

SOCIOLOGICAL JURIDICAL ANALYSIS ON ISLAMIC BOARDING SCHOOL AS AN EDUCATIONAL INSTITUTION FOR CHILDREN COMMITTING CRIMINAL ACT IN INDONESIA

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ABSTRACT

Act No. 11 of 2012 concerning the Juvenile Justice System has established justice mechanisms against children in conflict with the law of which they are alleged to have committed criminal act. The difference with Criminal Code (KUHP) was that Juvenile Justice System in the legislation have attached importance to double track system, which is sentence and treatment. The articles related to sentence and treatment in Act No. 11 of 2012, are Article 71 section (1) letter b regarding sentence with parole, Article 71 section (1) letter d concerning educational sentence in institution, Article 82 section (1) letter b relating to act of submission to the appointed person, Article 82 section (1) letter e concerning act of obligation to opt for formal education and/or training organized by the government or private agency, it had opened up opportunity of various non-governmental organizations to play a role in the effort of children resocialization, improvement of children's future and eliminate bad stigma from the community against children in conflict with the law. One of the Islamic educational institutions in Indonesia is an Islamic boarding school. Islamic boarding school has long existed prior to the Indonesian independence. Educational system by setting a model of teachers and holder of the Islamic boarding school called kiai or scholars have been presumed by the community that they are able to transform children into more religious and noble character. Islamic community in Indonesia have likewise trusted the boarding school as a moral workshop. In term of juridical and sociological study, the boarding school can be taken as a punishment alternative to both sentence and treatment for children proven by the court to have committed criminal acts. Therefore, the Indonesian government does not require to establish new institutions to deal with the matter of education for children in conflict with the law, yet call for the boarding school in children resocialization program.

Keywords: Islamic Boarding School, Children, Sentence, Treatment

PREFACE

Criminal act in the era of information technology these days were not only committed by adults, but children as human beings with simple thought and pure-minded did not escape from their misconduct. In the electronic media we could identify a lot of criminal offenses committed by children in opposition to both children and adults. Children committing criminal acts are definitely distinctive from adults with the same misconduct. Syamsu Yusuf (in Maskur, 2012, p. 172) stated that all children are children, not exactly adults in minor size of its kind.

The legal protection over children either as being victims of crime or perpetrators of criminal acts has long been a world-wide concern. Even in the *Convention on the Rights of the Child, 2007* explained that juvenile justice must consider the main principles in decision-making, among others, principle of non-discrimination, having main concern for best interest of the children, promoting children's right for living, survival and development as well as principle of children's right to have their voice heard.

Correctional database system by Ditjenpas Kemenkumham dated December 2016 indicated that number of children in conflict with the law in Indonesia either have already been versioned, convicted, granted with the sentence as well as proceeded in the court, there were approximately 30,821 children (<http://smslap.ditjenpas.go.id/public/abp/current/monthly/kanwil/all/year/2016/month/12>).

The number represents somewhat considerable amount that it requires serious prevention measures. Crime prevention shall be taken in comprehensive ways, as well as crimes committed by children. There are two tracks to take simultaneously, the penal and non-penal. Penal is an approach to criminal act, while non-penal is an approach for extrajudicial criminal law.

Indonesia referred to as party to the convention of children's rights, had issued a new policy related to treatment of children in conflict with the law either as victims of crime and perpetrators of criminal acts, which is Act No. 11 of 2012 on Juvenile Justice System. This Act made up for Law No. 3 of 1997 on Juvenile Court. General principles in the legislation have been referring to the agreement of Convention on the Right of the Child.

Act No. 11 of 2012 concerning Juvenile Justice System has established justice mechanisms against children in conflict with the law of which they are alleged to have committed criminal act. Juvenile Justice System in the legislation have attached importance to *double track system* in the sanction, which is sentence and treatment. Many types of sentence and treatment to be imposed but the treatment for children as mentioned in the Convention on the Right of the Child shall be concerned with the best interests of the child, thus it is better to avoid imprisonment as much as possible. It is better to provide the child committed criminal act with fostering educational organized by both the government and private agency.

One of the educational institution have long existed before the Indonesian independence was Islamic boarding school. Majority of Indonesian Islamic community gave credits to the existence of Islamic boarding school as a children educational institution to transform them into good, noble characters, and to the parent's pride. Even the boarding school is an educational institution for the future religious leaders in the community. Therefore, there is no harm when children in conflict with the law are those who committed criminal act or commonly called as delinquent children (juvenile delinquency) especially the moslems located in the boarding school rather than sentenced into imprisonment. However, the placement of children who committed criminal act (children in conflict with the law) in the boarding school requires in-depth study both juridically and sociologically.

PROBLEMS

1. How is juridical review on Islamic boarding school as an educational institution for children as perpetrators of criminal acts in Indonesia?
2. How is sociological review of Islamic boarding school as an educational institution for children committing criminal act in Indonesia?

