

Implementation of Sanctions on Juvenile Offenders in Criminal Justice System

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Abstract: Research entitled “Implementation of Sanctions on Juvenile Offenders in Criminal Justice System” was carried out to draw attention on how the form of sanctions to children who commit crimes and to figure out how the application of sanctions against juvenile offenders in the juvenile justice system in Jayapura. The chosen method in this research-based paper is empirical normative legal research. This report presented the findings of research that forms of sanctions given to children who commit crimes regulated in the Law on the Juvenile Criminal Justice System are beyond Principal Crimes (criminal warning, criminal with conditions, job training, mentoring in institutions and prisons) and Additional Crimes (Expropriation of profits derived from criminal acts; and Fulfillment of customary obligations). As well, forms of imposition of sanctions against children in the Jayapura IA Class District Court, judges tend to impose criminal sanctions to provide deterrent effect of imprisonment and learning effect. Based on results obtained in this line of research, as a special judge in Jayapura District Court in imposing sanctions on children must really think of the best interests of children by placing criminal sanctions as *ultimum remidium*. Furthermore, the Diversion system should be used in solving child cases as stipulated in the Juvenile Criminal Justice System.

Keywords: Application; Sanctions; Crimes; Children; Criminal Acts

INTRODUCTION

Children are the nation’s future generation who have limitations in understanding and protecting themselves from the various influences of the existing system or in other words children are an

inseparable part of the survival of humans and the survival of the nation and state.¹

On November 20, 1990, The United Nations General Assembly hosted the Convention on the Rights of the Child (CRC) in New York. Article

¹ Marlina. (2009). *Peradilan Pidana Anak di Indonesia “Pengembangan Konsep Diversi*

dan Restorative Justice”. Bandung: PT. Refika Aditama, p. 14.

1 The Convention on the Rights of the Child generally defines children as citizens under the age of 18 years old, yet such article also recognizes the possibility of differences or variations in determining the age limit of maturity in the statutory regulations of each participating states.²

Indonesia as a country that signed to the Convention on the Rights of the Child (Convention on the Rights of the Child) which regulates the principle of legal protection for children, shall provide special protection for children in conflict with the law. One form of child protection by the state is realized through a special criminal justice system for children who are dealing with the law. This has been confirmed in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, that the purpose of juvenile justice is: the criminal justice system for children or adolescents will prioritize adolescent welfare and will ensure that any reaction to juvenile offenders will always be commensurate with good conditions to the law offenders and violation of the law.³

Children's rights are necessary to be recognized, respected and upheld like adults because children also have human rights like other adults. This has existed long before the issuance of various regulations that currently apply nationally and internationally in the context of efforts to protect children's rights, on November 20, 1959 at the United Nations General Assembly internationally adopted children's rights, which in general in the declaration which contains 10 (ten) principles.⁴

Likewise, children who are in conflict with the law, both children as victims, children as witnesses and children who are perpetrators of criminal acts also have rights that are worthy of respect and protection regulated in both national and international laws as well as in imposing sanctions on children.

Under Law No. 11 of 2012 regarding the juvenile justice system, Article 2 states that a child who is in conflict with the law or a child who commits a crime in the implementation of the criminal justice process shall be addressed based on

² Supriadi W. Eddyono. (2005). *Pengantar Konvensi Hak Anak*. Jakarta: ELSAM, p. 23

³ <http://www.un.org/documents/>

⁴ Irma Setyowati Soemitro. (1990). *Aspek Hukum Perlindungan Anak*. Jakarta: Bumi Askara, p.12.

the principle of: a. Protection; b. Justice; c. Non-discrimination; d. The best interests of the child; e. Appreciation of children's opinions; f. Child survival and development; g. Child guidance and guidance; h. Proportional; i. Deprivation of liberty and punishment as a last resort; and j. Retaliation avoidance. Thus, the child who commits a crime in imposing sanctions shall be based on the ten principles contained in Article 2, and in turns, the best interests of the child can be realized by not leaving a bad impact on the child in the form of discrimination, stigmatization and labeling in the community. Because, the goal of child punishment is that its attention is directed on the basis of thought carried out in juvenile justice is nothing however it is addressed to realize the welfare of children by prioritizing the best interests of children as an integral part of social welfare.⁵

