

Policy Formulation on Community Service Order for Crime of Child Actors Under the Framework for Child Protection

Bahria Prentha, Made Sadhi Astuti, Prija Djatmika and Ismail Navianto
Faculty of Law, Universitas Brawijaya, Malang, Indonesia

Abstract: The goal of the Republic of Indonesia to provide protection and welfare to children cannot be separated from the goals of the national development, i.e., to develop the citizens of Indonesia to be a whole human being not to exclude the children. To achieve the goals, one of the means used is the policy formulation related to legislation. The Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System for Juvenile Delinquency is the form of the legislation on juvenile justice system. Jail sentence still dominates the judge's decision, although the judge may impose a penalty other than a jail sentence. Prison is not a good place to for children to grow. Community service order is a new type of penalty in the juvenile justice system in Indonesia and this can be an alternative for judges in dealing against crime of child actors. The consideration of the Law Number 11 of 2012 only contains the principle of protection alone and therefore, the principle of justice and welfare must be added as to ensure justice and welfare for children in conflict with the law. The juvenile justice system does not regulate the types of criminal offenses, the minimum age that can be imposed on community service and on the existence of children during the period of social work against their status as as the criminal actor. Therefore, a new concept of norm must be formulated in Article 73 and 76, i.e., adding, altering and inserting it. Referring to the Beijing Rules, Rule 18.1 on community service order, it is inconsistent to use the term social work and community service order as both have the same meaning, i.e. to avoid suffering due to the liberation, stigmatization and not losing self-confidence.

Key words: Community service order, crime of child actors, child protection, alternative, dominates, protection

INTRODUCTION

A child is God's precious gift. From the perspective of the society and nation, children are the forerunner of a society. Children hold the potential as they are the younger generation, successors of the nation's ideals. Children hold a strategic role and have special characteristics that they must be protected from all forms of inhumane treatment resulting in human rights violations as stated in the consideration of Law Number 35 of 2014 as Amendment to Law Number 23 of 2002 on Child Protection. Furthermore, in the general explanation of Law Number 35 of 2014, children are an integral part of human survival and the continuity of a nation and state. In order to be able to hold the responsibility for the continuity of the nation and state, every child needs to get the widest opportunity to grow and develop physically, mentally and socially. For that reason, protection needs to be done to realize the welfare of children by providing assurance against the fulfillment of rights without discriminatory treatment.

A Lebanese philosopher, Khalil Gibran, sees children as a bow darting through their own time. "Your children

are not your children. They are the sons and daughters of life's longing for itself. They come through you but not from you. Though they are with you, yet they belong not to you". Therefore, children need to get the widest opportunity to grow and develop properly, physically, spiritually and socially. The local wisdom of the Malay says, "Buah Hati Sibirang Tulang" (Djamil, 2013) expressing the existence of a child as the motivation of parents, they who radiate life as well as the result of a nation's civilization. Traditional wisdom is actually the basic philosophical value of Indonesian society, one of which is the value of goodness or moral value that comes from the desire of ideals; these values live, grow and develop in the society and have become the view of life of the Indonesian Nation, called Pancasila. In the context of the nation and state, Pancasila is referred to as the state ideals (state idea) and at the same time the law ideals (right idea). The state ideals are based on the ideals that live in society as a result of a philosophical reflection (Mahendra, 1996).

As part of the world community, it is inevitable that the development of the era and globalization has brought both positive and negative effects on child behavior. The

influence of globalization and information has brought such an impact such as the moral crisis that ultimately affects the community, especially children to commit unlawful acts. Violations of law by children do not stand alone but is influenced by various factors, one of which is the environmental factor. Therefore, parents and especially the community in general, take responsibility for guidance, education and development so children can avoid unlawful acts or dealing with the law which can lead to criminal sanctions such as imprisonment.

The imprisonment or deprivation of liberty is historically unknown in Indonesian society before the arrival of the Dutch. Indonesia knew the term prison when the VOC (Verenigde Oost Indische Compagnie) introduced the institution "bui" in 1602 continued in the time of the Dutch East Indies into imprisonment (Arief, 2010). This type of punishment is most often used as a means to overcome the problem of crime, seen from its history. The use of imprisonment as a way to punish criminals began in the last part of the 18th century which stems from the ideology of individualism (Arief, 2010).

