



Reformulation of the Recidivist Concept in the Juvenile Criminal Justice System in Indonesia

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ABSTRACT

Protection of children against the law is essentially an effort to protect children's rights. This study aims to provide an overview of the meaning of repeated offenders against children and efforts to realize the protection and fulfillment of children's rights in violation of the law. This research is a normative legal research with a legal and analytical perspective. The results of this study indicate that the concept of children as recidivists in juvenile justice has so far failed to provide a sense of justice for children. The criminal justice system for children is underused to protect the rights and future of children as perpetrators and victims of crime. More and more children intersect with the law and even become repeat offenders. According to the Criminal Code and the Law on the Juvenile Criminal Justice System, legal protection for children is not clearly regulated in repeated cases. According to Article 7 of the Law on the Juvenile Criminal Justice System, children who (repeatedly) commit criminal acts cannot be disturbed. According to Article 488 of the Criminal Code, the perpetrators of the second (repeated) crime are threatened with one third of the sentence.

Keywords: Children Against The Law; Protection; Repeat Offender

1. Introduction

One of the goals of law is to realize the value of justice (Nur, 2020). According to Lili Rasjidi, law enforcement must reflect justice (Lili, 2017). Justice for all must be upheld in the law enforcement process. Realizing this unique process requires national development, including human development, and development in the field of law is one of them. The law cannot be seen as final, but the law must continue to move, change and follow the dynamics of human life (Hakim, 2016). Therefore, testing the law must be carried out through positive efforts, namely by proposing improvements (Rahardjo, 2010; Salam, 2020). By demonstrating progress in human justice, we can change the entire justice system for the better and sincerely fulfill the truth in achieving the goal of justice. Internationally, the principle of legal protection for children is contained in the Convention on the Rights of the Child. This principle has been reaffirmed by the Government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child. In addition to these principles, Indonesia also has regulations related to the juvenile justice system, namely Law Number 11 of 2012 (known as the Juvenile Criminal Justice System Law) (Nur, 2017).

The Law on the Juvenile Criminal Justice System brought several major changes in the philosophy of criminal justice, from restitution to compensation, by prioritizing restorative justice models and systems and gender equality. At all levels of the criminal justice system, the authority of law enforcement officials at all levels, including investigations, trials and prosecutions, is required to try to resolve child cases through deliberation, so there is no need to resolve problems through the courts. (Nur, 2020; Bakhtiar, 2015). In essence, the expected output of the restorative justice model is to reduce the number of children who are arrested, detained and sentenced to prison, as well as eliminating the negative stigma of returning children to society, which is expected to help in the future. (Nur, 2021). The law also emphasizes that detention must be considered carefully and imprisonment must be an unavoidable last resort.

The problem we face today is the high number of cases of children who are resistant to repeated crimes. Recidivism occurs when children who become perpetrators of crimes are not fully prepared for the process of integration into society (Jatnika, 2016). The return of ex-convicts to the Children's Detention Center, which is known as recidivism, is one of the results of the inability of ex-convicts to re-enter society as responsible youth amidst the negative attitudes of society. According to data from the LPKA (Institute for Special Development for Children) in Gorontalo City, the number of children who commit repeated crimes is increasing from year to year. Based on these facts, it seems that there are many problems, many children do not meet the requirements for restorative justice and are diverted as a result of obtaining restorative justice status, including the ineffectiveness of a comprehensive study related to the interests of the child and the pattern of education and fostering of children who have been convicted so that it is necessary to understand the meaning of returning to It is important for parents of children who are based on imprisonment under 5 years to carry out an in-depth study, especially since most children who have gone through restorative justice have committed repeated crimes or are recidivists. For this reason, it is necessary to study related to how the concept of children as recidivists in the criminal justice system?

2. Method

In this study, normative legal research is used as a method. Normative research is library research that requires materials, such as books, laws and regulations, and other documents. Research is conducted to produce arguments, theories or new concepts as recipes to solve existing problems. The research method of this research uses descriptive techniques, which are examined in describing how a situation or situation consists of legal or illegal propositions. The nature of this research is descriptive analysis with a statute approach and an analytical approach, namely by analyzing cases (case studies) using qualitative methods to generate conclusions.

3. Result and Discussion

3.1 Residivis

In the legal dictionary, recidivism means the repetition of a crime, an event in which a person convicted of one crime commits another crime (Kanter, 2002). Recidivism occurs when a person has committed a crime and has been legally punished for it, after which he or she commits the crime again. Everyone who commits a crime and is sentenced after receiving coaching, counseling, and special education in a correctional institution. Repeat offenders are perpetrators who have been in correctional institutions more than twice or perpetrators who have committed repeated violations, as a result of which they can be punished again in correctional institutions (Kanter, 2002). According to E.Y. Kanter and S.R. Sianturi repetition or repetition occurs when someone commits a crime and is sentenced because of a judge's decision that has finality or "res judicata", then commits another crime (Kanter, 2002).