The juvenile criminal system shall have the authority based on a restorative philosophy, prioritizing the recovery of circumstances due to

violations that occur. On the basis of such formulated philosophy, the paradigm of the child criminal system must also be grounded in the Restorative philosophy, prioritizing the recovery of circumstances due to violations that occur. As a form of such philosophy of criminalization, the objectives and guidelines for criminalization are required to be explicitly regulated.⁶

Some examples of criminal cases committed by children in Indonesia always end in sanctions that are not appropriate for them. It is needless to mention that the Raju case in Medan, and the case of juveniles who committed theft in Tasikmalaya who were sentenced to prison resulting in the juveniles are not able to take their Final Semester Exams, and there are still many other examples of the imposition of sanctions against children in Indonesia that are not in accordance with our positive law.

On account of such obvious matters, in Jayapura, there are also many criminal cases committed by children, such as abuse, ask forcibly,

⁵ Rules 5.1 *SMRJJ (Beijing Rules)*

⁶ Barda Nawawi Arief. *Sistem Pemidanaan dalam Ketentuan Umum Buku RUU KUHP, Bahan Sosialisasi: Rancangan Undang-*

Undang tentang KUHP 2004). Diselenggarakan oleh Departemen Hukum dan HAM, Jakarta, 23-24 March 2005.

fornication, theft. Based on such formulated background, the researcher is therefore interested to conduct a study to seek and examine more deeply about giving sanctions to children who commit crimes with the title: "Implementation of Sanctions on Juvenile Offenders based on Law Number 11 of 2012 on the Juvenile Criminal Justice System".

METHOD

The study adopted varied approaches to the review, this research-based paper is a type of empirical normative legal research that examines the laws and regulations governing the imposition of sanctions against juvenile offenders in statutory regulations, as well as empirical legal research that tends to prove and examines the actual situation in the field relating to issues. The regulation of types of sanctions against children has been stipulated in legislation whether the application of sanctions given to children who commit crimes in Jayapura is in accordance with what is stipulated in the law. The current research is kind of analytical descriptive, where the data include primary and secondary data. To address these issues, data were

collected through interview techniques and literature study.

DISCUSSION

Forms of Sanctions on Juvenile Offenders based on Law Number 11 of 2012 on the Juvenile Criminal Justice System

Law Number 11 of 2012 regarding the Juvenile Criminal Justice System (hereinafter abbreviated as UUSPPA), which replaces Law No. 3 of 1997 regarding Juvenile Court. UUSPPA has stipulated all matters concerning the juvenile criminal justice process, including regulating the distribution of types of sanctions imposed on children who commit crimes, regulated in Chapter V articles 69 to Article 83.

Article 69 types of sanctions, in the form of Criminal and Action:

- (1) Children can only be punished or subjected to action under the provisions of this Act.
- (2) A child who has not aged 14 (fourteen) years can only be subjected to the action.

Article 71 UUSPPA divides criminal sanctions into two types as follows:

- (1) Principal crimes for children consist of:
 - a. Criminal Warnings;
 - b. Criminal on condition
 - 1) guidance outside the institution;

- 2) community services; or
 - 3) supervision
 - c. Work training;
 - d. Coaching in institutions;
 - e. Imprisonment
- (2) Additional crimes consist of:
- a. Expropriation of profits derived from criminal acts;
 - b. Fulfillment of customary obligations.

Article 82 UUSPPA stipulates sanctions for actions:

- (1) actions that can be imposed on children include:
- a. Returns to parents or guardians;
 - b. Submission to someone;
 - c. Treatment at the mental hospital;
 - d. Nursing at LPKS (Social Welfare Organization);
 - e. Obligation to attend formal education and/or training provided by government or private bodies;
 - f. Revocation of driving license; and
 - g. Repairs due to criminal acts.
- (2) The action is subject to a maximum of 1 year.