"Much criticism both moderate and extreme come from experts, extreme critics want the abolition of imprisonment. The prison abolition movement was first seen in the International Conference on Prison Abolition (COPA) held in May 1983 in Toronto Canada and the second on 24-27 June 1985 in Amsterdam and the third was in 1987 in Montreal Canada. At this third conference, the term "prison abolition" has been changed to "penal abolition" (Priyatno, 2013).

The prison abolition movement then led to the idea of altered the punishment with other form of punishment. According to, Roeslan Saleh, around 1985, there have been alternative sanctions imposed by member states of the European council, meaning that the member nations of the European council have begun to consider alternative criminal measures in an attempt to find a shorter prison criminal replacement (Saleh, 1983).

Britain is the most punitive country by imposing imprisonment on the perpetrators of criminal acts and then an alternative to the imprisonment of Community Service Order (CSO) was proposed and effective on January 1, 1973 in only a few areas. However, since 1979, the alternative was enacted and applied as an alternative criminal deprivation of independence for convicted adults throughout the UK (Cartledge, 1986).

According to R.M. Jackson, imprisonment is a relatively less effective type of penalty. Based on a comparative study of the effectiveness of imprisonment, the average number of recidivists, for the first time committing a crime is inversely proportional to the age of the perpetrator. The child offenders reach 50% while for

those who have been sentenced to 21 years and under reach 70%, higher than non-recidivists after being sentenced to imprisonment than any other types of penalty (Bakhri, 2009). Further criticism is that imprisonment carries more evil influence, especially against children or teenagers, so it is often said that the prison is a crime college or crime factory as quoted by Syaiful Bakhri from Barda Nawawi's opinion (Bakhri, 2009). Prison is not effective to change the state of children and must be replaced with something better for the development of children. Related to the treatment of children in conflict with the law, imprisonment still dominates court decisions above 70% even though the judge could have handed down a verdict of action capable of restoring children in conflict with the law (Joni, 2012). From the perspective of negative criticism, it is necessary to reform the criminal politics, especially the use of imprisonment against children in conflict with the law. All activities related to the juvenile justice system and process must always benefit or prosper the child, i.e., for the personal development of the child (Sudarto, 1986).

As an illustration that in Law Number 11 of 2012 on Criminal Justice System for Juvenile Delinquency Article 71 and Article 76, the term social work is used, yet it is not explicitly called as community service order but when traced back, then both terms have the same meaning. The articles also have not explained the types of criminal offenses, the minimum age that can be imposed on social work and the existence of children during the period of criminal punishment of social work.

Considering the aforementioned, the focus of this study is the policy formulation of community service order on crime of child actors under the framework for child protection with the following issues to discuss the basic philosophy of community service order on crime of child actors in the framework of child protection and the policy formulation of community service order related the types of criminal offenses, the minimum age that can be imposed on social work and the existence of children during the period of criminal punishment of social work.

The basic theories used to analyze and examine the problems in the present study are the theory of justice, the theory of criminal law policy and the theory on the purpose of punishment.

MATERIALS AND METHODS

The method used in this study is normative method or doctrinal method or doctrinal research because the starting point of the search for the principle and doctrine is the norms of positive law. Specifically, seeing from the

type, the nature and the purpose a legal study can be divided into 2 namely normative legal research and empirical legal research. This study, "policy formulation on community service order on crime of child actors under the framework for child protection" is included in normative research or literary research. The approaches used in legal research are the statute approach, case approach, historical approach, comparative approach and conceptual approach (Marzuki, 2011).

RESULTS AND DISCUSSION

The results of research in response to the first problem by reviewing legal materials, among others, preamble of some international provisions, consideration of some national legislation and the opinion of jurists will strengthen the basic concept of child protection philosophy associated with community service order for crime of child actors.

