



The Analysis of Prison Penalty for Children in Perspective on the Theory of the Purpose Punishment

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<http://dx.doi.org/10.18415/ijmmu.v7i5.1706>

Abstract

This study aims to analyze the purpose of the basic considerations of judges in imposing sanctions imprisonment for children offenders and the suitability of the basic considerations of judges in imposing prison penalties in the perspective of the objective theory of punishment. This research is a normative legal research completed with empirical data, which uses a legal approach, a case approach, and a conceptual approach. The results of the study show that imprisonment is still the choice of imposing sanctions for children by judges if the child is given another criminal sanction, the execution of the results of the decision does not support because of the unavailability of facilities and infrastructure, in this case, LPKA (Special Child Development Institution), LPAS (Temporary Child Placement Institution), or LPKS (social welfare management agency) from social institutions provided by local government; (2) in the verdict analyzed, the judge in imposing sanctions of imprisonment is still intended as retaliation (deterrent effect).

Keywords: *Prison Criminal; Child Criminal Purpose; Punishment*

Introduction

Addressing the problem of children in conflict with the law should be done with a family approach and as far as possible avoid children from the judiciary. Law Number 11 of 2012 concerning the Juvenile Justice System regulates in detail the sanctions that can be imposed on children in conflict with the law. This is stated in Article 71 and Article 82 of Law No. 11 of 2012 concerning SPPA (Juvenile Justice System). Where in Article 71 regulates criminal sanctions that can be imposed on children and Article 82 regulates sanctions actions. The imposition of criminal sanctions, especially imprisonment for children in conflict with the law, is the last resort. This is in accordance with Article 81 paragraph (5) of Law no. 11 of 2012 which states that imprisonment against children is only used as a last resort.

Children who are in conflict with the law and are suspected of committing a crime and they have been accused will undergo trial in the Court. Law Number 11 of 2012 concerning the Juvenile Justice System explains that the juvenile justice system must prioritize a restorative approach and seek diversion. In imposing sanctions imprisonment for child defendants, Judges have their own basic considerations that are tailored to the needs of the defendant, justice for victims, public order, and adapted to the theory of

criminal penalties. As well as judges in imposing criminal sanctions on children for not only considering in terms of juridical, because judicial considerations judicially alone is not enough. Therefore, juridical considerations must be supported by non-judicial considerations. Because basically, judicial considerations are used non-judicially because the responsibility for the punishment of child offenders does not refer to the normative aspects and losses experienced, but must also look at and consider external and internal factors of children in committing criminal acts (Sofyan & Azisa, 2017).

This can certainly be seen in the facts that occurred at the trial. And children who are in conflict with the law certainly need more guidance and guidance than imprisonment. Without legal certainty, people will not know what to do, do not know what is right or wrong, are prohibited or not prohibited by law (Akub & Sutiawati, 2018). This legal certainty can be realized through a good and clear naming in a law and its implementation will be clear (Popelier, 2000; Ali, 2002).

In connection with the description above, the author is interested in conducting a study of Decision Number: 1 / Pid.Sus-Anak / 2019 / PN.Stg which is the child as the criminal act of Article 363 paragraph (1) of the fourth KUHP (Criminal Code), the perpetrator commits theft together. -the same happened at the beginning of January 2019. The perpetrators were arrested for committing motorcycle theft in a hospital parking lot, then in that case the judge sentenced him to prison for 4 (months). While undergoing his sentence, the child offender is again faced with a new case in Decision Number: 6 / Pid. Sus-Anak / 2019 / PN.Stg who was sentenced to prison for 4 months in which the locus delict is still in the jurisdiction of the same Court in the case this is the Sintang Regency Court. Neither the case with the decision Number: 11 / Pid. Sus-Anak / 2019 / PN.Stg The third occurred at the same time and the judge sentenced him to prison for 5 months.

The interesting thing about the case that will be reviewed by the author is that there is a tendency for judges to impose imprisonment sanctions without considering the non-judicial considerations of the perpetrators when committing criminal acts, as well as the tendency of the goal of criminal punishment for children only as retaliation without regard to the best interests of the child.

This study aims to analyze the purpose of the basic considerations of judges in imposing sanctions imprisonment for children offenders and the suitability of the basic considerations of judges in imposing prison penalties in the perspective of the objective theory of punishment.

