

Conference Paper

Imposition of Fines Converted to Confinement for Juvenile Sex Offenders (Case Study Decision Number 1/Pid.Sus-Anak/2019/PN.Pts)

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ORCIDCholidah Baghos: <https://orcid.org/0000-0001-5061-8368>**Abstract.**

Decision Number 1/Pid.Sus-Anak/2019/PN.Pts with Defendant R is a case involving a child in conflict with the law. Defendant R has been legally and convincingly proven guilty of committing a criminal act of sexual intercourse against a minor, because of this act the Defendant was sentenced to 2 (two) years and 6 (six) months in prison at the Pontianak Special Child Development Institute (LPKA), and a fine in the amount of Rp.60,000,000 (sixty million rupiah) subsidiary of 1 (one) month imprisonment. In Article 71 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is explained that if the material law is threatened with cumulative punishment in the form of imprisonment and fines, the fine will be replaced with job training. This study aims to find out and analyze the judge's considerations in imposing a fine against a child in Decision Number 1/Pid.Sus-anak/2019/PN.Pts and the legal consequences if a fine against a child is converted into confinement. The research method used is normative juridical by using primary, secondary, and tertiary legal materials. Based on this article, if the punishment is in the form of imprisonment plus a fine, which fine will be replaced through job training activities for children, therefore the judge can still determine the punishment in the form of confinement and job training for a child who has legal problems.

Keywords: fine, conversion, confinement, child cases

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1. INTRODUCTION

Punishment for children who commit crimes cannot be equated with punishment for adults, because basically children have unstable mental conditions, a process of psychological stability that produces a critical attitude.[1] A crime committed by a child cannot be considered a crime, but a delinquency caused by an imbalance in psychological conditions and understanding of the actions committed by the child. The difference in treatment and threats regulated in the law is intended to protect and nurture the child so that he can face a long future [2]. Protection of children in conflict with the law is

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contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Law on the Juvenile Criminal Justice System emphasizes the improvement of child offenders. Where this law adheres to the Double Track System sanctions system or better known as the Dutch term "Zweispurigkeit" or a two-track system that emphasizes the punishment of two sanctions, namely criminal sanctions and actions [2].

Criminal sanctions are sanctions whose imposition is limited by the *ultimum remidium* principle (the last sanctions imposed after other sanctions have been imposed) [3]. Meanwhile, the principle of implementing imprisonment for child offenders is related to the principle of legal protection, that punishment for deprivation of liberty or imprisonment is a last resort [4]. so it is interesting to study how the position of the judge's decision that converts the criminal fine to confinement in the case in Decision Number 1/Pid.Sus-Anak/2019/PN.Pts with Defendant R is a case involving children both as victims and perpetrators who are both aged 16 years in which R has been legally and convincingly proven guilty of committing the crime of "committing sexual intercourse to a minor", because of this act R was sentenced to prison for 2 (two) years and 6 (six) months at the Child Special Guidance Institute (LPKA). Pontianak and a fine of Rp.60.000.000,- (sixty million rupiah) subsidiary of 1 (one) month imprisonment, reduced as long as the child is in detention.

An important note in this decision is in the case of imposing criminal sanctions in the form of imprisonment for 2 (two) years and 6 (six) months, and a fine of Rp. conversion) with imprisonment of 1 (one) month.

2. METHODOLOGY/ MATERIALS

This study focuses on the impact of pair work types on the analysis of judge decisions in criminal decisions of fines converted to confinement in children's cases. Meanwhile, the dependent variable is the confinement conversion. This study is appropriate to find out a the legal basis for the judge's decision to convert a child's punishment. The causal relationship to be investigated in this study is the basis of judges in converting children's sentences. In other words, this study was to investigate whether the judge's basis was correct in converting a criminal fine into confinement in his decision and the legal consequences if a fine against a child was converted into a confinement sentence.

3. RESULTS AND DISCUSSIONS

Based on the result of data analysis, it was found that Fines are one type of crime that has long been known, of course, the arrangements and ways of applying these fines vary, according to the conditions and developments of society [5]. Fines are the third most common type of criminal offense in Indonesian Criminal Law and can only be imposed on adults. Legal experts have different views on fines in the whole criminal system, especially when it is associated with imprisonment. A new concept in criminal sanctions in criminal law in Indonesia is the development of alternative sanctions (alternative sanctions) from the crime of loss of independence, one of which is a criminal fine. These views form a conflicting attitude between imprisonment and fines. Regarding imprisonment, criminal law experts tend to minimize its use. On the other hand, the penalty for fines is to be maximized. Imprisonment is often considered too severe when compared to fines. In practice in court, it turns out that the crime of deprivation of liberty, namely imprisonment and confinement is still the main choice of judges [6]

The determination of fines in the Criminal Code is a type of crime that varies in the number of fines and the severity of the type of crime. The fines are contained in Books I and II of the Criminal Code which are threatened with offenses and violations. The regulation is a single prison, imprisonment with a fine, a single confinement, a single confinement with a fine, a fine with a single sentence [7].