RESEARCH METHODS

This scientific article was taken up from the study with qualitative method. According to W. Lawrence Neuman in Soemantri (2015, p. 57-65) qualitative methods have 4 orientations. *First*, concerns with an approach to the data. Qualitative research considers the data as an intrinsically meaningful subject. *Second*, the use of non-positivistic perspective. *Third*, the research rationale is logic in practice. *Fourth*, qualitative methods often take nonlinear measures.

This type of applied research is a sociological juridical one, of which it is based on normative legal science (legislation) but instead of reviewing system of norms in the rules and regulations, it observes how was the reaction of interactions funds that occur while the norm was operating in the community (Dawn, 2010, p. 47).

DISCUSSION

This scientific article as described in the research methods, based on results of the author's study with original title "The Study on Education System of Islamic Boarding School in Search of an Alternative of Educational Institution for Children as Perpetrators of Criminal Acts in Semarang (Comparison Study in Islamic Boarding School of Durrotu Aswaja, Al-Asror, and Al-Uswah in Gunungpati District, Semarang)," thus the subsequent discussion as a reference in addition to results of latest scientific thoughts will be likewise much based on these results.

Judicial Review on Islamic Boarding School as An Educational Institution for Children as Perpetrators of Criminal Acts

Act No. 11 of 2012 on the Juvenile Justice System governing children in the criminal justice process. There are two key terms used in the legislation related to children in dealing with the law, the first term is children against the law, and the second is children in conflict with the law. Article 1 number 2, explained that Children against the Law is those in conflict with the law, those who become victims of crime, and those who witness criminal act, whereas in number 3 described the notion of children in conflict with the law are those who have aged 12 (twelve) years, yet less than 18 (eighteen) years allegedly committing criminal act. Therefore, the term of children in conflict with the law and children committing criminal act is equal.

Islamic boarding school is an Islamic educational institution that has long expanded in Indonesian society prior to Indonesian independence. Even the 'santri' as designation of boarding school students have also fought to liberate and preserve the Indonesian independence. Resolution of jihad by KH. Hashim Asyari in October 22, 1945 was historical witness on how the boarding school students with their improvised weapons opposed to Dutch aggression in Surabaya, East Java.

Islamic boarding school has several definitions, among others, as Zamakhsyari Dhofier (1982, p. 43) defined that the boarding school is a traditional Islamic educational institutions to learn, comprehend, value and practice the Islamic teachings by laying emphasis on the importance of religious morals as conduct guide on a daily basis. Another definition by M. Arifin (1991, p. 240) that the boarding school is an Islamic educational institution expanding and acknowledged by the surrounding community, with dormitory system (campus) in which they receives religion education by recitation system or madrassa fully under the power of leadership of one or several kiai with their typical characteristics of charismatic and independent in all respects.

Placement of children in conflict with the law in Islamic boarding schools are juridically based on Act No. 11 of 2012 on Juvenile Justice System. In the law, it has set up sanctions to be granted by the judge to children allegedly committing criminal act. The imposed sanctions may be sentence or treatment. However, prior to having imposed the sanctions, Article 7 of Act No. 11 of 2012 on Juvenile Justice System mentioned if the criminal offense committed with sanction under 7 (seven) years in imprisonment and not a repetition of criminal acts, then in each of criminal justice process from investigation, prosecution and trial process, the authorities shall prioritize the diversion, which is settling disputes beyond the judicial process.

If there is diversion then the parties concerned on a case which are victims and/or their families and children accompanied by their parent/guardian are given opportunity to make agreements witnessed by Social Adviser and Professional Social Workers.

An agreement in the diversion as mentioned in Article 11 of Act No. 11 of 2012, among others, reconciliation with or without compensation, handover to the parent/Guardian for participation in education or training in an educational institution or LPKS later than 3 (three) months of community service.

Considering formulation of article 11 concerning agreement established in discussion of diversion process, thus the ageement to put the child committed criminal act with criteria by which it requires to take diversion, then the placement in Islamic boarding

school can be taken into consideration. This corresponds with article 11 letter c. However the placement merely has limited time for 3 (three) months.

If the children committing criminal offense must be forcefully processed in court, then in accordance with Article 69 of Act No. 11 of 2012, the judge can decide on either sentence or treatment. Sentence category is provided in Article 71, whereas the treatment is set out in Article 82. Principal punishment can be imposed as mentioned in Article 71 of Act No. 11 of 2012, among others, (a) admonition penal as sentence with parole (education outside agency, community service, supervision), (b) vocational training, (c) education within institution, and (d) imprisonment. In addition to principal punishment, they can also be put into additional punishment such as deprivation of benefits derived from the criminal act, fulfillment of customs obligations. While the treatment can be imposed on children, among others, (a) handover to the parent/Guardian, (b) submission to the appointed person, (c) treatment in a mental hospital, (d) treatment in LPKS, (e) obligation to take part in formal education and/or training organized by the government or private agency, (f) revocation of driving license; and/or, (g) correction as a result of criminal offenses (Article 82 of Act No. 11 of 2012).

