

Effectiveness Of Determining Action Sanctions On Children Who Conflict With Law In Pangkajene

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Abstract: The aim of the child who has this research is to find out the influence of the imposition of sanctions on children in conflict with the law. and to find out the mechanism for imposing sanctions on children in conflict with the law. The research method used is the normative legal research method, namely research on the principle of legal principles and synchronization of law with regard to the imposition of sanctions on children in conflict with the law.

Keyword: Children, conflict, imposition of sanction

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I. INTRODUCTION

As a young generation, children are the successors of the ideals of the nation's struggle and human resources for national development. In order to realize quality human resources, survival, physical and mental development and protection from various distresses that can threaten their integrity and future, it is necessary to develop sustainable and integrated. In reality, efforts to develop the younger generation are often faced with various problems and challenges that are difficult to avoid, among others, encountered temporary behavior deviations of children. Even further than that, there are children who commit acts that violate the law, both children from high, middle, and lower socio-economic circles.

In Law No.11 of 2012 concerning the Criminal Justice System of Children, in Article 1 Chapter I General Provisions are explained that:

"Children in conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not 18 (eighteen) years old who are suspected of committing a crime."

Deviant actions and behaviors that are contrary to the law carried out by children are typical actions when compared to deviant actions and behaviors committed by adults in general, considering the child's emotional characteristics are still unstable and still cannot distinguish which actions are good and the bad therefore need to be dealt with specifically in order to provide child protection and welfare.

In an effort to overcome various deviant deeds and behaviors of children, one must not forget the position of children with all their special characteristics. Although children basically and within reasonable limits have determined their own actions based on their thoughts, feelings and desires, but because of their condition as children, their surroundings can have a greater effect on determining their personal attitudes and values. Therefore, in dealing with children the imposition of sanctions on children needs special attention.

Penalties are a tool of power to strengthen the application of a norm and to prevent and eradicate actions that interfere with the entry into force of a norm. The imposition of sanctions is intended to protect the interests of children, so that the threat of sanctions for deprivation of liberty is avoided as far as possible. As confirmed in various international instruments, that no one will be deprived of their liberty illegally or arbitrarily. Punishment of children must be appropriate and applied as a last resort for the shortest period of time.

Based on the above, it is clear that in imposing sanctions on children, the goal to be achieved is legal protection that must prioritize the best for the interests of children, so that children's welfare can be achieved.

However, in the criminal system that applies to the present, sometimes it still treats children who are involved as perpetrators of such crimes as the perpetrators of crimes committed by adults. The child is placed in a position as an offender who deserves the same punishment as an adult. Whereas the criminal act itself is more oriented to the individual, the perpetrator, or commonly called individual responsibility, in which the offender is seen as an individual who is able to take full responsibility for the actions he committed. While children are individuals who have not been able to fully realize the actions / actions they do, this is because the child is an

immature individual in thinking. Without realizing it, of course it can cause a great psychological impact on children which ultimately affects the mental and mental development of the child. Therefore, by treating the child as adults, it is feared that the child will quickly imitate the treatment of people who are nearby.

Juvenile delinquency is a form of legal problem found in society which has increased almost every year, especially in big cities. The Ministry of Social Affairs Pusdatin data shows that in 2008 the number of juvenile delinquents was 1998,578, while from the Legal Apparatus data there were 3,800, while in Makassar alone from the 2008 Makassar City Social Service data there were 415 children, 171, related to theft cases, 65 children related to persecution, 29 related to Nakotika and the rest related to other cases, while for 2009 it has reached 150 child problems dealing with laws such as negligence, persecution, gambling, etc.

The government in responding to the conditions that occur to children (mischievous) actually has enacted Law Number 11 of 2012 concerning the Criminal Justice System of Children, but the phenomenon of an increase in crimes committed by children continues to increase every year as described above.

