

RECONSTRUCTION OF LAW ENFORCEMENT REGULATION AGAINST CRIMINAL ACTIONS PERFORMED BY CHILDREN BASED ON THE VALUE OF JUSTICE OF PANCASILA

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Abstract: *The penal system, which until now sometimes still treats children who are involved as perpetrators of crimes, is like perpetrators of crimes committed by adults. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System requires a change in the form of protection of children's rights, especially Children in Conflict with the Law (ABH) from a retributive paradigm to a restorative one." After going through the case settlement process and it was decided that the offender's child was found guilty, the offender's child will undergo a coaching period. It is during this coaching period that the rehabilitation stage is carried out for the offender's child. This legal research uses a sociological legal research approach. The SPPA Law replaces Law Number 3 of 1997 concerning Juvenile Courts, the Law concerning Juvenile Courts was replaced because it has not paid attention to and guarantees the interests of the child, both the child perpetrator, the child witness and the child victim. The Child Protection Act only protects children as victims, while children as perpetrators are sometimes in the same position as adult perpetrators. Reconstruction of Article 71 paragraph (1) letter e of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by changing the main punishment for children in the form of prison to rehabilitation.*

Keywords: *Children, Convict, Rehabilitation*

A. BACKGROUND

The young generation is the next generation of the nation in the future. The younger generation is at the forefront as the future leaders of this nation.¹ Therefore, children need guidance, special guidance so that they can develop optimally physically, mentally and spiritually.²

Every child has the right to freedom according to the law. Arrest, detention or punishment of imprisonment for children is only carried out if in accordance with applicable law it can only be carried out as a last resort. Child legal protection is an effort to protect the law against various freedoms and children's human rights.³

The concept of Restorative Justice in the SPPA Law requires the active role of judges as parties or facilitators who bridge communication between perpetrators, victims, families of perpetrators/victims, public prosecutors, and other parties in order to find the most equitable alternative settlement by emphasizing restoration to its original state.⁴ Likewise, during the implementation of the Diversion process, the Judge is obliged to maintain the dignity of the child, encourage community participation to participate, instill a sense of responsibility for the child, and most importantly, that imposing prison sentences on children is only used as a last resort (ultimum remedium).⁵

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System requires a change in the form of protection of children's rights, especially Children in Conflict with the Law (ABH) from a retributive to restorative paradigm" which is emphasized in Article 1 Number 6 states that restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a just solution by emphasizing restoration to its original state, and not retaliation. Policies that prioritize children's rights by implementing restorative justice can be realized by involving relevant parties in analyzing and adapting to the cultural conditions of the local community.⁶ The key word is recovery back to its



original state is one of the goals to eliminate trauma in children and provide opportunities for children to be accepted back in their environment in a dignified manner so that they can reorganize their better future.⁷

After going through the case settlement process and it was decided that the offender's child was found guilty, the offender's child will undergo a coaching period. It is during this coaching period that the rehabilitation stage is carried out for the offender's child. Rehabilitation is any effort intended to restore self-confidence and self-esteem, awareness and social responsibility for the future of self, family and the surrounding community, so that they have the will and ability to prevent themselves from acts that violate the law, religion and socio-culture. as well as recovering the will to carry out its social functions properly.⁸ Another definition of rehabilitation is restoration to the former (original) position (state); repair of disabled limbs and so on for individuals (eg hospital patients, disaster victims) so that they become useful human beings and have a place in society.⁹ Rehabilitation can also be interpreted as "restoration" (repair, recovery) leading to normality, or recovery to the most satisfying status for individuals who have suffered injuries or suffered from a mental illness.¹⁰ Children as perpetrators of crime are handled by providing rehabilitation efforts.¹¹ This effort is considered better than giving the child a prison sentence. Apart from creating a deterrent effect, he will receive guidance and coaching, so that he will no longer repeat similar actions. The application of imprisonment does not necessarily have a deterrent effect. Precisely, allegedly in the prison, they get lessons about things that are not good. Because if a child is put in prison, then it is certain to mingle with other criminals. As a result, indirectly the child will be contaminated with the nature of the criminals. So that when they leave prison they do not become good, but instead become more familiar with the world of evil. The function of religious rehabilitation will have a stronger role than social rehabilitation for mistakes that have been made. It is believed that mistakes made by children are not entirely the will of the child. However, sometimes the environment influences it, including economic conditions or family disunity issues. In practice, the imposition of imprisonment can make a child who has committed a crime more qualified to commit the act again and become a criminal again.¹²

