

# Analysis of the Implementation of Action Sanctions against Children Dealing with the Law in Child Criminal System Perspective

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## Abstract.

*The purpose of this study is to examine and analyze the mechanism of the criminal justice system in imposing sanctions on children in conflict with the law. In this writing, the writer uses sociological juridical writing method. Protection of children as perpetrators in the provisions of Article 3 of Act No. 11 of 2012 concerning the Juvenile Justice System clearly states what are the rights of children in criminal justice. Children who can no longer and are difficult to tell and advise. Children who can endanger society, when children commit crimes that can endanger the surrounding environment and society. Departing from the purpose of punishment in an effort to provide protection for the achievement of child welfare, the criteria/standards for the severity of sanctions are not only seen or measured quantitatively, but are based on qualitative considerations.*

*Keywords: Children; Conflict; Imposition; Sanctions.*

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## 1. Introduction

Indonesia is a legal state where the implementation of government power is based on law. In a state of law, the power to run the government is based on the rule of law (rule of law) and aims to carry out law and order.<sup>1</sup> Another opinion states that in a state of law, law as the basis is embodied in laws and regulations culminating in the constitution or the basic law of the state. The state constitution must also contain ideas or ideas about constitutionalism, namely the limitations on power and guarantees of the basic rights of citizens.<sup>2</sup> Thus in a state of law, state power is based on law, not mere power and state government is based on a constitution that understands constitutionalism, without this it is difficult to be a state of law.<sup>3</sup>

Along with the times, humans need rules that are in accordance with the times. One of the tasks of government in a country is to formulate regulations whose main purpose is to create justice, certainty, and benefit for the community. This is as

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<sup>1</sup>Haris Wahyu Sunarno and Akhmad Khisni, *Analysis of Criminal Liability as Doer of Preening Criminal (Case Study in the Blora State Court)*, Jurnal Internasional Daulat Hukum, Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8779/4074>

<sup>2</sup>Muhammad Adiel Aristo, *Criminal Law Policy against Actor of Criminal Performance Persecution*, Jurnal Internasional Daulat Hukum, Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/issue/view/434>

<sup>3</sup>Supriyono, *Criminology Study of Crime of Fencing the Stolen Goods*, Jurnal Internasional Daulat Hukum, Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

intended by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which explains that Indonesia is a state of law.<sup>4</sup>

The development of people's lives and technological advances today indirectly also triggers the development and diversity of criminal behavior in society, crime can happen to anyone not only adults but also often happens to children if we pay attention to the information in print and electronic media cases of children dealing with the law tends to increase. The protection of children in our constitution is stated very clearly that the state guarantees children's rights to survival, growth and development and guarantees protection from violence and discrimination.<sup>5</sup>

In its development, Indonesia has had special rules regarding child protection, namely Act No. 4 of 1979 concerning Child Welfare, Act No. 3 of 1997 concerning Juvenile Court which was subsequently replaced by Act No. 11 of 2012 concerning the Criminal Justice System for Children and Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection.

Every child has dignity that should be upheld and every child born must get their rights without the child asking. This is in accordance with the provisions of the Convention on the Rights of the Child, which was ratified by the Indonesian government through Presidential Decree No. 36 of 1990 which states the general principles of child protection, namely non-discrimination, the best interests of the child, survival and growth and development, and respect for children's participation.<sup>6</sup>

Children are as shoots, potentials and the younger generation to succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. As the next generation of the nation, children are expected to be able to build a more advanced nation by carrying out their obligations. The problem of solving children's problems facing the law is something that is still interesting to study today. In fact, in Indonesia cases against children reached 33%.<sup>7</sup> From this fact, there is a need for proper case settlement as regulated in the applicable legislation, namely the Law on the Judicial System (Law No. 11 of 2012), namely the implementation of resolving child problems in conflict with the law with the application of restorative justice (Restorative Justice). ) through the diversion system.

However, it is actually too extreme if criminal acts committed by children are called crimes, because basically children have unstable psychological conditions, the

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<sup>4</sup>Nuryanto and Umar Ma'ruf, *Dynamics of the Community in the Implementation of Complete Systematic Land Registration Program in the Land Office of Blora Regency*, Jurnal Internasional Daulat Hukum, Volume 3 Issue 1, March 2020, url:

<http://jurnal.unissula.ac.id/index.php/RH/article/view/8430/4065>

<sup>5</sup>Yanto Risdianto and Lathifah Hanim, *Accountability for Motorized Vehicle Owners Used By Children in Traffic Accidents (Case Study on Supreme Court Decision Number 1029 K/Pid.Sus / 2015)*, Jurnal Internasional Daulat Hukum, Volume 3 Issue 1, March 2020, url:

<http://jurnal.unissula.ac.id/index.php/RH/article/view/8730/4077>

<sup>6</sup>Rika Saraswati, (2009), *Hukum Perlindungan Anak Di Indonesia*, Bandung, Citra Aditya Bakti, p.1

<sup>7</sup>Supardji Rasban, *Kasus Kekerasan Terhadap Anak di Indonesia Capai 33%*, Media Indonesia, October 12

process of psychological stability produces a critical, aggressive attitude and shows behavior that tends to disrupt public order.<sup>8</sup>

This cannot be said to be a crime, but delinquency caused as a result of an unbalanced psychological condition and the child as the perpetrator of a crime is not aware and understands the actions he has taken. However, it is different when the actions of children in conflict with the law are repeated (recidivists) as in the case raised by the author in Decision Number 6/Pid.Sus-Anak/2018/PN Bla and Decision Number 2/Pid.Sus-Child/ 2019/PN Bla, which requires analysis in dealing with events in this case.