Law Number 11 of 2012 concerning the Criminal Justice System of the Child will provide a national legal basis for legal protection for children through the juvenile justice system. In addition, Law Number 11 of 2012 concerning the Criminal Justice System of Children is intended as a legal instrument that is more stable and adequate in carrying out coaching and providing legal protection to children who have problems with the law and the enforcement of children's rights and children's law to realize the principle of best for the child (the best interest of the child). The provisions contained in Law Number 11 of 2012 concerning the Criminal Justice System of Children have partly referred to these signs. Deprivation of liberty, for example, must be done only as a measure of last resort, which is related to the child's right not to be separated from his parents.

Based on the description above, the authors assess the existence of a gap between the level of ideality and reality, where the system of sanctions in the Child Criminal Justice System Act should be able to provide educational guidance for the future of children, but in reality the level of crime committed by children continues to increase from year to year and even from the results of pre-research conducted by the author there are children who have committed crime.

This problem is quite actual considering the child as one of the human resources and is the next generation of the nation, it should deserve special attention especially children who are in conflict with the law.

II. PROBLEM FORMULATION

- 1. What is the imposition of sanctions on children in conflict with the law?**
- 2. What is the mechanism for imposing sanctions on children in conflict with the law?**

III. THEORETICAL FRAMEWORK

A. Understanding of Children in Conflict with Law

This bad boy or child delinquency is taken from the foreign term Juvenile Delinquency. Juvenile means Young, children, young people, characteristic traits in youth, typical traits in the teenage period. Whereas Delinquency means doing wrong, being ignored or ignoring, which is then expanded to be evil, asocial, criminal, rule breaker, maker of grabs, troublemakers, irreparable, vain, insane, etc. (Wagiati Soetodjo, 2006: 8-9).

According to Soedarsono (1990: 10):

The standard term in the psychological concept is juvenile is a child, while delinquency is a crime, etymological understanding is the crime of a child.

Furthermore child delinquency can be divided into two parts, as stated by Gatot Suparmono (2000: 4):

Child delinquency is an act carried out by a child who is not in accordance with the regulations in force in the community, and is divided into ordinary delinquency and delinquency which is a criminal act. Ordinary delinquency as well as: guitar playing and singing crowded on the roadside until late at night, crossing people's walls, speeding with vehicles on public roads, while delinquency which is a criminal act is threatened by criminal law, including: stealing, raping and others as stipulated in the Criminal Code.

Soedjono Dirdjosisworo (Marlina, 2009: 40) says that child delinquency includes 3 meanings, namely:

1. Actions performed by adults are criminal acts (crimes), but if done by minors are called delinquency such as theft, robbery and murder.
2. Children who deviate from the actions of groups that cause disturbances such as speeding, fighting and groups.
3. Children whose lives need help and protection, such as abandoned children and orphans, who if left to roam can develop into bad people.

Paul Tappan (Marlina, 2009: 39) suggests:

Juvenile delinquent is a person who has been adjudicated as such by a court of proper jurisdiction thought he may be no different, up who are not delinquent.

The purpose of the definition put forward by Paul Tappan above is juvenile is the behavior of a child who violates norms that have been determined by the surrounding environment and that behavior can be ensnared by the authority of the child's court (Marlina, 2009: 39).

R. Kusumanto Setyonegoro (Wagiati Soetodjo, 2006: 10), in this case expressing his opinion as follows:

Individual behavior is contrary to general terms and opinions which are considered as acceptable and good, by a community environment or applicable law in a particular culture society. If the individual is still a child, then often such behavior is referred to as difficult or misbehaving behavior. If he tries adolescent or preadolescent, then the behavior is often called delinkuen, and if he is mature then his behavior is often called psychopathic and if openly against the law is called a criminal. .

Meanwhile, according to M. Gold and J. Petronio (Sarlito, 2001: 196), the definition of deviation of adolescent behavior in terms of child delinquency (juvenile delinquency) is as follows:

Child delinquency is an act by an immature person who deliberately violates the law and is known by the child himself that if his actions were known by a legal officer he could be punished.

Children suspected of committing a crime or committing a violation of the law, in Act Number 11 of 2012 concerning the Criminal Justice System of Children, are called "Children in conflict with the law". In the Law on the Criminal Justice System of Children. According to some circles this term is considered more appropriate given to children who break the law, so that it can eliminate the bad stigma for children who have not been proven to have committed their mistakes (Nandang Sambas, 2010: 90) .