In the Regulation on the imposition of sanctions for children in Indonesia adheres to the double track system, such as besides criminal sanctions there are also sanctions for actions. The giving of sanctions to juvenile offenders is divided into two types, criminal sanctions and action sanctions. Criminal sanctions, refer to

the principal and additional crimes in the UUSPPA, are clearly regulated, under the principal and additional crimes. The main criminal law in the form of criminal warning is one of the minor crimes that does not result in limitation of child freedom. In imposing criminal warnings there are also specified general and specific conditions. General conditions in the form of the child are expected not to commit further crimes while undergoing his/her criminal period, while the special requirement is that the child is expected to do or not do certain things specified in the judge's decision is certain by still paying attention to the child's freedom.

The term of the criminal period with the stipulated term is 3 years and while serving the criminal condition the Public Prosecutor is assigned to conduct supervision and social guidance.

The UUSPPA also further explains that children who commit crimes can also be sentenced to imprisonment in the LPKA (Special Guidance Institution of Children) if the circumstances and actions of the child can endanger the community and the environment.

Imprisonment is imposed on children no later than 1/2 (one half) of the maximum threat of imprisonment for adults, for instance, a theft case which is a 5 year prison sentence, thus the child is given 1/2 of 2.5 years of imprisonment. However, it shall be highlighted that giving or imprisoning a child is a last resort, and if the child commits an offense that is punishable by death or life imprisonment then the sentence imposed is a maximum of 10 years.

It is clear that the regulation regarding the distribution of sanctions in the SPPA Law, judges are expected when deciding a case against juvenile offenders shall pay serious attention to the rights of children and all matters relating to the interests of the child. In this regard, children should not be disturbed by their life systems, education or mentality. The severity of the acts committed by the child must be the basis for consideration for judges in imposing sanctions by having to consider aspects of justice and humanity.

The application of sanctions against children in conflict with the law is expected to be in accordance with the mental and psychological

development of the child itself. In our laws and regulations governing children, it has been stipulated that sanctions are imposed on children who commit criminal acts. Imposition of sanctions must be given based on the age group of the child. SPPA provides age classifications in imposing sanctions known as children under the age of 14 and committing criminal offenses subject to sanctions in the form of sanctions while children aged over 14 years to 18 years are subject to criminal sanctions.

From such observations, in imposing criminal sanctions on children, consideration shall be given to the protection of children and access to justice for children, it is part of the implementation of human rights values and shall also be based on the principles of child protection which include: Non-discrimination, the best interests of children, survival, growth and development of children, and respect of children's opinions.

Implementation of Sanctions against Juvenile Offenders in the Juvenile Criminal Justice System in Jayapura

In juvenile justice, the conviction of juvenile offenders is expected to be the last resort in imposing penalties for

children as stipulated in Article 81 paragraph (5) UUSPPA: "Criminal Prison Against Children is only used as a last resort".

Criminal imprisonment by a judge against juvenile offenders is not a wrong matter yet the judge should reconsider whether he has provided protection for the sentence, the interests of the child and shall pay extensive attention to all of the best interests of children, pay serious attention to the physical and mental of the child and also endeavored not to inhibit the growth and development of children. Because after the child has finished serving his/her sentences, can he/she become a good person? Is he/she one hundred percent will not commit crime again? Such matters should be considered in making a decision for the child.

At the Jayapura IA Class District Court, many cases of children were tried. Starting from cases of persecution, theft, murder, and narcotics. For the last 2 (two) years, in 2017 for the case of children processed in Jayapura IA Class District, there were 22 (twenty two) cases. Of the 22

cases in the form of 18 (eighteen) cases were sentenced to prison while for Diversi there was 1 (one) case which was a narcotics case, and 1 (one) case was decided free. Whereas for 2018 there were 26 (twenty-six) cases of children who were tried with a prison sentence of 25 (twenty-five) cases, Diversion did not exist during 2018 and there were 1 (one) cases that were decided free.