3.2 Protection of Children

Legal protection of children is the responsibility of all of us, because children are the nation's next generation who play a strategic role in realizing the ideals of the state (Arliman, 2018). Therefore, children must be guided and protected so they can grow and develop properly. Children are a group exposed to criminal acts as victims, witnesses and perpetrators. In dealing with and protecting children who violate the law, many problems arise not only from the actions of child victims, but also from the actions of children in the form of crimes which ultimately harm themselves (Wahyudi, 2015). In punishing children, it must be realized that the protection of children must come first, because according to the judge, the welfare of children is the most important factor in targeting children. The Law on the Juvenile Criminal Justice System has applied the principle of "last resort" to sentences imposed by judges on children who commit crimes. In addition to imprisonment as a last resort, the Law on the Juvenile Criminal Justice System has caused a paradigm shift in handling children who break the law, based on the roles and responsibilities of society, government and other state institutions that are responsible for improving children's welfare and providing special protection to children. carried out with the aim of achieving justice that truly guarantees the protection of the welfare of children (Bakhtiar, 2019).

According to Jeremy Bentham, the main purpose of law is to provide maximum happiness, namely the happiness of the whole community (Nur, 2020). Therefore it is necessary to prevent the emergence of criminal laws and regulations, namely the obligation not to make or use criminal laws if there is no reason to make them (baseless), ineffective, unprofitable and unnecessary. As for the purpose of law, the main purpose of law is to

create an orderly social order, to create order and balance. To achieve this goal, the role of law is to divide rights and obligations among individuals in society, divide jurisdiction, and preserve ways of solving legal problems and achieving legal certainty.

3.3 Reformulation of the Recidivist Concept in the Juvenile Criminal Justice System in Indonesia

The application of the recidivism system relies heavily on the national crime database. Criminal data that is not updated is one of the obstacles in the implementation of recidivism in Indonesia. Judges sometimes do not know that someone has committed another crime until the case is investigated by the court (Siregar, 2016). The reality on the ground shows that there are weaknesses in law enforcement officials who do not know if someone has committed another crime (Ervariani, Sopyono, & Sularto, 2013). Judges have traditionally relied solely on the perspectives of detectives and prosecutors to hand down harsh sentences for crimes.

Repetition of criminal acts as referred to in Article 7(2)(b) of the Juvenile Criminal Justice System Law is an exception to the transfer as referred to in Article 1(7). Deviation is the transfer of settlement of child cases from the criminal process. outside the criminal process (Marlina, 2010). Provisions related to transportation are specifically regulated in Article 16 of the Law on the Juvenile Criminal Justice System. Referring to Supreme Court Regulation No. 4 of 2014 and Government Regulation no. 65 of 2015.

The prison sentence emphasized that the suspect dropped out of school and did not work, so he really needed skills to support his life in the future. Respondents are given the opportunity to develop through educational institutions that offer specialized training. The accused was advised to attend preventive, remedial, rehabilitative social counseling or promotion of rehabilitation (physical, mental, social and skills training), resocialization and re-education of delinquent children so that they can be independent and actively participate in social life. The suspect has been transferred to the Social Welfare Organizing Institution based on Article 11(c) of the Law on the Juvenile Criminal Justice System. This intervention should not be used for children who are being treated with care, as these children are considered repeat offenders. Bapas is a general prison work unit that organizes prisons with impunity. One of Bapas' duties is to conduct community research. Community studies or case studies are very important ways to encourage actors.

Community studies or case studies can help judges make reasonable and fair decisions about parental therapy. Community research reports must be able to provide an overview of the customer's life history, before or after becoming a customer (Gultom, 2012). Social research describes several cases, namely: (a) criminals, both children and adults, who are still in prison or punished by courts, (b) delinquent children whose parents are no longer able to care for them and court cases to state, (c) criminals released on parole (Gultom, 2012). In the protocol drawn up by the Purwokerto Correctional Institution Level II, it was not found that the defendant had never committed a crime before, so a criminal trial was held. In fact, recidivism is only one of many criminal terms. Additional penalties related to repeated violations must be given to the perpetrator and must be explained in the Criminal Code (Marpaung, 2012). The general basis for the addition of a sentence or the basis for aggravation or aggravation of general punishment is based on three things, namely the function as a public office, repetition of criminal acts and concurrence (Farid, 2007). This term is mentioned several times because there are many opinions about the general criminal basis in the Criminal Code.

The objectives of juvenile justice systems differ depending on the juvenile justice model used. The youth justice paradigm at the district level is divided into three, namely the individual development paradigm, the recovery paradigm and the recovery paradigm (Gunarto, 2009). The individual development paradigm emphasizes the problems caused by actors. The responsibility in this paradigm lies with the system to meet the actor's needs. Criminal deterrence in juvenile justice under the individual development paradigm is considered inadequate and generally inappropriate. The main focus of this pattern is to identify the perpetrators and develop a positive approach to addressing the problem. The criminal justice system with an individual counseling paradigm emphasizes aspects of direct community protection and is not part of the juvenile justice function.