In Article 1 paragraph 2 to 5 of Law Number 11 of 2012 concerning the Criminal Justice System of Children, Children are categorized into 4 namely Children who are dealing with the Law, Children in conflict with the Law of Children who are Criminal Victims and Children who are witnesses to criminal offenses .In the article it is explained as follows:

- Children Against the Law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts.
- Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not 18 (eighteen) years old who are suspected of committing a crime.
- Children Who Become Criminal Victims, hereinafter referred to as Victim Children, are children who are not yet 18 (eighteen) years of age who experience physical, mental, and / or economic losses caused by criminal acts.
- The Child Who Becomes a Witness of Crime, hereinafter referred to as the Witness Child, is a child who is not yet 18 (eighteen) years old who can provide information for the purpose of investigation, prosecution, and examination in a court session concerning a criminal case he has heard, seen and / or experienced own.

B. Criminal and Criminal Law

Moeljatno (Bambang Waluyo, 2008: 7) provides a broad understanding of criminal law, as follows:

- a. Determine which actions should not be carried out, which are prohibited accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition.
- b. Determine when and in what way those who have violated the prohibitions can be imposed or imposed as threatened.
- c. Determine in a way how the imposition of the criminal can be carried out if there are people who are suspected of having violated the prohibition.

Meanwhile, Muladi and Barda Nawawi Arief (2005: 4) concluded that the criminal contained the following elements or characteristics:

1. The punishment is essentially an imposition of suffering or sorrow or other unpleasant consequences;
2. The sentence was deliberately given by a person or entity that has power (by the authorities);
3. The criminal sanction is given to someone who has committed a crime according to the law.

Meanwhile what is meant by punishment is an action taken by the judge to convict a defendant as stated by Sudarto (1997: 36):

Punishment is derived from the word legal basis, so that it can be interpreted as establishing a law or deciding about the sentence (berschen) stipulating the law for an event not only concerning criminal law, but also civil law. Therefore, this article revolves around criminal law, then the term must be narrowed to mean punishment in a criminal case, which is often synonymous with punishment or criminal award or imposition by a judge.

According to M. Sholehuddin, the aim of punishment must be in accordance with the politics of criminal law which must be directed towards protecting the community from prosperity and the balance and harmony of life by paying attention to the interests of the community / state, victims and perpetrators.

M. Sholehuddin (2004: 59) suggests the characteristics of the criminal element based on the purpose of the sentence, namely:

1. Humanity, in the sense that the punishment upholds a person's dignity.
2. Educative, in the sense that punishment is able to make people fully aware of the actions committed and cause them to have a positive and constructive mental attitude for crime prevention efforts.
3. Justice, in the sense that the punishment is felt to be fair (both by the convicted and by the victim or the community).

Meanwhile, according to Muladi (2004: 11) the purpose of punishment must be integrative, that is:

1. Community protection;
2. Maintain community solidarity;
3. Prevention (general and special);
4. Balance / balancing.

In the criminal justice problem, there are two systems or methods commonly applied from the time of Wetboek van Strafrecht (W. v. S) to the Netherlands up to now, which is regulated in the Criminal Code, namely:

1. That people imprisoned must undergo their crimes in prison walls. He must be alienated from the public and separated from the habits of life as they are free. Coaching for convicts must also be done behind the prison wall.
2. Whereas in addition to inmates being convicted, they must also be fostered to return to community or rehabilitation / resocialization.

In connection with prosecution, theories arise about this:

1. Absolute Theory or Retribution Theory (*vergeldings theorien*)

The theory of retaliation says that crime is not intended to be practical, like fixing criminals. The crime itself contains elements for the imposition of a crime. Crime is absolutely there, because it is committed a crime. It is not necessary to think about the benefits of imposing a penalty. Every crime must result in a criminal offense to the offender. Therefore, this theory is called the absolute theory of Crime is an absolute demand, not just something that needs to be dropped but a necessity. The nature of a criminal is retaliation (Andi Hamzah, 1994: 31).

