

Towards Modern Juvenile Criminal Justice in Indonesia

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ABSTRACT. Juvenile Criminal Justice Procedure is part of the judicial system in Indonesia where to rehabilitate children who are involved in legal cases, the aim is not to eliminate their children's rights. Often this is the case in Indonesia, itself, when children face legal cases, the process still follows the general criminal justice system. The era of globalization demands that the modern state does not overdo coercion and repressive pressure on children. Starting from the implementation of a long and drawn out process makes children experience disturbed psychological impacts. This background seeks to find and improve the condition of the juvenile justice system which is not in accordance with the development of the modern era of globalization in Indonesia. The purpose of this research is to provide offers and input and optimize the Criminal Law System for Children who are Very Vulnerable with a Long and Repressive Process. take a Normative approach.

Keywords: *Criminal Justice, Modern.*

1. INTRODUCTION

Judicial institutions in Indonesia have undergone changes in line with the development and changes of the era itself both in its institutions and in its law enforcement system which in certain periods of time is marked by certain characteristics as well. this is done by seeking and implementing a system suitable for the Indonesian nation. The search for a suitable form of system must go through a long process because it also involves changing the social behavior of law enforcers, social order, and legal culture because modern law and rule of law require a certain social and cultural predisposition to be successful. in Europe itself it will take a thousand years. In such a context, it means that the Indonesian judiciary has a process of transformation and institutional reform in line with the times. [1]

Indonesian law is a legacy of the Netherlands or neocolonialism which still follows and equates the laws that colonized Indonesia at that time. The deterioration of law in Indonesia was added to the existence of public expectations of the role and function of modern law despite the many things it had to offer. So far, people in Indonesia only recognize the Criminal Code, which is a colonial legacy. This is no longer appropriate if there are cases of problems related to children, this is evident by the mention in the Criminal Code regarding the age limit of children which has been a debate among legal practitioners to bring children to trial in court.

Related instruments in Indonesia have also begun to be formed starting from the Welfare Law No. 4 of 1979, Law No. 23 of 2002 concerning Child Protection and the Law Regarding the Child Criminal

Justice System No. 11 of 2012 which also does not contain any limitations Certainly regarding the age of the child, the concept of a rule of law that prioritizes equality of rights and recognition of differences The international Commission of jurist the international Commission of jurist The principles of rule of law coupled with the principles of free trial and impartiality are absolutely necessary in every democratic country. The principles that are considered important characteristics of a constitutional state according to the International Commission of Jurist are: The state must obey the law, the free trial is impartial, the government respects individual rights, it seems that it is no longer applied in modern countries, especially if it is related to cases of children.

The implementation of the Imposition of Crime, especially in terms of the Criminal Words committed against children, is identical to the giving of witnesses and imprisonment. Although imprisonment is the main crime threatened and carried out by the majority of countries, from the beginning until now the effectiveness of imprisonment is in doubt. The Juvenile Criminal Justice System Law, which consists of a number of articles and regulations, still follows the process in the procedural provisions. It seems that a long process of arrest, a protracted investigation that causes children to lose time, energy, and traumatizing children. It seems that this is no longer relevant to be applied in a modern country like now.

The deterioration of law in Indonesia has eroded public expectations of the role and function of modern law, even though there are many ideals

offered by it and in the Juvenile Criminal Justice system law itself. terms of operating positive law. Even though as an authentic science, Law Science is required to provide and present a more complete picture of law and not only be able to provide certainty in law but also provide a sense of benefit and a sense of justice for children. Based on the sad condition of the existing law, there is a need for renewal of a more modern juvenile criminal justice process

2. RESEARCH METHODS

The type of research used is normative legal research, namely research that examines laws and regulations that have a relationship with the object of research, especially regarding the principles -asas and legal norms contained in the laws and undangandan in this study, metodependekatan used is the approach of legislation(Statuteapproach)and approach concept(ConceptualApproach).

Legislative Approach (Statute Approach), which is an approach by reviewing and examining statutory regulations and regulations that are related to the subject matter of the research.

ConceptualApproach, which is an approach by studying the views and doctrines in legal science, concepts, legal principles that are relevant to the subject matter of the research.