Methods

The type of this research uses a normative legal research type equipped with empirical data, also called literature research (Soekanto, 1986). some call it doctrinal research (Marzuki, 2007). Which is used to analyze the imposition of imprisonment sanctions for children from the perspective of the objective theory of punishment.

Types and Sources of Legal Materials used in this study are Primary Legal Materials and Secondary Legal Materials. The several types of research approaches used by the author to analyze existing problems, namely the statute approach, Case Approach and Conceptual Approach. The procedure of collecting primary legal materials by studying documents by inventorying the laws and regulations relating to the thesis the researcher discussed.

Results and Discussion

Judges' Considerations in Dropping Prison Criminal Sanctions for Children

The Child Criminal Justice System Act (SPPA Law) is not merely restorative justice. The SPPA law provides a final alternative for judges to impose sanctions on children. This is stated in the provision of Article 81 Paragraph (5) of the SPPA Law, namely, "Criminal Prison against Children is only used as a last resort". Therefore, the SPPA Law provides an alternative for providing light sanctions, namely criminal warnings. This criminal act is not a limitation or deprivation of child freedom, and this criminal is a minor crime. If the child is considered to have a serious criminal offense, there are alternative criminal conditions, including but not limited to Coaching outside the institution; community service, or supervision. Criminal job training and coaching in institutions.

Of the various alternative sanctions, the judge tends to choose imprisonment as the choice most often handed down. Keep in mind that the judge's decision will affect the next life of the child concerned, therefore the judge must be absolutely sure that the decision taken can be a strong basis for returning and taking the child towards a good future to develop himself as a responsible citizen responsible for the life of family, nation, and country.

Table 1. Data on Criminal Cases committed by Children in the Sintang Regency Court in 2017 - August 2019

No.	Year	Diversification	Processed	Total Case
1.	2017	1 case	13	14 cases
2.	2018	-	17	17 cases
3.	Januari-Agustus 2019	2 cases	19	21 cases

Source: Sintang Regency Court data source, processed October 2019.

Based on data on criminal offenses committed by children in the Sintang Regency Court from 2017 - August 2019, it was noted that in 2017 there were 14 cases of criminal acts of which the perpetrators were children, 1 of whom was diversified. Furthermore, in 2018 there were 17 cases of children all decided by the Sintang Regency Court and in 2019 there were 21 cases, 2 cases were diverse and 19 cases were decided in court.

From these data, it can be seen that in the Sintang region there has been an increase in the number of criminal cases committed by children each year.

In terms of judicial institutions in this region, Sintang Regency consists of the District Police, the District Attorney's Office, the District Court, and the Penitentiary. Which for the District Prosecutor's Office, District Court, and Penitentiary in this region also handles cases from the Melawi Regency.

Melawi Regency is also one of the regions in West Kalimantan Province. This area is adjacent to the Sintang Regency so that further handling of the case from the Melawi Regency Police is transferred to the Sintang Regency legal area.

The handling of cases like this places a higher burden on the Sintang Regency Court when compared to the burden of handling cases at Courts in other regions whose jurisdiction only covers one district area. So that handling like this resulted in overcapacity in the Sintang Prison which has a capacity of 200 people but now has reached 485 people and 185 of them are prisoners from Melawi Regency. As a result of this overcapacity, the state has difficulty meeting the rights of prisoners. So far the state can only play a role as a prison guard so as not to escape, and feed prisoners to avoid illness (Akub & Sutiawati, 2018).

This also has fatal consequences for children who undergo a criminal term at the Sintang Penitentiary because the placement of these children is integrated with adults. This has led to ineffectiveness in fostering children who have committed crimes that should have been placed in LPKA.

The Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham), stated that to solve the overloaded prisons problem, there are only 2 ways).

In Sintang Regency there are no LPKA, LPAS, or LPKS from the local government that can be used as a place of rehabilitation and guidance for children who commit criminal acts. LPKA only exists in the provincial capital, Pontianak. Therefore, in the case of the execution of a decision, the placement of a child remains placed in the Sintang Penitentiary.

Placement of child offenders is also integrated with adults because there are no special blocks that can be used to place the child. The reason why children are not sent to the LPKA Pontianak while in the decision to place them in the Pontianak Child Special Development Institute (LPKA) is the absence of a special budget and is constrained by distance from families who want to visit. Finally, the placement is put together with an adult. According to researchers, this treatment is very ineffective because it will lead to the occurrence of criminal acts of repetition (recidive) by children and these crimes could have been more dangerous than previous crimes.