2. Relative Theory or Purpose Theory (*doeltheorien*)

According to this theory a crime does not absolutely have to be followed by a crime. For this, it is not enough to have a crime, but it must be questioned the need for and the benefit of a crime for the community or for the criminal himself. It is not only seen in the past, but also in the future.

Thus, there must be a goal further than just dropping the criminal course. Thus, this theory is also called the theory of goals. This goal must first be directed to the effort so that in the future the crime committed will not be repeated (prevention).

3. Combined Theory (*verenigingstheorien*)

Besides absolute theory and relative theory about criminal law, a third theory emerges on the one hand that recognizes an element of retribution in criminal law. However, on the other hand, it also recognizes elements of prevention and elements of improving criminals that are inherent in each criminal. This third theory arises because there are weaknesses in absolute theory and relative theory, the weakness of the two theories is (Hermien Hadiati Koeswadji, 1995: 11-12):

Weakness of absolute theory:

1. Can cause injustice. For example, in murder, not all murderers are sentenced to death, but must be considered based on the available evidence.
2. If the basis of this theory is for retaliation, then why is it that only the State gives a criminal?

Weakness purpose theory :

1. It can also cause injustice. For example, to prevent crime by frightening, the perpetrators of minor crimes may be punished with severe crimes just to scare them, so that they become unbalanced. Things that conflict with justice.
2. Community satisfaction is ignored. For example if the goal is solely to improve the criminal, people who need satisfaction are thus ignored.
3. It is difficult to implement in practice. That the purpose of preventing crime by frightening it in practice is difficult..

With the emergence of this combined theory, there are differences of opinion among experts (criminal law), there are those who focus on retaliation, others want balanced retribution and prevention.

The first, namely emphasizing the element of retaliation embraced by Pompe (Andi Hamzah, 1994: 36). Pompe stated:

People do not turn a blind eye to retaliation. Indeed, crime can be distinguished by other sanctions, but there are still characteristics. It still cannot be reduced to mean that the criminal is a sanction, and thus bound to the purpose of the sanctions. And because it will only be applied if it benefits the fulfillment of rules and is useful for the public interest.

Van Bemmelen also embraced the combined theory (Andi Hamzah, 1994: 36), he stated:

Criminal action aims to repay mistakes and secure the community. The action aims to secure and maintain the objectives. So the criminal and the actions, both of which are aimed at preparing to return the convicted person to community life.

Grotius developed a joint theory that emphasized absolute justice which was realized in retaliation, but which was useful for the community. The basis of each crime is severe suffering according to the severity of the actions committed by the convicted person. But to what extent the weight of the criminal and the severity of the actions committed by the convicted person can be measured, determined by what is useful for the community.

The second combined theory is to emphasize the defense of the public order. This theory should not be heavier than what is caused and the use must not be greater than it should.

Criminal punishment is retaliation because it is only imposed on offenses, namely acts committed voluntarily, retaliation is the nature of a crime but not an objective. The aim of the criminal is to protect the welfare of the community.

The third combined theory, which views revenge and defense of the order of society. According to E. Utrecht this theory is less discussed by scholars (Andi Hamzah, 1994: 37).

C. Double Track System Concept in Criminal Law

Double track system is a two-track system regarding sanctions in criminal law, namely criminal sanctions and types of sanctions. Even though in practice, the difference between criminal sanctions and action sanctions is often rather vague, but at the level of the basic idea both have fundamental differences, where criminal sanctions originate from the basic idea of "why is convicted", whereas the sanction of action departs from the basic idea "for what is to be prosecuted that" (M. Sholehuddin, 2004: 17).

The formulation and confirmation of the system's double track system by specifically arranging sanctions for action shows that new views are adopted to lead to criminal justice systems that are appropriate for the purpose of prosecution.

In connection with the concept of a double track system that distinguishes between criminal sanctions and sanctions for action, it is deemed necessary to give the opinion of some scholars regarding the differences between the two types of sanctions (M. Sholehuddin, 2004: 51-54):

1. Satochid Kertanegara:

In one of his writings, Satochid explained that in criminal law there are also sanctions that are not torture, namely what is called action (*maatregel*).