Cita Savitri,⁷ as a juvenile judge stated that many child cases processed in Jayapura IA Class District Court began with the most cases of theft and ill-treatment and narcotics. Conducted by children aged between middle to high school and most of the results of the examination of these children have often committed acts of theft and so on, and this is the consideration of some child judges in imposing criminal sanctions (imprisonment) on children with the aim to provide learning and deterrent effect on these children.

Likewise with the opinion of Azer Wanma,⁸ he said that it was true what the child judge said, many of the children of the perpetrators of theft and

⁷ Child Judge in Jayapura IA Class District Court

⁸ Legal Counsel in Legal Aid Post (Pos Bantuan Hukum).

torture were given criminal sanctions in the form of imprisonment because based on research from the Community Guidance in this case was Bapas (Correctional Institution) that they had committed the crime repeatedly and the children are including children who are indeed naughty so they are given such a decision by the judge, even though in our defense (PH) we want the child to be sanctioned by action only.

And therefore, it is clearly seen that in Jayapura IA Class District Court, for children who commit criminal acts more criminal sanctions in the form of imprisonment rather than sanctions for actions. Empirically based on the results of research in Jayapura IA Class District Court it was found that court decisions against children who commit criminal acts are dominated by judges in the form of imprisonment rather than imposing sanctions. Whereas in Law Number 3 of 1997 concerning Juvenile Justice and also Law Number 11 of 2012 on the Juvenile Criminal Justice System (UUSPPA) confirms that the principle of criminalization of children is a final step (*ultimum remedium*), with the reason that criminal confiscation

independence is the most avoided crime against juvenile offenders given the negative impact and stigmatization and labeling of children, yet in fact it does not work better.

According to the researcher's point of view, in imposing criminal sanctions on juvenile offenders shall be considered the principles of child protection such as non-discrimination, the best interests of children, survival, growth and development of children, as well as respect for children's opinions. Children must still be able to carry out their main daily activities such as still being able to get education, carry out worship (spirituality).

First and foremost is to consider the best interests of children and must hold the principle of *pemindaan* and imprisonment as a last resort (the last resort). By realizing that children do wrong not fully with their awareness, yet they are horribly victims of the people around them and their social environment. For such obvious reason, it is considered necessary that imprisonment is only carried out as a last resort. Therefore, in addition to our positive law, the child must also be

protected and thus he/she is not further trapped in vandalism.

For imprisonment also finally becomes a new problem because it has been stipulated in the legislation in Law No. 3 of 1997 on Juvenile Court that a juvenile offender and is sentenced to prison then his/her placement must be in the Prison of Children. Nonetheless, in Law Number 11 of 2012 on SPPA, children who are sentenced to prison must be placed in the LPKA (Special Child Development Institute). In contrast to this, in Jayapura there is no Lapas Anak or LPKA, and therefore the children who were sentenced to prison were finally made a placement with other adult convicts despite different rooms in Lapas Klas IIA Abepura.

In principle, this has drawn broad attention that the imposition of criminal sanctions or penalties by the Jayapura IA Class District Court through judges of juvenile offenders is not wrong, yet the judge should make a consideration whether the decision in the form of criminal sanctions against juvenile offenders can give a positive value to children or the value of benefits. It is therefore argued that the imprisonment of juvenile offenders,

according to the researcher's point of view, can provide a negative impact and harm to the child's growth and development.