The first result is that the basic philosophy of child protection can be seen in the values in the preamble of some international provisions, the consideration of national legislation and the basic philosophy of the experts. The opinions of experts such as Arif Gisita, Bismar Siregar, Irma Setyawati Soemittro, Abdul Hakim Garuda Nusantara, Maidin Gultom and Peter Newel will confirm the principle of child protection. While the basic philosophy of some international provisions and the consideration of legislation contain several principles such as the principle of equality of rights, the principle of justice, the principle of freedom from fear, the principle of protection, the principle of freedom, the principle of welfare and the principle of legal certainty.

The basic philosophy in the Consideration of Law Number 11 Year 2012 on the Criminal Justice System for Juvenile Delinquency currently contains only the principle of protection. Thus, the purpose of this law to realize welfare for the best interests of the child will not be achieved. Therefore, it is proposed that the basic concept of philosophy to in the Consideration of Criminal Justice System for Juvenile Delinquency in the future not only contain the principle of protection alone but it should also contain other principles, i.e., justice and welfare so that the objectives of the Criminal Justice System for Juvenile Delinquency can be accomplished for the best interests of the child and also the best interests for the survival of humanity.

The consideration of Law Number 11 year 2012 on the criminal justice system for juvenile delinquency mentions that: children are trust and gift of God who inherently have a dignity as human beings. That in order to maintain the dignity, children are entitled to special protection,

especially the protection of law in the judicial system. That Indonesia as a state party to the convention on the rights of the child governing the principle of legal protection of children has an obligation to provide special protection for children in conflict with the law.

That Law Number 3 of 1997 on Juvenile court is no longer appropriate with the development and legal needs of the community because it has not been comprehensively provides protection to children in conflict with the law so it needs to be replaced with the new law and.

That based on the considerations as referred to in there, it is necessary to establish a new law on the criminal justice system for juvenile delinquency.

The proposed consideration of Law Number 11 of 2012 on the criminal justice system for juvenile delinquency in the future is as follows.

Children are trust and gift of God who inherently have a dignity as human beings. That in order to maintain their dignity, children are entitled to get justice, special protection, especially the protection of law in the judicial system in order to realize the welfare of children.

That Indonesia as a state party to the convention on the rights of the child governing the principle of legal protection of children has an obligation to provide special protection for children in conflict with the law.

That Law Number 3 of 1997 on juvenile court is no longer appropriate with the development and legal needs of the community because it has not been comprehensively provides protection to children in conflict with the law so it needs to be replaced with the new law and.

That based on the considerations as referred to in there in the discussion, it is necessary to establish a new law on the criminal justice system for juvenile delinquency.

The bases for consideration for the proposed changes in the principles are the juridical references of the concepts set forth in the Preamble of some international provisions and the consideration of Indonesian legislation, elaborated as follows.

The first is the principle of equality of rights. This can be found in the Preamble of the Universal Declaration of Human Rights Paragraph 1; the Preamble of the International Covenant on Civil and Political Rights (ICCPR) Paragraph 1, 2 and 4; the Preamble of the Convention on the Rights of the Child (CRC) Paragraph 1, 3 and 7; the Fundamental Perspective of United National Rules for Protection of Juveniles Deprived of Their Liberty poin 1.1, 1.3.1 and 1.9 and the Preamble of the 1945 Constitution of the Republic of Indonesia Paragraph 1 sets forth the recognition of equal dignity and equal

rights. The second is the principle of Justice. This can be found in the Preamble of the Universal Declaration of Human Rights Paragraph 1; the Preamble of the International Covenant on Civil and Political Rights (ICCPR) Paragraph 1; the Preamble of the Convention on the Rights of the Child (CRC) Paragraph 1; the Fundamental Perspectives of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) poin 1.4 and 1.6; the Preamble of the 1945 Constitution of the Republic of Indonesia Paragraph 1, 2 and 4 and the Consideration on the Law of Child Welfare.