3. RESULTS AND DISCUSSION

Indonesia has Regulations related to the Juvenile Criminal Justice System Law, namely Law No. 11 of 2012 the reason this law was formed is to provide special protection for children to maintain their dignity in the juvenile criminal justice system. In this case, the State as a Party to the Convention on the Rights of the Child has the obligation to provide Special Protection for children in conflict with the law. Law from the beginning to be retributive justice turned into Restorative justice. Age of child accountability, Role of LPKA (Special Institution for Children), LPAS, (Temporary Children's Institution), LPKA (Institution for Special Guidance for Children). Age of criminal responsibility for children in Indonesia Children who are 12 years old but not yet 18 years old. The law is man-made, said by Jhon Austin that: law is man-made, he categorizes it into 2 categories, namely: The first is Positive law made by a maker or an expert. law The second law is made by a jurist or an organization of a State. applicable to the group concerned. Such as rules and laws that are inaccurate are the results of analogy and metaphorical results (laws that are not true) According to Jhon Austin the law has 4 elements, namely: 1. Order, 2. sanctions, 3. Obligations (duty), 4. Sovereignty

(sovereignty). [2] The truth Legal norms come from an external source and the unique necessity of law that is distinguished from moral norms is the witness. The threat of sanctions that must be imposed if something is done or not is a characteristic of a legal relationship. Such sanctions must be implemented by the authorities so that the source of legal norms emerges. When applied in child criminal practice, it cannot be applied in that case. [3]

Kelsen's thinking about a system itself is that: Law is a science whose purpose is to reduce chaos and plurality into a unity which means that, When a law is applied to a child that contains a rule, a law should be made that applies to it. at that time. It is not the law that should be. The relationship with a typical system is the relationship that is possible with existing laws. [3] The characteristic of modern law is that Liberal-individualistic is often seen as hyperregulated and changes in laws which often change the age limit of children in various laws. Then a fundamental question arises is why of the many rules relating to children, order and justice for children is still far from expectations. is this because the law is not formulated accurately, is not sufficiently comprehensive or because the law enforcers do not handle children when dealing with the law. [4]

The modern legal system was created to protect the independence and freedom of individuals so that it was created from that system in the form of a legal duty to maintain the interaction of individuals in society. Modern law has liberal characteristics, is rational, is written and is made by an authorized body and is carried out by layers of society. the salient characteristics of modern law which are strictly formulated and written, if applied to children are no longer appropriate. The international world has also attempted to make rules related to children's rights regarding the prevention of crime and the treatment of offenders that were held in 1980. [5] Rule 4.1 of the 1985 United Nations assembly in terms of a comprehensive intergal framework of justice, the whole process is part of the National Development in each country. [2] The second instrument is the Riyadh instrument which was ratified by the UN General Assembly Number 45/112 December 1990 paragraph 2: prevention of juvenile delinquency efforts is pursued by the whole community and ensures the development of the child. Paragraph 5: No child is allowed to be deprived of his legal dignity, either at home or at school or at any other place of the institution. [2]

The third instrument is related to the Havana Regulations which were passed by the United Nations

Resolution which states that in the havannah regulations, this principle of detention is the last step and for the shortest possible time. when the child is suspected of guilt, the child detained before the trial should be avoided as much as possible and limited to extraordinary circumstances. The classification and placement of children should be carried out in conditions that take into account special needs according to age, personality, sex and type of offense. In terms of education in the Havvana Rule, every child in the learning age has the right to education according to his needs and is designed to prepare the child to return to society. [6]

Tokyo Rules Which is the 4th instrument adopted in UN General Assembly resolution No. 45/110 14 December 1990 which is the basic principle for increasing non-custodial use and minimum protection for persons other than imprisonment. Detention is carried out as possible as a last step in the judicial process in order to respect the investigation of the alleged crime and for the protection of the community and the victim, the perpetrator, in this case, has the right to apply for a detention postponement. The rules in the Tokyo Rules relating to the Imposition of Crime here must pay attention to the rehabilitation needs of offenders, protection of the community and the interests of the victims. [7] The 5th instrument relating to the Beijing Rules passed through UN Assembly Resolution No. 40/33 on the Age of Criminal Accountability The legal system regarding the age of criminal responsibility for early age children cannot be established at a lower age level given the mental and intellectual emotional maturity. a child detained before trial will only be used as a last resort and only for a very short period of time. Detention carried out by children was replaced by alternative measures. parents participate in the judiciary. Based on the provisions in the international instrument above, the Law on the Criminal Justice System for Children No. 11 of 2012 in Indonesia adopted and adopted the rules contained in the international instrument. [7]

This standard uses a term that includes all "children at risk" based on evidence of a particular harm that a child has or is likely to suffer. The main principles of this International Standard are as follows:

- Strong assumptions about parental autonomy.
- Intervention should be limited to serious cases, so that it is more than likely to be detrimental.
- A stable living environment must be provided for the child. [5]