Children should not be punished because it can have a negative impact on the child's psychology and mind. Punishment does not deter children, but increases the likelihood that children will repeat their actions (Djamil, 2013). Children must be guided in such a way as to admit their mistakes, experience changes in good behavior and not repeat criminal acts. The Law on the Juvenile Criminal Justice System which regulates the Prevention of Repetition of Children does not have a clear understanding of recidivism. Article 7(2)(b) of the Law on the Juvenile Criminal Justice System explains that diversion is not possible if it is a repeat offence. Repetition

or renewal of similar or different crimes, including crimes resolved by transfer. Practice shows that progress has been made, even if the child has previously committed a crime and has been punished for it. There is uncertainty about the implementation or application of new legal regulations for the settlement of minor criminal cases (Wandoyo, 2020). Filing a lawsuit against a child who has previously committed a crime is considered a violation of the Law on the Juvenile Criminal Justice System.

Children involved in criminal cases are not only perpetrators but also victims. Children have criminal motives that are different from adults, meaning that many children are not aware of their actions (Koy, 2021). After participating in coaching, children with legal problems are expected to have noble and noble morals, polite behavior and the ability to take care of themselves and society (Muhammad, 2004). Children who have problems with the law usually do not understand the actions they are taking, so they still need special guidance and direction.

The punishment given to every citizen is in essence related to the possibility of being responsible for the actions committed. Children must be given special treatment in the legal process, but being different from adults does not mean that children are free from the law. Children are seen as individuals who are not fully responsible for their actions. More extensive treatment is needed to prevent children from having a relapse. Efforts to prevent and deal with crime in criminal law are carried out through punishment in the form of crime because the purpose of crime is to prevent people from committing crimes (Rachma, 2021). Criminal penalties for repeat offenders do not prevent the perpetrator from committing another crime. Article 85 of the Law on the Juvenile Criminal Justice System stipulates that children who are sentenced to imprisonment are placed in the Special Child Development Institution and have the right to take part in a coaching program. At the Child Special Development Institution, children's rights must be prioritized in child development according to Article 3 of the Law on the Juvenile Criminal Justice System (Koy, 2021). Article 2 letter g of the Law on the Juvenile Criminal Justice System emphasizes that coaching is a program that aims to improve children's quality, intelligence, attitude, behavior, obedience in worship, professional skills, skill development and maintenance of physical condition while improving the criminal justice process.

The time limit for prosecuting someone for committing another crime is five years after the principal sentence has been served in whole or in part due to the obligation of the informant to carry out the previously imposed sentence. The penalty is increased by adding one third of the maximum sentence. It is hoped that law enforcement officers will be more vigilant and firm in measuring sanctions for recidivism so that the concept of recidivism can be more easily applied (Nuh, Anzward, & Rizqia, 2019). Repeat offenders can be fined by a judge and risk less than five years in prison.

The repeated crimes discussed in this study are included in the theory of repeated intermediates, which are divided into three groups of crimes as referred to in Article 486, Article 487 and Article 488 of the Criminal Code. Article 486 of the Criminal Code defines the crime of pursuing profits from unlawful acts or bad deeds through fraud, theft and kidnapping. In Article 487 of the Criminal Code, there is a definition of acts of violence committed by a person against the soul or body of that person, for example murder and torture. Article 488 of the Criminal Code contains different definitions of crime, but in essence they are the same crime, which also includes insult.

Guidelines for handling cases involving children are based on the Law on the Juvenile Criminal Justice System. Investigators will of course handle it if a child commits a crime with a sentence of less than seven years. Investigators are looking into whether the crime was simple robbery, which carries a maximum sentence of five years in prison. Theft rarely carries a prison sentence of up to seven years unless the plaintiff or the victim's family revokes it. Direct arrests can go on endlessly because the results of social investigations can decide whether the perpetrator or the child has committed another crime. The condition for drawing conclusions is that the crime committed is not a repetition of the crime which causes confusion in studying criminal law and the principles of criminal law. The problem with the wording in Article 7(2)(b) of the Juvenile Criminal Justice System Act makes it clear that repetition of a crime may or may not constitute a similar crime, but similar crimes must have legal remedies in a judicial investigation and that there is must also be a court decision for a previous similar crime. (Faisal & Rahayu, 2021). In this case, the Law on the Juvenile Criminal Justice System does not protect repeat offenders (Faisal & Rustamaji, 2020).

Restorative justice in juvenile justice is carried out by diverting child cases from the criminal process to extra-judicial processes, with an emphasis on reparation, not revenge. Diversion is a form of punishment that has an educational side for children. The implementation of this disorder is motivated by the desire to prevent negative influences on the soul and development of children through participation in the criminal justice system.

4. Conclusion

Based on the results of this study, it indicates that the concept of recidivism in the juvenile criminal system has not provided a sense of justice for children. The criminal justice system for children is underused to protect the rights and future of children as perpetrators and victims of crime. More and more children intersect with the law and even become repeat offenders. According to the Criminal Code and the Law on the Juvenile Criminal Justice System, legal protection for children is not clearly regulated in repeated cases. According to Article 7 of the Law on the Juvenile Criminal Justice System, children who (repeatedly) commit criminal acts cannot be disturbed. According to Article 488 of the Criminal Code, the perpetrators of the second (repeated) crime are threatened with one third of the sentence.

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