The current Juvenile Criminal Justice System refers to Act No. 11 of 2012, in the mechanism of the process, it still has to go through a formal process like an adult by going through the process of investigation and investigation by the police, the prosecution process by the prosecutor's office and trial in court. This long formal process gave birth to several thoughts from both scientists and law enforcement officers to find the best alternative treatment for children by keeping children away from the formal justice system as much as possible.

Based on the above background, this study aims to identify and analyze the mechanism of the juvenile criminal justice system in imposing sanctions on children in conflict with the law.

## 2. Research Methods

To conduct a study in this paper, the author uses a sociological juridical method (social legal research) to examine and discuss the problems raised. Juridical is an approach that uses legal principles and principles derived from written regulations, sociological is an approach that aims to clarify the actual situation that exists and appears in society towards the problem under study or gives importance to the observation steps.<sup>9</sup>In socio-legal research, law is not only conceptualized as the whole of the principles and rules that govern human life in society but includes the institutions and processes that embody the application of these rules in society, as the embodiment of the symbolic meaning of social behavior as manifested and from their actions and interactions.<sup>10</sup>

## 3. Results and Discussion

Criminal sanctions are basically a guarantor to rehabilitate the behavior of the perpetrators of these crimes, but it is not uncommon that criminal sanctions are created as a threat to human freedom itself. The criminal law system has two types of sanctions that have the same position, namely criminal sanctions and action sanctions. Criminal sanctions are the type of sanctions that are most widely used in imposing penalties on someone who is found guilty of committing a criminal act.<sup>11</sup>

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<sup>8</sup>M. Nasir Djamil, (2013), *Anak Bukan Untuk Dihukum (Catatan Pembahasan UU Sistem Peradilan Pidana Anak (UU-SPPA))*, Jakarta: Sinar Grafika, p.33-34.

<sup>9</sup>Rony Hanitijo Soemitro, (1990), *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, p.34

<sup>10</sup>Soetandyo Wignjosebroto, (2011), *Silabus Metode Penelitian Hukum*, Program Pascasarjana Universitas Airlangga, Surabaya, p.1.

<sup>11</sup>Mahrus Ali, (2015), *Dasar-Dasar Hukum Pidana*, Jakarta, p.193

In addition to the use of criminal sanctions as a means of tackling criminal acts and maintaining public order, the purpose of sentencing is also equally important in order to find the basis for justifying the use of criminal acts so that the crime becomes more functional. In the beginning, punishment was only meant to impose a sentence on violators of the law. However, in its development, punishment is always related to the objectives to be achieved with the punishment.

Based on the results of the author's research at the Blora District Court, which obtained a judge's decision in the case of children dealing with the law. In this case, it is enough to attract attention because the child perpetrator commits a criminal act recidivistically. The resulting decisions are Decision Number 6/Pid.Sus-Anak/2018/PN Bla and Decision Number 2/Pid.Sus-Anak/2019/PN Bla that the circumstances and severity of the crime committed by the child, physical needs and The mental health of children, and the needs of the community are things that must be considered by the judge in imposing criminal sanctions on children who are perpetrators of crimes. Imprisonment is entirely the jurisdiction of the judge. The basic considerations for judges in imposing imprisonment on children are as follows:

- The child has committed a crime more than once;
- The child commits a crime which is classified as a serious crime;
- It is considered that the child is beyond repair by other means;
- The child is a danger to society.<sup>12</sup>

Based on the decisions above that the basic considerations for judges in imposing a prison sentence are that a child commits a crime more than once, such as committing a crime repeatedly in the case of an RDS child. . Children who can no longer and are difficult to tell and advise. Children who can endanger society, when children commit crimes that can endanger the surrounding environment and society.<sup>13</sup>

Departing from the purpose of punishment in an effort to provide protection for the achievement of child welfare, the criteria/standards for the severity of sanctions are not only seen or measured quantitatively, but are based on qualitative considerations. Therefore, the actual consideration of the severity of the sanctions (especially the sanctions for coaching within the institution), is not only limited to the reduction of the threat of sanctions for adults, but also the weight of the sanctions that are threatened.