The provisions for fines in the Criminal Code are regulated in Article 10 Jo. Article 30 of the Criminal Code. Article 10 of the Criminal Code states that the main punishment has four types of punishment, namely the death penalty, imprisonment, imprisonment, and a fine. In Article 30 paragraph (1) of the Criminal Code it is stated that a fine can be set at a minimum of Rp.25 (twenty five rupiah), but the maximum is not determined in general but is determined in the articles of the crime concerned. Due to the existence of this minimum order, the court's decision on the fine must not be less than the minimum limit. This applies to all offenses punishable by a fine. Furthermore, Article 30 paragraph (2) stipulates that if the fine is not paid, it will be replaced with imprisonment.

In the Criminal Code, to determine the amount of the fine, it is specifically determined in each article related to the type of violation or offense committed. The maximum fine in the Criminal Code is Rp.150,000 (one hundred and fifty thousand rupiah) as stated in Article 251 and Article 403 of the Criminal Code, except for Article 303 and Article 303 bis of the Criminal Code which have been amended by this article to Rp.25,000,000 (twenty five million rupiah) and Rp.10,000,000 (ten million rupiah), this decision is in accordance with Law no. 7/ 1974 [8].

Confinement can be interpreted as depriving freedom but it is lighter than imprisonment. Imprisonment can be carried out for a minimum of 1 (one) day and a maximum of 1 (one) year. However, if there are difficulties such as unity or repetition, the imprisonment can be accumulated to 1 (one) year and 4 (four) months. Imprisonment in lieu of a fine is the same as imprisonment. The sentence of imprisonment in lieu of a fine is imposed by the judge and the fine. The judge must clearly state the fine that must be paid by the defendant and the length of imprisonment that the defendant must serve, if he is unable to pay the prescribed fine.

Imprisonment as a substitute for fines is regulated in Article 30 paragraph (1) to paragraph (6) of the Criminal Code. Regarding the determination of the length of the substitute imprisonment as referred to in paragraph 30 paragraph (4), the decision states the length of the substitute imprisonment, if the amount of the fine is 50 (fifty) cents or less than 50 (fifty) cents, it is calculated for one day, if more than 50 (fifty) cents, calculated every 50 (fifty) cents for one full day, as if the remainder is not more or less than 50 (fifty) here the length of imprisonment in lieu of a fine is at least 1 (one) day and maximum of 6 (six) months. In addition, in paragraph (5) it is stated whether there is a criminal fine based on a combination of violations, work (repetition of violations), or criminal acts as referred to in Article 52 of the Criminal Code, the substitute imprisonment is the maximum amount. for 8 (eight) months [9].

Against child perpetrators, the Law on the Juvenile Criminal Justice System regulates more specifically about punishment and criminal conversion in the provisions of Article 71 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that if in material law a cumulative punishment is imposed in the form of imprisonment and fines, fines are replaced with job training. This article is not applied to Decision Number 1/Pid.Sus-Anak/2019/PN.Pts.

In order for a person to be fined, if he fails to pay the fine imposed by the judge, the judge's decision on the amount must be made carefully. The fine that must be paid by the perpetrator and the length of imprisonment in lieu of the fine that must be imposed by the violator, namely if he fails to pay all the fines concerned.

In that case, the violator may be sentenced to confinement in exchange for not waiting for the deadline for payment of the fine if he wishes, or because he knows he cannot pay the fine within the time specified by the judge. However, he can always free himself from the criminal obligation of confinement by paying a number of fines determined by the judge, as long as he has not fulfilled the sentence of imprisonment, or after he has started to act during his imprisonment in a correctional institution. The criminal provisions regulated in Article 81 Paragraph (2) of the Law on Child Protection