As for the impact of imprisonment in the form of deprivation of liberty against children including, the child will be separated from his family and the environment where he lives so that it will have an impact on the disruption of the child's relationship and family such as too short in providing education, direction, positive guidance from parents towards the child. When a child is sentenced to prison, it is certain that the child becomes more expert about crime because he learns more and absorbs new knowledge in prison, this is due to the influence obtained from other convicts, which opens the possibility for the child to learn behavior other criminal convicts so that the child will become more expert about crime, the child is given a stamp by the community, this we can associate with one of the theories in criminology that is the labeling theory that sees criminals not as bad people but they are individuals who have previously been evil as a criminal justice system or the wider community, as well as the possibility

of the community rejecting the presence of a former convicted child, related to the stigma given by the community where the child who had served a prison sentence when he got out of the prison then the child is still referred to as a naughty child and has a bad temper so that the community rejects the presence of the child because the community is worried that the child will repeat the same crime and will have an adverse effect on other children, even though if we digest it kindly, in turns it is not necessarily the case.

Based on the observation above, in the juvenile justice process, judges in imposing sanctions on children must use the paradigm that sanctions imposed on children must truly have or have educational value in the best interest of the child in the future, thus as to impose sanctions on children. In relation to this, the judge shall apply extensive attention on the *ultimum remidium* principle. Related to the application of the principle of *ultimum remidium* in imposing sanctions on children is often still neglected in the juvenile justice process.

The principle of *ultimum remidium* is not applied in the trial of

child cases in the Jayapura IA Class District Court, as evidenced by empirical data that in 2017 up to 2018 the Jayapura IA Class District Court has tried or processed a child case of approximately 48 (forty eight) child cases where the whole case against the defendant in this case more children were given criminal sanctions in the form of imprisonment.

The final part of this study, it is therefore argued that, in the case of imposing sanctions on juvenile offenders, the judge shall extensively consider the best interests of children, and the right sanctions for children who commit criminal acts are sanctions for actions, because even if the child is an offender criminal but the child can also be said to be a victim, due to lack of control and supervision by parents, the community and even the government. As a result of the lack of supervision and control this can cause the child to fall into the world of delinquency and eventually do unlawful acts.

In principle, sanctions for actions have more of a good benefit to give to children who have committed a crime. Because sanctions for actions are not only for the children to be entrusted in

a penitentiary, but sanctions for actions are more directed towards improving children's behavior, such as conducting coaching, rehabilitation and providing the best education for children. Another case with criminal sanctions, under the researcher's perspective, criminal sanctions are more directed or led to provide deterrent effect of future crimes to the perpetrators.

CONCLUSION

Forms of sanctions given to juvenile offenders have been stipulated in Law Number 11 of 2012 on the Criminal Justice System in Chapter V Article 71, under the Principal Crimes (criminal warning, criminal on the condition, job training, fostering in institutions and prisons) and Additional Crimes (deprivation of profits derived from criminal acts and fulfillment of customary obligations).

The application of sanctions towards juvenile offenders in Jayapura, especially in the District Court Class IA Jayapura in the last 2 (two) years in 2017 and 2018 out of 48 (forty eight) cases of children are more likely to be subjected to criminal sanctions in the form of imprisonment with due consideration for the juvenile

offenders have repeatedly committed the crimes and it has been in great demand since that time thus the sentences seek to provide a deterrent effect of future crimes and learning effect.

REFERENCES

Books:

Arief, Barda Nawawi. (2005). *Sistem Pemidanaan dalam Ketentuan Umum Buku RUU KUHP*. Bahan Sosialisasi: Rancangan Undang-Undang tentang KUHP 2004. Diselenggarakan oleh Departemen Hukum dan HAM. Jakarta: 23-24 Maret.

Eddyono, Supriyadi W. (2005). *Pengantar Konvensi Hak Anak*. Jakarta: Lembaga Study Advokasi Masyarakat.

Marlina. (2009). *Peradilan Pidana Anak di Indonesia "Pengembangan Konsep Diversi dan Restorative Justice"*. Bandung: PT. Refika Aditama.

Soemitro, Irma Setyowati. (1990). *Aspek Hukum Perlindungan Anak*. Jakarta: Bumi Askara.

Laws and Regulations:

The United Nation Standard Minimum Rules for the Administration of Juvenile Justice (SMRJJ)

Law Number 11 Year 2012 regarding the Juvenile Criminal Justice System

Internet:

<http://www.un.org/documents/>