The handling of child offenders is also contrary to the rights of children in juvenile justice. As stated in Article 3 of Law Number 11 of 2012 concerning the Criminal Justice System for Children which regulates that in the criminal justice process children have the right to be separated from adults.

According to Habibullah, the Community Guidance at Sintang Class IIB Penitentiary that criminal prison is still the only option for imposing sanctions on children. Because of the application of other criminal options such as job training, there are still difficulties. He has also often coordinated with the local government, especially related institutions, to provide a place such as LPKS or Vocational Training Centers for children who commit criminal acts considering the level of delinquency in Sintang is quite high but has not been realized to date.

Imposition of Imprisonment Sanctions for Prisoners for Children of Crime in The Perspective of The Theory of Child Criminal Purpose

Based on the elaboration through the analysis of researchers on several decisions and the results of interviews with several judges, the authors argue that the judges have not abandoned the old paradigm contained in Law No. 3 of 1997 concerning the Juvenile Court, which in imposing decisions takes precedence over imprisonment rather than criminal action. The judges put forward the retributive theory (retaliation).

Community Research Report

In the results of the community research (LITMAS) of Priscilla Paramita's Children, the social counselor who handles children reports the following recommendations. Without reducing the authority of the judge in hearing the case of the child client, the social counselor argues and advises the judge in the trial in the first case with a decision Number 1 / Pid. Sus-Anak / 2019 / PN.Stg that after seeing and analyzing the problems faced by the client relating to criminal acts that have been carried out, the Community Guidance recommends imprisonment and be placed in the Institute for Special Development of Children (LPKA) Pontianak.

In the second case with decision No. 6 / Pid.Sus-Anak / 2019 / PN.Stg, the social counselor provides recommendations to the client's child to be sanctioned by actions, in the form of being returned

to parents and receiving supervision/guidance from the Class II Sintang correctional center for 3 (three) months with the following reasons: (1) At the time of the incident the client has not reached the age of 14 years. (2) Clients feel guilty and sorry for their actions. (3) The client's parents/family are still willing to educate and supervise their children.

While in the third case with Decision Number 1 / Pid.Sus-Anak / 2019 / PN.Stg, by the social adviser it is recommended to be given a Penal Criminal Penalty and placed in the Pontianak Child Special Development Institute (LPKA) so that the survival and rights of children are fulfilled as mandated by law.

There is a discrepancy in the report on the results of community research in the third case, which in the study should be in the recommendation of the social counselor to be sanctioned for action. Given that the age of the child when committing a crime is not yet 14 years old.

According to Habibullah, the Children's Community Guidance at BAPAS (Correctional Center/penitentiary) Sintang said that his party at the investigation level had requested a merger of criminal acts to reduce the criminal period, but the investigators did not approve of it. In the end, all of these cases were divided into three cases. There was a disagreement between law enforcers in handling this child case.

Purpose of Child Criminalization

The purpose of the juvenile justice system according to the SMRJJ (THE Beijing Rules) No. 40/33 of 1985 which is one of the legal instruments used in the administration of justice for children emphasizes the purpose and rationale for prioritizing child welfare as stated in Rule 5.1, namely the juvenile justice system shall emphasize the well being of juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstance of both the offender and the office.

Arief (2010) stated that there are two very important goals or objectives, namely: *Promoting welfare (the promotion of the well being of the juvenile); and the principle of proportionality.*

Emphasis on advancing the welfare of the people, the criminal justice system must emphasize the welfare of children, this principle supports the principle of avoiding the use of sanctions that are merely punitive or the avoidance of merely punitive sanctions (Ellis Jr, 1982; Mann, 1991). The principle of proportionality is a principle that is a tool to curb the use of sanctions that are punitive in the sense of replying solely (just desert) (Arief, 2010).

To understand the child's behavior is not as easy as turning his hand. Mismanagement of naughty children is often done because actions of naughty children are seen and sometimes equated with handling adult crime. Naughty children as criminals have their own characteristics. Therefore, the handling done for children must be done carefully.

As a child, his mind and will are not yet perfect, so they have not been able to determine which actions to do. Therefore the choice of actions carried out in many ways has been influenced by the surrounding environment so that the dominance of the environment has made children behave not as expected.