do not apply to the Defendant because as a child they will be tried with the juvenile criminal justice system. In accordance with the provisions of Article 71 Paragraph (3) of the Juvenile Criminal Justice System Act, it regulates the cumulative punishment that can be sentenced to a child in the form of imprisonment and job training. The phrase "a subsidiary of 1 (one) month imprisonment" can be interpreted if the fine is not paid must be replaced with imprisonment for 1 (one) month, then the punishment in the Decision of the Putussibau District Court Number 1/Pid.Susanak/2010/PN.Pts is not appropriate. with the criminal provisions in Article 71 Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Public Prosecutor in his indictment and the Judge in his decision based the transfer of the form of a fine criminal into the form of imprisonment in lieu of a fine as regulated in Article 30 Paragraph (2) of the Criminal Code which states that "If the fine is not paid, it is replaced with imprisonment", and does not pay attention to the provisions Article 71 Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System "If in material law it is threatened with cumulative punishment in the form of imprisonment and fines, the fine will be replaced with job training". The principle of *lex specialis derogat legi generalis* applies that special laws override general laws. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has the position as (*lex specialis*) to the provisions of the Law on Child Protection and the Criminal Code in the case of the Child Defendant ROBIN Als Bin Anak from MANSAIR, but the Public Prosecutor and Judge are only guided by the provisions Article 81 Paragraph (2) of the Law on Child Protection and Article 30 Paragraph (2) of the Criminal Code without complying with Article 71 Paragraph (3) of the Juvenile Criminal Justice System Act which is located as (*lex specialis*) in this legal matter. The criminal justice system which is guided by the Criminal Procedure Code as a general provision (*lex generalis*) of criminal procedural law applies also to the juvenile justice system, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as a special provision. (*lex specialis*). This is emphasized in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which stipulates that the provisions of proceedings in the Criminal Procedure Code also apply to juvenile criminal justice proceedings, unless otherwise stipulated in this Law.

The rule of law regarding fines in general is found in Article 30 and Article 31 of the Criminal Code. Where by observing the provisions of the fine rules in the Criminal Code, the following legal construction is obtained: first, if the fine is not paid, it is replaced with imprisonment. With this construction, if the replacement money is not paid, the convict will replace it with imprisonment, the two convicts have the authority to free themselves from the substitute confinement by paying the fine [10]. In this case,

a guarantee of greater freedom of judges is needed to determine the amount of fines to be imposed. It's just that if the fine is not paid by the convict either because of his inability or unwillingness, then the fine can be converted into a form of confinement called a subsidiary or substitute imprisonment, not a principal imprisonment [10].

Fines are a type of punishment that benefits the government, because the government does not spend a lot of money, if it is not accompanied by subsidiary losses. The punishment of a fine does not bring or does not result in disgrace to the good name or honor as experienced by the convict. Fines will make the world of humanity relieved. The fine will be an income for the region/city [11]. Although punishment in the form of a fine will be more beneficial to the state than imprisonment [12] but in the case of children, the fines paid by parents according to the judge cannot provide a sufficient deterrent effect to the child who is the perpetrator of the crime, as well as the age of the Defendant who is 16 years old. agree with the Community Counselor it is necessary to place the child in the Pontianak Special Child Correctional Institution (LPKA) in order to be held accountable for his actions. Article 20 of Law Number 11 of 2012 which regulates "In the event that a criminal act is committed by a child before the age of 18 (eighteen) years and is submitted to a court hearing after the child in question exceeds the age limit of 18 (eighteen) years, but has not yet reached the age of 18 (eighteen) years. 21 (twenty one) years old, the child is still submitted to the juvenile court". The provisions of the main criminal sanctions for "Children in Conflict with the Law" are regulated in Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which consists of:

1. Criminal Warning

According to the provisions of Article 72 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a warning crime is a minor violation that does not limit children's freedom. This can be defined as disciplinary action in the form of a warning to the child so that the violation does not repeat itself to the detriment of others. Judges may apply a warning criminal sanction to minors for minor offences [13].

1. Criminal with Conditions

The criminal provisions contained in Article 73 of Law Number 11 of 2012 apply to the Juvenile Criminal Justice System, which states that the maximum penalty for arrest by judges is 2 (two) years and the general conditions and special conditions. The general rule is that a child does not commit a crime again while serving a sentence. Specific requirements to do or not to do certain things specified in the judge's decision regarding

the freedom of the child. The punishment is based on the fact that there are many types of punishment for children with the aim of providing guidance to children, in the form of:

1. Work training

Job training for children is stipulated in Article 78 of Law Number 11 of 2012 concerning the Child Criminal Justice System, job training for a minimum of 3 (three) months and a maximum of 1 (one) year. The job training program is to provide skills to children so that they are available and have skills that can be developed in social life. The implementation of this job training eliminates humiliation as a punishment (punishment) being threatened and intimidated, this job training is similar to the doen theory way to improve the behavior of perpetrators in criminal activities with relative criminal objectives, workers will be well received in society and improve their skills so that they can have a decent life and work [2].

If there is a criminal fine on a child, then the provisions of Article 71 Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System state that "If in material law a cumulative penalty is threatened in the form of imprisonment and a fine, the fine is replaced with training. work" so the fine is replaced with a criminal job training for children.