2. Sudarto:

His opinion stressed that criminal sanctions are suffering that is intentionally imposed on people who commit acts that meet certain conditions. The provisions of modern criminal law also include what is called a disciplinary action. Furthermore Sudarto also explained that criminal sanctions are retaliation (repayment) of the mistake of the maker, while the action is for the protection of the community and for the guidance or care of the maker.

3. Andi Hamzah:

Although differences in criminal sanctions and sanctions according to Andi Hamzah's actions are rather vague, but he gave a brief explanation that criminal sanctions are focused on imposing sanctions on the perpetrators of an act, while sanctions for action aim to protect the public.

Furthermore, the principle difference between criminal sanctions and sanctions for action lies in whether or not there is an element of denunciation, not on whether there is an element of suffering. Whereas sanctions for the purpose of the action are more educational. If viewed from the perspective of criminal theories, the sanction of action is a sanction that does not reciprocate. Action sanctions are solely aimed at special prevention, namely protecting the public from threats that can harm the community's interests. In short, criminal sanctions are oriented to the idea of imposing sanctions on the perpetrators of an act, while sanctions for action are oriented to the idea of community protection. The difference in orientation from criminal sanctions and action sanctions, has to do with the philosophy that holds them, namely indeterminism philosophy as a source of criminal sanctions ideas and philosophy of determinism as a source of ideas for action sanctions. As is known, the basic assumption of indeterminism philosophy is that in fact human beings have free will, including when they commit crimes. Because as a consequence of their free choice, every punishment must be directed at moral denunciation and the imposition of suffering for the perpetrator. While determinism is based on the assumption that human life and behavior, both as individuals and as a group of people, are determined by the physical, geographical, biological, psychological, sociological, economic and religious factors that exist. Thus, the evil behavior of a person or society is determined by these factors and the truth is that every punishment can only be justified by the intention of rehabilitating the perpetrators (M. Solehuddin, 2004: 33).

D. Sanctions System in the Indonesian Criminal Justice System in Indonesia

The Child Criminal Justice System is the whole process of resolving a case of a Child who is dealing with the law, from the stage of investigation to the stage of coaching after serving a criminal.

Furthermore, the criminal justice system of children embodies the welfare of children, so that children are tried individually. All activities carried out in child criminal justice should be carried out by child investigators, child prosecutors, juvenile judges or child penitentiary institutions, based on the principles for the welfare of children. The judge imposes a crime or action intended to provide the best for the child, without sacrificing the interests of the community and upholding the authority of the law. Criminal sanctions imposed on children are based on the truth, justice and prosperity of children (Maidin Gultom, 2008: 124).

A child who has not fully been able to account for his mistakes, the environment can provide opportunities for him to commit the offense. The law of trial for children benefits more than other forms of punishment, while being given a stern warning that parents / guardians / foster parents will be accountable for their behavior. Wrong handling in the juvenile court process can lead to a negative and dangerous growth of the child's mentality or mentality for the future generation of young people. The purpose of prosecution is not to punish them, proclaimed to provide education, so that they do not fall into caliber criminals after serving punishment (Maidin Gultom, 2008: 125).

Furthermore, the judge may not impose a cumulation of sanctions on children, meaning that the crime and actions cannot be dropped at once. However, in cases of children in conflict with the law can be subject to additional basic and criminal penalties, such as imprisonment and compensation. In imposing a criminal sanction or sanction of action, the judge must pay attention to the severity of the crime or delinquency committed by the child. Judges must consider the state of the child, the condition of the household, parents / guardians / foster parents, family members' relationships, environmental conditions, and the Community Guidance report.

Barda Nawawi Arief (Waluyadi, 2009: 59), quoting Nigel Walker's opinion, presents several principles that must be followed in the use of criminal law as follows:

1. Criminal law should not be used solely for retribution / retribution purposes.
2. Do not use criminal law to convict acts that are not harmful / harmful.
3. Do not use criminal law to achieve goals that can be achieved more effectively by other lighter means.
4. Do not use criminal law if the loss / danger arising from a crime is greater than the loss / danger of the act / criminal act itself.
5. Prohibitions of criminal law do not contain more dangerous properties than actions that will be prevented.
6. Criminal law must not contain restrictions that do not get strong support from the public.
7. Criminal law does not contain prohibitions / provisions that cannot be implemented / imposed (*unforceable*).