The third is the principle of protection. This can be found in the Preamble Convention on the Rights of the Child (CRC) Paragraph 9, 10, 11 and 12; the Fundamental Perspectives of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) Point 1.2 and 1.4; the fundamental principle of the united nations guidelines for the prevention of juvenile of juvenile delinquency Point 1.5.a and 1.5.d; the Fundamental Perspective of the United National Rules for Protection of Juvenlies Deprived of Their Liberty point 1.9; the Preamble of the 1945 Constitution of the Republic of Indonesia Paragraph 4; the Consideration of the Human Rights Act letter a and b; the Consideration of the Child Protection Act letter a, c, d, e and f; and the Consideration of the Criminal Justice System for Juvenile Delinquency letter b and c. In addition, there are also doctrines by the experts such as Arif Gosita, Bismar Siregar, Irma Setyowati Soemitro, Abdul Hakim Garuda Nusantara, Maidin Gultom and Peter Newel. The principle of protection aims to guarantee the rights and obligations of children as well as some to guarantee that children can really grow and develop properly in accordance with their rights.

The fourth is the principle of Welfare. This can be found in the Preamble of the Convention on the Rights of the Child (CRC) Paragraph 5, 8 and 10; the Fundamental Perspectives of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Point 1.1 and 1.3; the Fundamental Principle of the United Nations Guidelines for the Prevention of Juvenile of Juvenile Delinquency, point 1.4 and 1.5.d; the Fundamental Perspective of the United National Rules for Protection of Juvenile Deprived of Their Liberty point 1.1; the Preamble of the 1945 Constitution of the Republic of Indonesia Paragraph 4; the consideration of the human rights act letter a and the consideration of the child protection act letter a, d and e and the consideration of the child protection act letter a. The state shall endeavor to promote and ensure the welfare of children because the children are not yet able to realize their own

welfare. The second result is related to policy formulation of community service order for crime of child actors in the future. We shall amend and add the norms in the Law of the Republic of Indonesia Number 11 of 2012 on the criminal justice system for juvenile delinquency as ius constituendum as follows.

Article 73 Paragraph 1 stating “criminal condition may be imposed by the judge in the case of imprisonment imposed for a maximum of 2 years” (original formulation) must be amended into criminal condition may be imposed by the judge on criminal action(s) in the case of imprisonment imposed for a maximum of 2 years, criminal fine or the repair of damages caused by the crime.

The second amendment is to change the term social work with community service order on Article 76 Paragraph 1 “community service order is a penalty intended to educate the child by raising awareness on positive social activities”.

Paragraph 2 “a community service order may be imposed on a child at least 14 years of age”.

Paragraph 3 “if the child does not fulfill all or part of the community service order for no valid reason, the supervisor may propose to the supervisory judge to order the child to repeat all or part of the community service order imposed”.

Paragraph 4 “community service order for a child shall be imposed for a minimum of 7 h and a maximum of 120 h”.

Paragraph 5 “during the period of community service order, the child remains in the family environment, provided that all conditions of guidance that have been decided by the court shall be carried out by the child with the guardianship of the parent or guardian”.

Here is an additional explanation on Article 73 Paragraph (1) “violation refers to making graffiti that is writing or drawings scribbled, scratched or sprayed illicitly on a wall using the composition of color, line, shape, volume to write a particular word, symbol or sentence; repairing the damage caused by a crime is a form of responsibility that must be done by the child to repair the damage caused by crime that has been done”. The aforementioned concept is proposed due to the following considerations.

Based on the juridical reference: The provision in the Dutch Penal Code Article 77 h Paragraph 1 states principal penalty consists of imprisonment for crime and fine for violation. Paragraph 2 states an alternative sanction that may be imposed as a substitute for the principal penalty is community service order, repairing damages due to criminal offenses and follow training projects. Article 77 i Paragraph 1 confinement of a child is

(a) at least 1 day and a maximum of 12 months in the event that the child has not reached the age of 16 years when the crime is committed and (b) a maximum of 24 months for cases other than mentioned in (a).

Article 77 m explains that the judge can only impose alternative sanctions upon the request of the accused. The length of the social work to repair the damages caused by the crime shall not exceed 200 h and the period of work performed shall not exceed 6 months. The duration of the training project is not more than 200 h while the duration of the training project is not more than 6 months.

The Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System for Juvenile Delinquency does not regulate the types of criminal acts, i.e., crime and violations as well as repair damages caused by criminal acts. Thus, an addition to the formula of the norm must be made.

In New South Wales in Children Community Service Order Art 1987 Number 56 (NSW). Referring to Part 1, criminal social work means any unpaid work when one has pleaded guilty to an offense. Part 2 Number 11 states that if a child commits a graffiti violation then his punishment is to clear the graffiti:

- Removal of graffiti from buildings, vehicles, ships and places and
- Recovery on the appearance of buildings, vehicles, ships and places that graffiti removal has been done by social work doers

Part 2 Number 13 states that violations committed by children under 16 years shall be punished with community service order for 100 h, if the violation and maximum imprisonment is not more than 6 months; 200 h, if maximum imprisonment is more than 6 months but not more than 1 year and 250 h if imprisonment is 1 year.

Adding the norm formulation is by referring to the provision of children community service order Art 1987 Number 56 (NSW). Graffiti turns very interesting to be considered and formulated in the criminal justice system for juvenile delinquency if children commit a violation of graffiti, they must remove and clean the drawings or writings. Graffiti is writing or drawings scribbled, scratched or sprayed illicitly on a wall using the composition of color, line, shape, volume to write a particular word, symbol or sentence. The Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System for Juvenile Delinquency currently does not regulate graffiti (avoid in norm in which a new norm is needed to complete). Referring to the draft of the law of the criminal code years 2012 Article 116 Paragraph 1 the basic crime for children consists of:

- Verbal punishment: warning or reprimand
- Punishment on condition: guidance outside the institution, community service order or surveillance
- Paying fine
- Restrictions on freedom: guidance inside the institution, imprisonment

The formulation of the norm in Article 116 Paragraph 1 of the 2012 Criminal Code Draft uses the term “community service order” while the formulation of the norm in Article 122 of the 2015 Criminal Code Act and Article 71 Paragraph 1 of the law of the criminal justice system for juvenile delinquency uses the term “social work”. Thus, inconsistency in using the term exists, yet these two terms have the same meaning. It is, therefore, proposed to use the term community service order as stated in The Beijing Rules, Rule 1.8. letter (c) “community service order” translated as “pidana kerja sosial” in Indonesian language.

2012 criminal code draft: In principle, community service order is an alternative to the deprivation of short-term independence. This concept is based on the idea that community service order will not be imposed on the perpetrators of serious crimes.

Article 121 provides for the imposition of a penalty by a child in the form of: main punishment and additional punishment.

Article 122 stipulates the principal penalty consisting of warning and punishment on condition guidance outside the institution, community service order or surveillance. Also includes in the Article are training, guidance inside the institution and imprisonment.

Article 128 Paragraph 2: During the period of community service, the child remains in the family environment, provided that all conditions of guidance that have been decided by the court shall be carried out by the child with the assistance of the parent or guardian. The norm formulation of Article 128 mentioned above is proposed to complement the void of norm because it is not regulated in Law Number 11 of 2012 on criminal justice system for juvenile delinquency.

Referring to the Law Number 13 of 2003 on Manpower Article 70 Paragraph 1 the child may undertake work in the workplace that is part of the educational or training curriculum authorized by the competent authority. Paragraph 2 the child as referred to in Paragraph 1 shall be at least 14 years of age. Paragraph 3 of the work referred to in Paragraph 1 may be made on condition:

- Of clear guidance on how to carry out the work and supervision in carrying out the work
- Of protection of occupational safety and health

Article 71 regulates the terms and hours of work. Paragraph 1 the child may undertake work to develop his or her talents and interests. Paragraph 2 employers who employ children as referred to in Paragraph 1 shall follow the followings:

- Under the direct supervision of a parent or guardian
- Maximum working time of 3 h a day and
- Conditions and work environment do not discourage the physical, mental, social and school development

Paragraph 3 the provisions concerning a child working to develop the talents and interests referred to in Paragraph 1 and 2 shall be regulated by a Ministerial Decree.