Considering provisions of Article 71 and Article 82 of Act No. 11 of 2012, the placement of children convicted criminal offenses in Islamic boarding school will proceed if the child is sanctioned by sentence or treatment. Placement in Islamic boarding school may be a concrete effort of the judge in convicting sentence charge by admonition penal as sentence with parole in the form of education outside institution (Article 71 section (1) letter b number 1 of Act No. 11 of 2012) or sentence charge by education in institution (Article 71 section (1) letter d of Act No. 11 of 2012).

Placement of children convicted criminal offenses in Islamic boarding school also can be used as a concrete act of adjudication, if the judge is intended to impose treatment in the form of (a) submission to an appointed person (Article 82, section (1) letter b of Act No. 11 of 2012), or (b) obligation to opt for formal education and/or training organized by the government or private agency (Article 82, section (1) letter e of Act No. 11 of 2012).

The adjudication that put children convicted of criminal offenses such as sentence or treatment by placing them in Islamic boarding school, shall be explicitly stated in the verdict. This is an effort of prosecutor's legitimacy who execute the verdict. Aside from being a juridical basis of implementation of the verdict, its formulation that clearly stated concerning the placement in Islamic boarding school can also be a groundwork for government in providing the expenses borne by the state to provide for the boarding school as an educational institution.

Sociological Review on Islamic boarding school as an educational institution for children committing criminal offenses

Islamic boarding school as an educational institution for children in pursuing their studies, not only teaching religious study in theory, but there are practices of teachers and caregivers set as an example. This is what makes the boarding school highly trusted by the community in fostering their children.

There is a custom in Indonesian society, in the case when discovering their children having bad morals and conduct, locating them in the boarding school turns out to be a reasonable choice. Most of children educated at Islamic boarding school, once returning home and graduated, they turn out to be religious leaders, community leaders, and teachers of the Koran in their hometown. Although when the first time they arrived to be characterized by a tendency to commit crime, it turns out to be good and noble character after graduation.

From the results of study on three Islamic boarding schools in Gunungpati District Semarang which were Durrotu Aswaja, Al-Asror, and Al-Uswah boarding schools, it discovered that their education and training system were relatively identical. They went through a religious approach and example. Religious studies gained from learning in the classroom, they immediately put into practice in daily life in the boarding schools.

Broadly speaking, the results of interviews at three boarding schools, it discovered that:

- a) Islamic boarding school is an educational institution as well as moral guidance proven by many children from different backgrounds as being well-educated and not the least children that initially entered with less good morals, however, once they step outside the place, they turn out to be excellent persons;
- b) A study on Islamic boarding school which focuses on religion, hence instinctively moral education is also included although there is explicitly moral education developed by code of conduct;
- c) Practice of strict discipline by the boarding school, thus in case of overdue in implementing the obligations, they will be punished (ta'zir);
- d) Attitude of 'tawadlu' towards caregivers or 'kiai' make moral education in the boarding school being effective;
- e) Cultivate self-awareness in moral education as it is accompanied by religious studies to make students aware of themselves and be alarmed about making mistakes;
- f) Between religious studies and moral education in these three Islamic boarding schools are combined to create students with high-quality moral (*akhlaqul karimah*);
- g) Islamic boarding schools are devoted to educate and nurture Muslim children.

Sociologically, the placement of children committing criminal offenses in the boarding school is greatly relevant. Education in the boarding school is certainly distinctive from the one in imprisonment and other institutions such as social institutions. Boarding school has had a highly disciplined educational system and exemplary caretakers. Approach to religious values are extremely effective in fostering children committed criminal offense to be better persons.

CONCLUSION

Placement of children convicted criminal offense or as known in the legislation referred to children in conflict with the law in Islamic boarding schools is an alternative of education that juridically have its legal basis, which is Article 7, Article 71 section (1) letter b number 1, Article 71 section (1) letter d, Article 82, section (1) b, Article 82, section (1) letter e of Act No. 11 of 2012 on Juvenile Justice System.

Sociologically, Islamic boarding school is a highly trusted place by the community. The performed coaching and education methods is extremely disciplined with an approach to religious values and exemplary teachers and caregivers. This is what makes the results of education incredibly excellent and it is proven by children who initially entered it with bad moral and character, after being forged in the boarding school with such an approach, it turned out to be children with excellent morality, and many of them happen to be community leaders, religious leaders and teachers of the Koran in their hometown.

SUGGESTION

In this regard, the government who plays an important role in the educational efforts of children in conflict with the law shall encourage efforts of children resocialization. The government shall not need to create new institutions for fostering children, but provide an opportunity for Islamic boarding schools to participate in fostering and improving the children's mentality in Indonesia. For the judge, as the party holding the judiciary, shall have the courage to make a legal breakthrough with the verdict in granting sanction of sentence and treatment by children education in the boarding schools.

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