An interview result with Mrs. Rukmini, the first police adjunct officer on 3 August 2013). Meanwhile in Jepara district command, when police officers catches or receives a report of juvenile delinquency, they will not directly process it to litigation but the case will be solved through a mediation. Initially, a meeting for both parties is conducted to initiate a mediation/dispute resolution with kinship system. However, the right for further prosecution or reconciliation will be placed upon the victim/reporter (An interview result with Farid W, the second police brigadier Jepara district commands). The mediation process in Jepara involves a number of parties including the victim/reporter, offender, parents of both parties, police and community leader. The model undertaken here is by meeting both parties (the victim and offender) and community leaders to find a win-win solution through the police facilitation and mediation. If both parties agree, a memorandum of understanding and a statement letter are necessary to state that the offender will not repeat his/her delinquency (when she/he does, a legal prosecution will be undertaken). They sit together to discuss consensus agreement to find the best solution for both parties.

In Brebes district command, when a criminal case committed by a juvenile, the police will not directly proceed to prosecution. Both parties will be gathered in a meeting in advance to reconcile the dispute through mediation. This process is undertaken by involving some parties such as the victim and offender, the social figures, the religious figures and police apparatus. They will discuss the best solution to benefit both parties and to maintain social social peace.

From the data of studies in three police district commands in Central Java namely Rembang, Jepara and Brebes, it can be stated that three of them attempt to resolve juvenile delinquency cases through panel mediation. When that procedure is unfeasible then the litigation/judicial is undertaken. Furthermore, it can be disclosed that Rembang, Jepara and Brebes police district commands in the mediation process involve similar parties namely families of both offender and victim, community leaders and local police officers to discuss consensus agreement in resolving the criminal case committed by the juvenile. That resolution is for the benefit of both parties particularly for the children and generally for the welfare of society. From the involved stakeholders in the penal mediation process, it can be concluded that the model applied in three policy district commands in Central Java (Rembang, Jepara and Brebes) is in line with the mediation model developed in Australian and New Zealand namely "Family and community group conferences". It involves the participation of society in the criminal justice system, the offender and victim, families of both parties, other members of society, particular officials (such as police and juvenile jury) and the supporters of the victim. The offender and his/her family are expected to make a comprehensive consensus and to satisfy the victim as well as to prevent the juvenile from future delinquencies.

Based on the researcher's analysis from the data in three police district commands, there is still a possibility to resolve a juvenile delinquency case through litigation/judiciary if the consensus through penal mediation is not achieved. In this regard, the procedure is only undertaken for minor criminal cases (with the maximum threat of 1 year imprisonment) committed by the juvenile. Therefore, the existing mediation model has not considered the type of delinquencies committed by the juvenile (intended not only for minor but also major cases). For future consideration, the procedure shall be in accordance with the latest regulation. For example, the penal mediation can be performed for criminal cases committed by the juvenile with the threat of seven year imprisonment in order to expand its scope through penal mediation. Besides that, the highlight of this model shall be placed on consensus agreement undertaken since a long time ago as the cultural heritage that shall be preserved.

CONCLUSION

According to the research conducted here, it can be concluded that the backgrounds or factors that trigger the juvenile delinquencies include: the juveniles themselves (a potency for such misconduct), parents' low economy, negative surrounding and socialization, lack of parents' attention and lack of religious value implementation. In addition, the penal mediation model as the dispute resolution alternative of juvenile delinquency case in Central Java is in accordance with the mediation model of consensus agreement developed in Australia and New Zealand namely "family and community group conferences" that involves the participation of society (criminal judicial), the victim and offender, families of offender, other members of society,

particular officials (police officer and juvenile jury) and supporters of the victim. The offender and his/her family is expected to make a comprehensive consensus and to satisfy the victim as well as to prevent the juvenile for future delinquencies.

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