Article 71 Paragraph 1 is intended to protect the child so that the development of talents and interests of children is not hampered.

Meanwhile, from the aspect of developmental psychology of children, the opinion of Singgih D. Gunarsa in his book "Dasar dan Teori Perkembangan Anak" can be used as a reference. There is connection of one's age with the development of the soul as follows: children, aged under 12 years old; early adolescent, aged 12-15 years old; adolescent, aged 15-18 years; young adults, aged 18-21 and adults, aged 21 years and over (Gunarso, 1989). Referring to the opinion of Singgih D. Gunarsa regarding the development of children, then the age of 14 years is in the stage of early adolescence, so it is considered that children can be responsible and able to do the work given. This is in line with the opinion of Made Sadhi Astuti in the book "Pemidanaan Terhadap Anak Sebagai Pelaku Tindak Pidana" stating that community service order can be imposed on children aged 14 years because physically they are strong enough to do the job (Astuti, 1997).

Regarding the minimum age limit for children who may be subject to community service order as to do the work requires maturity, the appropriate minimum age limit is 14 years considering that the age is considered to be mature enough and able to be responsible for the work provided.

Thus, the proposed minimum age limit is 14 years as to complement one of the void norms because the Law of the Republic of Indonesia Number 11 of 2012 on the criminal justice system for juvenile delinquency does not regulate the age limit which may be subject to community service order.

Referring to the existing theories as the basis of analysis: The theory of justice put forward by John Rawls affirms that justice is a major virtue in social institutions as is the truth in the system of thought. This view shows the virtue of justice to regulate the society. John Rawl's principle of justice is to see it as an obligation to help others when needed, those in danger, the obligation not to harm and the obligation not to cause unnecessary suffering. Although, the implementation sometimes does not match with the expectations, i.e., between procedural justice and substantive justice but judges can accommodate proportionally to meet the sense of justice for justice seekers, especially children.

To teach moral attitudes to children, there is an obligation for children to account for an action that has harmed others. This is a fair attitude. When children commit an act that harms others, then they must be responsible in this regard, they have to be responsible for the damage caused by their actions as to create justice for the victim. Parents are obliged to give examples in the form of good behavior so that children see and imitate. According to Rawls (1976).

"The first stage in the sequence of moral development I shall refer to as the morality of authority. While certain aspect of this morality is preserved at later stages for special occasions, we can regards the morality of authority in its primitive form is that of the child. I assume that sense of justice is acquired gradually by the younger members of the society as they grow up. The succession of generations and the necessity to teach moral attitudes (however simple) to children is one the conditions of human life.

The development of the moral authority of children is twofold. First, parents should love children, become worth to the pride of their children and awaken self-esteem to become parents. Second, parents must communicate clearly the rules they have adapted to their children's level of understanding. Most importantly, parents should model the morality in which they command and explain the underlying principles. Thus, related to the proposed new concept of the existence of a child during the period of community service order, then children must remain in their family environment. Penalty for children must take into account the interests of children and community service order is one of the sanctions that can be used to punish children as perpetrators of crime by considering the existence of children during the period of community service order. The child remains in the family environment with the parent or guardian as family is the first and foremost place for the child to get love and guidance so as not to lose his rights.

Children need to interact with the environment such as the need for education. Supeno (2010) by quoting Malcolm S. Knowles in the book "Kriminalisasi Anak" explains that there are six basic needs of a child that must be considered in the education process. Those are physical needs, growth needs, the need for security, the need for new experience, the need for affection and the need for recognition.

Thus, by imposing community service order, the basic needs of children can still be fulfilled because community service order let children avoid stigmatization and let children remain in the family environment for them to do their activities normally surrounded by affection and guidance from their loved ones.

Referring to the theory of criminal law policy proposed by Barda Nawawi Arief, i.e., using criminal law as one means to overcome the crimes as regulated in the legislations: policy planning on prohibited actions to be addressed as they are considered harmful; policy planning on sanctions imposed on offenders and the application system and policy planning on procedure or mechanism of criminal justice system in the framework of criminal law enforcement (Muladi and Arief, 1984).