The Law on the Judicial System in Indonesia states that a child is someone who is 12 years old and

not yet 18 years old. It cannot be said anymore that the age limit of a child who is 18 years old is said to be "a child". that for the category of children under the age of 18 years is included in the group who are adults who are able to think rationally to determine the actions carried out by a child in their environment. what is surprising here is that, the Justice system law in Indonesia still follows the proceedings in the provisions of the Criminal Procedure Code. Modern law that appears to answer the needs of the times, has the achievement(achievement)that answer the needs in the form of a written and public, which strongly supports the need for a new economic system in providing predictability that time. [1] The icon for modern law is: legal certainty. Society, especially modern society, really needs certainty in the various interactions between its members and this task is placed on the shoulders of the law. [4] Legal certainty is a kind of ideology in legal life, so a critical understanding of the word is needed. By becoming an ideology, there is a tendency to confuse statements and truths. Because it is written and publicly announced, everything can be predicted and included in the components of a law. Legal science is also called to give theoretical legitimacy to these developments. This is where positivism emerges and thinks positivistically-analytically because it is written and announced publicly, then everything can be foreseen and put into the production component. Law Science is also called to provide theoretical legitimacy to these developments. This is where the emergence of positivism and very thick positivistic-analytical thinking is produced from the "machine" of law enforcement suppliers in this country. [4]

The emergence of modern law was intertwined with the modern state, industrialization and a capitalist economic system of production. A rational state, political and economic system also requires a guarantee of a rational footing and predictable / predictable components. Radbruch and Fuller both touched on the issue of enforcing legal certainty. Radbruch spoke of "Geltung des positiven Rechts," while Fuller said, that "there has to be a match between rules and day-to-day operations. (6) If legal certainty is discussed as "certainty of implementing regulations," then we have entered the realm of action, behavior, people and other factors that can influence how positive law is carried out. We enter into problems and behavioral discourses and social psychology. That means, not just written rules, but what's behind them. Observing the description above, it is clear that the presence of modern law which is full of legal certainty has become an "ivory tower" that stands in the midst of the realities of society. Law

is no longer present to serve society and bring prosperity to humans, but is present for its own sake. Absolutism of thought that is so strong has placed modern law as a constructed reality. So, two kinds of realities emerge, first, which is formed by modern law and its guards consisting of the modern state, hierarchical administrative governments, and law enforcers who hold legal certainty as the main weapon in carrying out their functions. The second is what is in fact in people's lives, including the inability of the little people to achieve justice because of their bad social status and "fate". [8]

Capra states that a systems view sees the world in terms of relationships and integration. The system is an integrated whole whose properties cannot be reduced to the properties of smaller units. Likewise the entire natural system is a whole whose particular structures arise from the interaction and interdependence of its parts. These properties break down when a system is chopped up, both physically and theoretically, into separate elements. [4] In terms of developing Law Science and Legal Theory with Indonesian characteristics, the idea of Progressive Law put forward by Prof. Satjipto Rahardjo can be used as a model, because he starts from learning about various conditions caused by the practice of the modern legal system. The first reason is that we realize and understand that the modern legal system that we use is basically designed by a liberal mind and spirit. This mind highly values the individual and his independence. Second, as an institution that is designed in a liberal way, the law follows too many procedural rules when applied to children. [9]

These principles are reflected in the specific nature of harm in the definition of a threatened child, the requirements for court consent after the process is filed and before a lawsuit resumes, and the preference for state involvement that does not require removal of the child from his home unless there are insufficient services to protect him. at home. If the giver of the rights of the child persists so that he cannot be returned to his home, in most cases the rights of the parents will be revoked. [7] The modern Indonesian judiciary is a court based on certain conditions. In addition, the child definitely needs care or control that he will not accept unless there is an order. The welfare of the child is the most important consideration only after the court has decided that the case is proven. [6] The court can then make an order to supervise the child in his own home, or place him under the supervision of local authorities. Any decisions regarding the future of the child will not be monitored by the court. Parents can apply to the court on behalf of the child at any time, to have their child returned to

them, and until their rights are not revoked. not only to promote a protracted Detention and Investigation Process, but must endeavor to have a Rehabilitation and deeper exploration so that Modern Criminal Justice can be realized fairly. [9]

4. CONCLUSION

Towards a Modern Criminal Justice for Children It is an ideal for all people, both legislators and as the implementation of the law itself. The Law on the Criminal Justice System in Indonesia contains a number of rules relating to the age limit of children who are As the reference is the category of children aged 12 to 18 years, this is seen, not appropriate anymore. maybe it is felt, the Law in the juvenile criminal justice system in Indonesia No. 11 of 2012 in handling cases of children who face the law only prioritizes Restorative justice, and rehabilitation of children without the need for arrests, detention, or investigations and proceedings before the court, all of which are something that makes the child lose his rights to gather with family, friends and play with friends at school.

Towards a modern Criminal Justice for children, all parties are also needed starting from the process of making the rules in the legislator, to the implementation stage, not only children who become Child Victims, Child Perpetrators, complete through deliberation without having to go through the trial process, arrest, detention that makes they experienced traumatic at the helm the day after the criminal proceedings took place.

5. SUGGESTIONS

By legislators and related parties to immediately update the law in the Juvenile Criminal Justice System, especially in criminal matters which always follow the provisions contained in the criminal procedural law book again, it is very irrelevant if the case being confronted is a person. children who still have a future and continuity in pursuit of their dreams.

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