1. Training outside the institution (Article 75) Training outside the institution is possible by participating in training and counseling programs conducted by supervisory officers and community-based organizations.
2. Community Service (Article 76) The function of the community is to educate children by increasing their awareness of good practices in the community.
3. Supervision (Article 77) Inspection of children is placed under the supervision of the Public Prosecutor who is guided by the community.

If there is a criminal fine on a child, then the provisions of Article 71 Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System state that "If in material law a cumulative penalty is threatened in the form of imprisonment and a fine, the fine is replaced with training. work" so the fine is replaced with a criminal job training for children.

A further definition of criminal work training for children in conflict with the law is contained in Article 78 Unit (1) of Law Number 11 of 2012, that:

1. The job training crime as referred to in Article 71 paragraph (1) letter c is carried out by a job training institution based on the age of the child.

2. The job training penalty as referred to in paragraph (1) is set for a minimum of 3 (three) months and a maximum of 1 (one) year.

The job training crime in question is usually carried out at the Special Child Correctional Institution, Rehabilitation, Protection Center, Job Training Center, and other institutions that carry out vocational training programs. This job training penalty can be decided by a judge as a criminal offense, but it can also be decided in lieu of a fine. Children who violate the law are threatened with a combined punishment in the form of imprisonment and a fine that can replace the fine with job training.

The 12th ICOPA Congress which mandated the countries of the world to include an alternative to imprisonment in their Criminal Code, was followed up by a United Nations Resolution in December 1990 which stipulated the "Tokyo Rule" which contained the "Standard Minimum Rules for non-custodial measures" (SMR for non-custodial). Non-custodial action, namely the act of not placing the perpetrator of a criminal act in an institution, so that there is no deprivation of liberty can be applied at every stage of the criminal justice process, namely during pre-trial (investigation and prosecution), judicial process (examination in court) and post-trial. judiciary (implementation of court decisions) [14]. The alternative imprisonment "alternative imprisonment/alternative to custodial sentences" occurs during examination in court when the judge as the official authorized to convict "sentencing authorities" imposes a crime, which according to the "Tokyo Rules" can be in the form of: verbal sanctions (admonition, reprimand, warning), conditional discharge status penalties, economic sanctions/monetary penalties, Confiscation, expropriation order, restitution and compensation suspended sentence, probation/judicial supervision, a community service order, referral to an attendance center, house arrest, non-institutional treatment, combination. Social work crimes and restitution are thus two alternative types of imprisonment mandated by the "Tokyo Rules" to be included in the Criminal Code of every country in the world, namely it is appropriate that the fines given to the defendant be transferred to job training [14].

Taking into account the Decision Number 1/Pid.Sus-Anak/2019/PN.Pts, and the fact that the Defendant wants to be responsible for what he has done to the victim, so that the Defendant's job training will not only have a deterrent effect but also to build responsibility. responsibility, increase the value of productivity, and also gain skills from what he can in this job training so that in the future if the Defendant is free from imprisonment and his job training the Defendant can also continue his life again and also benefit from the job training as well as an idea of how he will be after undergo this job training is useful for him. The basis for reinforcement in terms of job training is contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

but does not explain in detail how the form of job training takes, this can also be linked to the previous court law, namely Law No. No. 3 of 1997 concerning Juvenile Court which explains that it is mandatory for job training aimed at educating children so that they have a skill and can be useful.

4. CONCLUSION AND RECOMMENDATION

First, the conclusion is that the imposition of a fine if converted into a prison sentence in Decision No. 1/Pid.Sus/2019/PN.Pts against the Defendant Child R as a perpetrator of abuse of minors who are not in accordance with Article 71 (3) UUSPPA, if there is a combined or cumulative criminal in the form of imprisonment and a fine, the criminal fines are replaced with job training. Children as perpetrators of crimes also have the right to get protection. The imposition of imprisonment as a substitute for fines against children as perpetrators of criminal acts actually results in a negative impact. The best interests of the child are very important so that job training in exchange for a fine if not paid can be given for a better future for the child

Based on the conclusion made above, first the Judge of the Putussibau District Court to make decisions must have the spirit of justice and fairness of punishment in all relevant cases, especially in crimes committed by children. Punishments are set to cause adverse consequences for the person who commits it, and for minors it is the result of education so that it does not happen again. Second Law enforcement officers should pay special attention to the provisions contained in the UUSPPA as the legal basis for criminal penalties against children, especially the provisions of Article 71 paragraph 3 of the UUSPPA. Based on this article, if the punishment is in the form of imprisonment plus a fine, which fine will be replaced through job training activities for children, therefore the judge can still determine the punishment in the form of a confinement and job training for a child who has legal problems.

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