For this reason, all forms of inability to educate children resulting in deviations from the child's behavior, the child must be seen as a victim. Children are victims of harsh environments, mass media shows that indulge in violence, ignorant parents, unfamiliar social environments, child-friendly education because teachers concentrate more on achieving political targets such as national exams.

Against children who commit crimes, judges in giving decisions must not merely fulfill legal formalities. Therefore, judges' decisions relating to Children in conflict with the law should function to

encourage improvement in the child and realize the welfare of the child. The decision must also be in accordance with the purpose of punishment for children.

One of the goals of punishment is how to improve the offender from returning to a criminal offense and to prevent other offenders from committing a crime. Therefore, a punishment is not enough to see the existence of a crime, but it must be questioned the need and the benefits of a crime for children in the sense not only seen in the past, but also in the future.

Thus there must be further goals than just dropping the criminal course. This theory is called the goal theory. The aim must first be directed towards efforts so that future crimes committed will not be repeated (prevention). So the criminal offense aims to improve the offender so that he becomes a good person and does not commit the crime again, so that criminal punishment aims to improve the offender, namely juridical improvement, intellectual improvement, and moral improvement.

According to Abdul Rasyid, the juvenile judge at the Sintang Regency Court said that his theory level was like that. As the executor in the field, he also understands that the theory of punishment is not in accordance with the theory of child punishment, but when the facilities and infrastructure do not support, then the decision cannot be carried out, it can be confusing, instead it becomes an absence of legal certainty.

According to Hendro Wicaksono, who is also a juvenile judge at the Sintang Regency Court, the decision was effective. Considering that this child is Priscilla Paramita Als Kila, the child from Kunyan has been recidivist. Meanwhile, if traced, this child's actions are not recidivists because he committed a crime, committed, and then arrested. Initially, the community adviser suggested to unite the case so that the criminal period that he did was not so heavy considering the child was also a victim. The victim was from an adult persuasion (his girlfriend) but the investigator still disagreed with this.

Almost entirely from data obtained by researchers, children who commit crimes are placed in adult correctional institutions. The decision of the child is placed in LPKA Pontianak but the execution of the ruling of the child is placed in the Sintang Penitentiary. According to this researcher, it is very ineffective and not in accordance with the theory of the purpose of child punishment, considering that the child who is put together is still aged 14-18 years. So that in serving their sentence, children are still very vulnerable to accept the influence and improper treatment of adult prisoners.

There has even been a case of a child committing a theft that has been placed in an Adult Penitentiary unit with an adult inmate. When the child is discharged, the child returns to committing a crime. However, the greater criminal offense is the narcotics crime. This child is a courier and user.

The Best Interest for Children

The provisions of sanctions in the juvenile justice system law are far more advanced in structure or sequences in imposing criminal sanctions. The application of criminal sanctions in the SPPA Act prioritizes the best interests of children by prioritizing the imposition of criminal sanctions in the form of the first action to children who commit crimes. This provides protection for the child's future in growing and developing in line with the principles adhered to in Law No. 23 of 2002 jo. Law Number 35 of 2014.

In the context of protecting children's rights, imprisonment of children must be a last resort (*ultimum remedium*).

The best interest for children is the principle of children's rights based on the UN Convention on the Rights of the Child contained in Article 3 paragraph (1), namely in all actions concerning children,

carried out by state or private social welfare institutions, the court of law, the administrative authority or legislative body, the best interests of the child must be the main consideration (Teguh, 2018).

This is contrary to what happened in the field. The judge considered that the verdict handed down to the child was the best and had a deterrent effect on the child, but according to the investigator, the sentence was very improper given the execution of the decision placed the child in an adult penitentiary where the room was put together.

Finally, an understanding can be obtained that the need for judges to reform the understanding of punishment aimed at retributive towards restorative and rehabilitative punishment, so that child punishment is truly in the best interest of the child in the future by not ignoring the interests of the victim and the community.

Conclusion

Criminal imprisonment is still the choice of imposing sanctions on children by judges. If the child is given another criminal sanction then the execution of the results of the decision does not support because of the unavailability of facilities and infrastructure in this case LPKA, LPAS, and LPKS from social institutions provided by the regional government. Judges are more dependent on the actions of the defendant along with the evidence and witness statements that were brought to trial. Judges in imposing sanctions imprisonment is still intended as retaliation (deterrent effect) even though, it is not recommended that way because the perpetrators are children. Therefore, a judge must be very careful in giving his decision.

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