B. RESEARCH METHODS

This legal research uses a sociological legal research¹³ approach. Sociological juridical research¹⁴, namely legal research using legal principles and principles in reviewing, viewing, and analyzing problems, in research, in addition to reviewing the implementation of law in practice.¹⁵ The data used in this study are primary data and secondary data. Furthermore, the data that has been collected in the analysis.¹⁶

Legal research is a scientific activity based on certain methods, systematics and ideas that aim to study one or several specific legal phenomena by analyzing them.¹⁷

C. RESEARCH RESULTS AND DISCUSSION

1. Law Enforcement Regulations Against Crimes Committed by Children Currently Not Based on the Value of Justice

Juvenile Criminal Justice, basically also to make corrections, rehabilitation, so that sooner or later, children can return to normal social life and not to end their hopes and future potential. Criminal imposition or action is an action that must be accounted for and can be beneficial for children. Every execution of a crime or action, endeavored not to cause victims, suffering, mental, physical and social harm. To prevent unwanted consequences that are detrimental in nature, it is necessary to pay attention to the ethical basis for the punishment, namely justice as the only basis for punishment, every act of punishment is assessed not only based on the nature of justice¹⁸, but also the nature of the harmony that will be achieved, because in harmony justice is also reflected, punishment is an act against a delinquent who can be held accountable for his actions, the judgment of a delinquent is not always based on the quality of their spiritual and psychological abilities at the time the



delinquency is committed, but primarily based on their ability to be entitled to receive punishment and.¹⁹

In principle, it is identical to the General Criminal Law (*Ius Commune*), so the Juvenile Court only recognizes the imposition of 1 (one) principal sentence. Strictly speaking, cumulation of 2 (two) main crimes is written. Specifically, against a delinquent child who commits a crime (Article 1 number 2 letter a of Law 3/1997) the judge can impose one of the main crimes or acts while on a child who commits an act that is declared prohibited for children, both according to statutory regulations and according to other legal regulations that live and apply in the community concerned (Article 1 paragraph (2) letter b Law 3/1997) criminal acts or actions that can be imposed on children, the judge pays attention to the severity of the crime or delinquency committed by the child concerned. The judge is also obliged to pay attention to the condition of the child, household, parents, guardians or foster parents, the relationship between family members and their environment Likewise, the Judge is obliged to pay attention to the Social Advisory report.²⁰

It is clear that criminal sanctions place more emphasis on the element of retaliation (compensation). It is suffering intentionally given to an offender. Meanwhile, sanctions for action originate from the basic idea of protecting the community and fostering or caring for the maker. Or as J.E. Jokers (1987), that criminal sanctions are focused on crimes that are applied to crimes committed, while action sanctions have social goals.²¹

In connection with the foregoing, the Law on the Juvenile Criminal Justice System emphasizes that for children in conflict with the law who have committed a crime punishable by death or life imprisonment, a maximum of 10 (ten) years imprisonment can be imposed on the child. . Out of the five main punishments for children in conflict with the law, supervision punishment is a new type of punishment. What is meant by supervision punishment is a punishment that is specifically imposed on children, namely supervision carried out by the Public Prosecutor over the child's behavior in daily life at the child's home, and the provision of guidance carried out by the Community Advisor.²² So supervision punishment is not a prison sentence or confinement carried out at the child's home, but in the form of supervision of the convict for a certain time determined by a court decision.