As a measure, that the imposition of sanctions is aimed at protecting the interests of children, the threat of deprivation of liberty is avoided as far as possible. As emphasized in various international instruments, that no one shall be deprived of his or her liberty unlawfully or arbitrarily. Punishment of a child must be appropriate and applied as a last resort for the shortest period of time. Every child deprived of their liberty must be treated humanely, and their human dignity must be respected. Children who are deprived of their liberty must be separated from adults, unless it is considered in the best interests of the child concerned.

Meanwhile, in the Beijing Rules, it is emphasized that restrictions on children's personal freedom are only imposed after being considered selectively and limited to a minimum. Deprivation of personal freedom should not be imposed unless the

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<sup>12</sup>Madhe Sadhi Astuti, (1997), *Pemidanaan Terhadap Anak Sebagai Pelaku Tindak Pidana*, Malang: Penerbit IKIP, p.117

<sup>13</sup>Excerpt of Decision Number 2/Pid.Sus-Anak/2019/PN Bla

child commits a serious crime against another person, murder or continues to commit a crime, unless there is no other form of sanction that is more appropriate. What is even more important is that the welfare of the child must be the main consideration factor.

Wright explained that the concept of Restorative Justice is basically simple, where the measure of justice is no longer based on retribution from the victim to the perpetrator (either physical, psychological or punishment), but the painful act is healed by providing support to the victim and requiring the perpetrator to be held accountable, with family and community assistance when needed.

In line with this, Jim Consedine, also argues that the concepts of retributive and restitutive justice must be replaced by Restorative Justice. Where the ultimate goal to be realized is the creation of moral justice and social justice in law enforcement, in addition to considering legal justice. And the realization of balance in society after the judge's decision. Through Restorative Justice, the interests of victims will still be considered through compensation or compensation mechanisms while still paying attention to the human rights of children who are perpetrators of criminal acts.

The judge may not impose a cumulative sentence on the defendant, meaning that the crime and the action cannot be imposed at the same time. However, in the case of naughty children, the principal and additional penalties may be imposed at the same time, for example imprisonment or compensation. In imposing a crime or action, the judge must pay attention to the severity of the criminal act or delinquency committed by the child. The judge must consider the condition of the child, household conditions, parents/guardians/foster parents, family member relationships, environmental conditions, and the Community Advisory Report. The second type of punishment for Children in Conflict with the Law is in the form of action. Based on Article 82 paragraph (1) of the Juvenile Criminal Justice System Act, there are three kinds of sanctions, namely: return to parents/guardians; surrender to someone; treatment in mental hospitals; care in LPKS; the obligation to attend formal education and/or training held by the government or private bodies; revocation of driving license; and/or remediation as a result of a criminal act.

If a child in conflict with the law, according to a court decision, is returned to a parent, guardian, or other person, it does not mean that the child is fully under the supervision of the parent, but the child concerned remains under the supervision and guidance of the Community Advisor. According to the law, if the judge is of the opinion that a parent, guardian, or other person cannot provide better education and guidance, then the judge may determine that the child is placed in the Child Correctional Institution (as a civilian child) to attend education, coaching and job training. Job training is intended to provide skills in the fields of carpentry, agriculture, workshops, cosmetology, and so on. So that after completing the Action they can live better and independently. In principle, education, coaching and job training are organized by the Government at the Child Correctional Institution or the Ministry of Social Affairs; However, in the interests of the child, the judge may determine that the child concerned is handed over to social organizations, such as: Islamic boarding schools, social institutions, and other social institutions by taking into account the religion of the child concerned.

When correlated with a theory of punishment, the juvenile criminal justice system has a concept in the theory of relative objectives where the context is not



purely on the whole meaning, but to be linked to a theory of punishment because it cannot be denied, the word sentencing cannot necessarily be attached to the child who is dealing with law in the sense of the context of ABH has its own meaning in the scope of criminal law. The theory of relative goals views as something that can be used to achieve use, both with regard to the guilty person and with regard to the outside world, for example by isolating and correcting criminals or preventing potential criminals, will make the world a better place.<sup>14</sup> The basis of justification for the existence of a crime according to this theory lies in its purpose. The punishment imposed is not *quia peccatum est* (because people make mistakes) committing *ne peccetur* (so that people don't commit crimes), then it is quite clear that this goal theory seeks to create order in society.<sup>15</sup>

#### 4. Conclusion

The basic considerations for judges in imposing a prison sentence are that a child commits a crime more than once, such as committing a crime repeatedly in the case of an RDS child. Children who can no longer and are difficult to tell and advise. Children who can endanger society, when children commit crimes that can endanger the surrounding environment and society. Departing from the purpose of punishment in an effort to provide protection for the achievement of child welfare, the criteria/standards for the severity of sanctions are not only seen or measured quantitatively, but are based on qualitative considerations.

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<sup>14</sup>Muladi, 2002, Conditional Criminal Institution, Alumni, Bandung

<sup>15</sup>Muladi and Barda Nawawi Arief, 2005, Criminal Theories and Policy, Alumni, Bandung

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