Meanwhile, with regard to the types of sanctions that can be imposed on juvenile delinquents, according to Law Number 11 of 2012 concerning the Criminal Justice System of Children, there are two types of sanctions, namely criminal sanctions and action sanctions. The regulation of the types of sanctions that can be imposed on children is different from the regulation of the types of sanctions contained in the Criminal Code, this is intended to better protect and protect children. In addition, the distinction is intended to provide opportunities for children so that through coaching will gain their identity to be independent, responsible, and useful for themselves, their families, communities, nations and countries.

For more details, a description of the types of sanctions that can be imposed on children is as follows:

1. Criminal Sanctions

Criminal sanctions are penalties given to someone who is proven legally and convincingly to have committed a crime. In the provisions of Article 10 of the Criminal Code (KUHP) there are types of crimes which consist of additional basic and criminal penalties. The principal crimes consist of capital punishment, imprisonment, criminal penalties and criminal penalties. Whereas additional crimes can be in the form of revocation of certain rights, seizure of certain items and announcement of decisions by judges (Darwan Prinst, 2003: 23-24).

With the coming into effect of Law No.11 of 2012, the provisions of criminal sanctions and actions against children have been determined separately which is different from the provisions of the Criminal Code as a form of special protection for children.

In contrast to the Criminal Code, Law No. 11 of 2012 regulates separately the types of criminal sanctions that can be imposed on a child, as stipulated in Article 71 of the Law on the Criminal Justice System of the Child, which contains the following contents:

- (1) The principal crimes for children consist of:
 - a. Pidana warning;
 - b. Criminal with conditions:
 1. Coaching outside the institution;

2. Society service; or
3. Supervision.
- c. Work training;
- d. Coaching in institution; and
- e. Jail.
- (2) Additional crimes consist of:
 - a. Deprivation of profits derived from criminal acts; or
 - b. Fulfillment of customary obligations.
- (3) If the material law is subject to cumulative criminal sanctions in the form of prisons and fines, criminal penalties are replaced by job training.
- (4) Crimes imposed on children are prohibited from violating the dignity of the child.
- (5) Further provisions concerning the form and procedure of criminal implementation as referred to in paragraph (1), paragraph (2) and paragraph (3) shall be regulated by Government Regulation.

2. Action

Children in Act Number 11 of 2012 Article 69 paragraph 2 explained that children who are not 14 (fourteen) years old can only be subject to action. Article 122 paragraph (2) The draft of the National Criminal Code (1999-2000) stipulates that actions that can be imposed on a child without imposing a principal sentence are: a) Returns to the parent, guardian, or guardian; b) submission to the government; c) submission to someone, d) must follow an exercise held by the government or private entity; e) revocation of a driving license, f) seizure of profits obtained from a criminal act, g) repair due to a crime, h) rehabilitation; and or i) treatment at the institution. Pursuant to Article 82 of Act Number 11 of 2012 paragraph (1), actions that can be Actions that can be imposed on a child include:

- a. Returns to parents / guardians;
- b. Submission to someone;
- c. Care in a mental hospital;
- d. Maintenance on LPKS;
- e. Obligation to attend formal education and / or training held by the government or private sector;
- f. Revocation of a driving license; and/or
- g. Improvements due to criminal acts.

IV. CONCLUSION

1. Sanctions Action is a sanction imposed on a child that can take the form of: returning to a parent, guardian, or foster parent; submit to the state to attend education, coaching, and work training; or submit it to the Ministry of Social Affairs, or the Social Organization which is engaged in education, coaching, and work training.
2. In an effort to prevent various deviant actions and behavior of children, one must not forget the position of children with all their special characteristics. Although children basically and within reasonable limits have determined their own actions based on their thoughts, feelings and desires, but because of their condition as children, their surroundings can have a greater effect on determining their personal attitudes and values. Therefore, dealing with children in conflict with the law of imposing sanctions on children needs special attention.

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