The arrest of a child is carried out for the purposes of investigation for a maximum of 24 (twenty four) hours and must be placed in a special service room for children. Detention of a child can only be carried out on condition that the child is 14 (fourteen) years of age or more and is suspected of having committed a crime punishable by imprisonment of 7 (seven) years or more. Detention for the purposes of investigation is carried out for a maximum of 7 (seven) days and can be extended by the public prosecutor for a maximum of 8 (eight) days. If the detention is carried out for the purposes of prosecution, the public prosecutor can carry out detention for a maximum of 5 (five) days and can be extended by a district court judge for a maximum of 5 (five) days. If the detention is carried out for the purposes of examination at a court hearing, the judge can make the detention a maximum of 10 (ten) days and can be extended by the head of the district court for a maximum of 15 (fifteen) days. If the detention is carried out for the purpose of examination at the appeal level, the appellate judge can make the detention a maximum of 10 (ten) days and can be extended by the head of the high court for a maximum of 15 (fifteen) days. In the event that detention is forced to be carried out for the purposes of an examination at the cassation level, the judge of cassation can make a detention for a maximum of 15 (fifteen) days and can be extended by the head of the Supreme Court for a maximum of 20 (twenty) days.

2. Current Weaknesses in Law Enforcement Regulations Against Crimes Committed by Children

The penal system, which until now sometimes still treats children who are involved as perpetrators of crimes, is like perpetrators of crimes committed by adults. Children are placed in a position as a criminal who deserves to get the same punishment as adults and applies in Indonesia.²³

Meanwhile in Law No. 11 of 2012 the principles adopted in the Juvenile Justice System include: the best interests of the Child; respect for the opinion of the Child; survival and development of the Child; development and guidance of children; deprivation of liberty and punishment as a last resort; and avoidance of retaliation.²⁴



If we pay attention to the provisions of Article 7 paragraph (2) letters a and b, then on the contrary it can be interpreted that diversion cannot be carried out in the case of a crime that is punishable by imprisonment of more than 7 (seven) years and if it is repetition it is not a crime. If seen from a progressive legal perspective, that law is made and applied to humans, not the other way around, namely humans for law. The existence of the law is to make people happy, the law serves human interests and the rule of law is obliged to make people happy. In this context, diversion must apply in the SPPA process as long as the parties involved as stipulated in Article 8 of the SPPA Law agree to diversify so that it must be accommodated and fairness or deliberation-based justice should be the highest dimension in resolving child cases.

Weaknesses Law enforcement by police, prosecutors and judges is actually a weakness in existing regulations that can be overcome if there is concern and sensitivity from law enforcement officials in handling ABH. This happens because they have the discretion to provide a more alternative than prison to protect the future interests of children.

In fact, more law enforcers have a legalistic paradigm which is only guided by written law on the grounds that they are trained for it. In fact, the law itself also provides flexibility in handling ABH. The insensitivity of the apparatus can be seen in the settlement of cases in court. Children who are in conflict with the law are forced to continue attending trials on their own without lawyers and parents, and are then imprisoned mixed with adults.²⁵ This is exacerbated by the many "naughty" law enforcement officers".

Legal understanding by the community is very important to be provided so that law enforcement functions effectively. In order for the law to function properly, it is necessary to have the following 4 (four) elements, namely: the existence of laws and regulations, the existence of law enforcement officials, the existence of facilities that support its implementation and the existence of public legal awareness and compliance.²⁶ Therefore, the community needs to be given socialization in earnest so that they are aware of the existence of legal rules governing an issue and carry them out in accordance with the specified substance.

3. Reconstruction of Law Enforcement Regulations Against Crimes Committed by Children in the Framework of Pancasila Value-Based Rehabilitation of Justice

In the case of punishing children, it is necessary to know that protection for children must be kept at the forefront, because the best interests of children are the biggest factor on the basis of consideration for judges in imposing sanctions on children.²⁷ In Law no. 11 of 2012 "Concerning the Juvenile Criminal Justice System has implemented the principle of "The Last Resort" "in imposing sanctions by judges on children who commit criminal acts. Apart from imprisonment as a last resort, in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, there has been a paradigm shift in the handling of children in conflict with the law, based on among others the roles and duties of the community, government and other state institutions which are obliged and responsible for improving children's welfare and providing special protection to children. as well as providing special protection to children, which is carried out with the aim that justice can be realized that truly guarantees the protection of the best interests of children.²⁸