The mechanism of policy related to actions, sanctions and criminal justice system is used as an analysis to design the prevention of criminal acts in order to enforce law against children as perpetrators of criminal acts; one of the appropriate sanctions for children is community service order. Policy that will be outlined in the formulation of future norms is the type of criminal offenses, minimum age limits that may be subject to community service order and the existence of a child during the period of community service order for crime of child actors.

The theory on the purpose of punishment by Made Sadhi Astuti emphasizes that punishment or penalty for children must be based on some considerations on the physical and mental (psychic) and spiritual sense, because the physical and mental growth of children must not be disturbed and the purpose of punishment with consideration (wisdom) is derived from Pancasila (Astuti, 1997). Based on the theory of wisdom, one of the objectives of punishment is to resolve conflicts arising from criminal acts, restore balance and bring a sense of peace in society. In terms of non-institutional aspects, the "wisdom" theory related to penalty must be in accordance with the social conditions of the society that prioritize balance, the nature of kinship and mutual cooperation as a manifestation of civilization of Indonesian society. Comprehensively examined, the theory of "wisdom" is in line with the purpose of punishment contained in Article 55 Paragraph 2015 Penal Code Draft, aiming to:

- Prevent criminal acts by enforcing legal norms for the sake of community protection
- Help the convicted to be accepted by the society through coaching for the person to become a good and useful person
- Resolve conflicts caused by criminal acts, restore balance and bring a sense of peace in society and
- Release guilt on the convicted

Paragraph 2 of punishment or penalty is intended neither to degrade human dignity nor to make them suffer.

CONCLUSION

Based on the analysis and discussion of the two problems, the following conclusions can now be drawn as follows. First, the philosophical basis for child protection in relation to community service order can be seen in the Consideration of the Law of the Republic of Indonesia Number 11 of 2012 on the criminal justice system for juvenile delinquency, covering the following aspects: the principle of justice to provide a sense of justice for children; the principle of protection to guarantee the rights and obligations of children and the principle of welfare for the promotion and assurance of the welfare of children. The Consideration of Law Number 11 of 2012 only contains the principle of protection alone, that the goal to realize children's welfare for the best interests of children is not achieved. Therefore, the basic philosophy of the Consideration of the Law Number 11 of 2012 on the criminal justice system for juvenile delinquency should add the principle of justice and welfare to ensure and realize justice and protection of children in conflict with the law.

Second, policy formulation on the norms of community service order against children as perpetrators of criminal acts in the future is as follows: adding and altering the norms formulated on Article 73 Paragraph 1 and adding and inserting norms on Article 76 of the Law Number 11 of 2012 on the criminal justice system for juvenile delinquency as a new concept (*ius constituendum*).

Article 73 Paragraph 1 that criminal condition may be imposed by the judge on criminal action(s) in the case of imprisonment imposed for a maximum of 2 years, criminal fine or the repair of damages caused by the crime. Changing the term social work into community service order as there is inconsistency in the used of the term. The community service order on Article 76 Paragraph 1 "community service order is a penalty intended to educate the child by raising awareness on positive social activities".

Paragraph 2 “a community service order may be imposed on a child at least 14 years of age” (Inserted). Paragraph 3 “if the child does not fulfill all or part of the community service order for no valid reason, the supervisor may propose to the supervisory judge to order the child to repeat all or part of the community service order imposed”.

Paragraph 4 “community service order for a child shall be imposed for a minimum of 7 h and a maximum of 120 h”.

Paragraph 5 “during the period of community service order, the child remains in the family environment, provided that all conditions of guidance that have been decided by the court shall be carried out by the child with the guardianship of the parent or guardian”.

Adding explanation on Article 76 Paragraph 1 “violation refers to making graffiti that is writing or drawings scribbled, scratched or sprayed illicitly on a wall using the composition of color, line, shape, volume to write a particular word, symbol or sentence; repairing the damage caused by a crime is a form of responsibility that must be done by the child to repair the damage caused by crime that has been done”.

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