Since the enactment of the Juvenile Criminal Justice System Act in overcoming the problems faced and providing special protection in the form of regulations that prioritize the principle of the best interests of children in solving problems that involve them, in essence children cannot protect themselves from various actions that can cause harm. mental, physical, social in various lives and livelihoods.²⁹ So they still need the support of other people to protect themselves considering the situations and circumstances included in the juvenile justice system which are foreign to them. In Article 71 paragraph (1) letter e of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that the main crime for children consists of imprisonment. According to the author's opinion, it is necessary to reconstruct Article 71 paragraph (1) letter e of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by amending Article 71 paragraph (1) letter e of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The main crime for



children consists of imprisonment and becomes the main crime for children in the form of rehabilitation.

Some of the impacts that go through a child who is in conflict with the law if a prison sentence is carried out include, psychologically disturbing the child, at risk of experiencing violence, basic needs are lacking/not fulfilled, the right to education is not fulfilled, the child becomes less active, the child is at risk of becoming a recidivist and expanding criminal acts and knowledge.³⁰

Many institutions are trying to deal with ABH, but the problems are still complex and varied. Besides ABH needing a solution, it also requires Islamic religious guidance which is possible to reduce emotions, so that changes in ABH's behavior can reduce the level of criminal acts. Rehabilitation with a religious approach, especially the Islamic religion, is intended to awaken ABH to return to carrying out activities according to religious teachings towards their nature, getting an education, achieving their goals, behaving well, carrying out orders and avoiding religious prohibitions.

According to Saerozi, the implementation of Islamic religious guidance in internalizing ABH's personal religion in connection with the efforts to solve problems and the life he has chosen, is guided according to the development of his attitude, religious feelings, and the level of his psychological life situation.³¹ Implementation of Islamic religious guidance as a reference in the transition to changes in ABH religiosity in accordance with Islamic teachings.

Guidance with a religious approach is also aimed at providing guarantees for handling children who are in conflict with the law through legal aspects, medical aspects, social aspects, spiritual aspects and development in an integrated manner so that children avoid mental damage and future effects of imprisonment. Build self-awareness, improve the function of self-identification and improve behavior so that children can change in a better direction, teach children to regulate their emotions so that they are more stable, conduct counseling which is commonly known as counseling which is generally interpreted as providing information, information or advice to the other party in the case here is the child. Apart from that, rehabilitation also provides understanding and information about knowledge so that children become more intellectual, and also teaches good habits so that children can apply them in institutions and then when the child is no longer guided in institutions, don't forget to also do ABH. providing legal guidance for prevention and providing an explanation that the crimes they have committed should not be repeated in the future so that there are no recidivists.

D. CONCLUSION

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaced Law Number 3 of 1997 concerning Juvenile Courts which states that 'a child in conflict with the law' is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old, then it is clear here that the legislators have agreed that the age under 18 (eighteen) years is indeed an age that cannot be held accountable for the actions they have committed, because children at such an age still do not understand what is he did.

If we pay attention to the provisions of Article 7 paragraph (2) letters a and b, then on the contrary it can be interpreted that diversion cannot be carried out in the case of a crime that is punishable by imprisonment of more than 7 (seven) years and if it is repetition it is not a crime. In fact, more law enforcers have a legalistic paradigm which is only guided by written law on the grounds that they are trained for it. In fact, the law itself also provides flexibility in handling ABH. The insensitivity of the apparatus can be seen in the settlement of cases in court. Children who are in conflict with the law are forced to continue attending trials on their own without lawyers and parents, and are then imprisoned mixed with adults. Cases of children who have not been successful in diversion at the police level are due to the lack of public understanding. Society considers that children should be punished with imprisonment. Even though the obligation to carry out diversion is not only carried out at the investigative level, but at the prosecution and trial stages, diversion can still be carried out. Opportunities for implementing diversion can still be carried out even though diversion at the investigative and prosecutorial levels fails.

Reconstruction of Article 71 paragraph (1) letter e of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by changing the main punishment for children in the form of prison to

rehabilitation. The ABH Social Rehabilitation Program is the implementation of social rehabilitation as an effort to develop children's normal social functioning in social life.

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