

CRIMINAL LAW POLICY AND NON-PENAL EFFORTS IN ADDRESSING JUVENILE DELINQUENCY IN INDONESIA: A LEGAL-CRIMINOLOGICAL REVIEW

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ABSTRACT

Juvenile delinquency is a multifaceted phenomenon necessitating a comprehensive approach that integrates legal, psychological, and social perspectives. The legal complications arising from a minor's interaction with the criminal justice system significantly impact their psychological well-being and future prospects; thus, a critical analysis of policy effectiveness is imperative. Employing normative legal research, this study demonstrates that the penal approach frequently engenders detrimental stigmatization. Consequently, a paradigm shift toward non-penal measures and the implementation of a double-track system is required, alongside the optimization of conditional sentencing. Furthermore, the concept of 'Reintegrative Shaming' serves as a viable alternative to rehabilitate minors while upholding their fundamental rights as mandated by child protection legislation.

Keywords: Juvenile Delinquency, Juvenile Justice System, Non-Penal Measures, Restorative Justice, Child Protection.

INTRODUCTION

The younger generation is the bud, the potential, and the successor generation of the nation's ideals, with a strategic role for the future of the country. However, in the dynamics of their growth and development, children are often faced with complex social issues that have the potential to trigger deviant behavior. In the era of globalization, the phenomenon of juvenile delinquency has become a focus of attention and a crucial issue in Indonesia. The spectrum of delinquency is not limited to minor violations of order, but extends to various forms of serious crime.

In relation to this, Romli Atmasasmita (1985) argues that the problem of child and adolescent delinquency cannot be separated from the structural conditions of the surrounding community. However, as a consequence, when such deviant behavior conflicts with criminal law norms, children are automatically drawn into the Juvenile Criminal Justice System (SPPA). This is where a legal dilemma arises, namely how to construct a meeting point between the firm enforcement of the law in order to maintain public order and the state's constitutional obligation to guarantee the protection and future of children.

The state has established legal instruments through Law No. 4 of 1979 concerning Child Welfare and Law No. 23 of 2002 concerning Child Protection, which philosophically place the welfare of children above all else. However, the practice of juvenile justice under Law No. 3 of 1997 on Juvenile Courts (and its developments) is often characterized by a retributive approach. Therefore, research is needed to analyze these legal issues and formulate ideal policies for children.

METHODS

The research uses normative legal research methods, including a statute approach to analyze the synchronization between laws related to children, as well as a conceptual approach through a review of literature from experts in criminal law, criminology, and psychology to formulate ideas for addressing juvenile delinquency.

RESULTS AND DISCUSSION

A. Legal Issues in the Juvenile Criminal Justice System in Indonesia

The mechanism for resolving cases involving children in conflict with the law (ABH) is essentially linked to characteristics and procedural laws that are restrictive in nature. Referring to the elaborations of Gatot Supramono (2000) and M. Pasaribu & B. Simanjuntak (1992), the design of juvenile court procedural law is philosophically aimed at guaranteeing the fulfillment of children's rights, which is manifested through closed-door trials and the segregation of detention rooms from adult offenders. However, empirical reality (*das sein*) shows that there are striking legal disparities.

Maidin Gultom (2008) criticizes that the operationalization of the Juvenile Criminal Justice System in Indonesia is often trapped in fulfilling procedural formalities but fails to realize substantive legal protection. As a result, children who are caught up in the criminal justice system are highly vulnerable to being reduced to objects of stigmatization. The process of negative labeling destructively kills children's character and robs them of their accessibility to a decent future. Responding to this irony, Maulana Hassan Wadong (2000) emphasized the urgency of comprehensive advocacy assistance to protect children's basic rights, from the pre-adjudication stage (investigation) to post-adjudication (court decision).

B. Criminal Penal Policy: Weaknesses and Reform Efforts

Criminal law policy (penal policy) is essentially a derivation and integral part of social defense policy. As constructed by Muladi and Barda Nawawi Arief (1984), the formulation of criminal policy must be oriented towards the rehabilitation of offenders, and not merely function as an instrument of punishment (deterrence or retribution).

Contextualizing this view in juvenile justice, Nandang Sambas (2010) voices the urgency of reforming the criminal justice system in Indonesia towards a more humanistic paradigm. The most crucial concept in this reorientation is the application of a double track system. Sholehuddin (2004) elaborates that this system accommodates dualism in sanctions, namely criminal sanctions (*straf*) oriented towards retribution for the act, and measures (*maatregel*) focused on the rehabilitation of the perpetrator.

For juvenile offenders, the proportion of 'measures' such as medical rehabilitation, social rehabilitation, or return to parents should be prioritized over the imposition of 'criminal' sanctions. However, in cases of *ultimum remedium* (last resort), where judges are forced to impose criminal sanctions, Muladi (1992; 1995) strongly recommends the optimization of the Conditional Criminal Institution. Through this mechanism, children are spared the misery of deprivation of liberty in prison, which sociologically often mutates into a 'school of crime'—and are transferred to a guidance program in the community under comprehensive supervision.

C. Optimization of Non-Penal Measures and the Concept of “Integrative Shaming”

As an antithesis to the deadlock and destructive impact of formal criminal law enforcement, Barda Nawawi Arief (1991) postulates that criminal policy strategies should prioritize non-penal measures. These means operate in the preventive sphere to structurally

eliminate the seeds of crime, including through educational intervention, economic vulnerability alleviation, and strengthening family institution development.

Furthermore, in response to the inability of the conventional criminal justice system to rehabilitate children, Paulus Hadisuprpto (2003) offers a solution in the form of Integrative Shaming. The basic philosophy of this concept is the absolute rejection of permanent negative labeling. Through this approach, state instruments do not repress or alienate children, but rather encourage them to internalize guilt in a proportional and educational manner.

The culmination of this process is the child's full return to their social ecosystem through restorative justice mechanisms, which ultimately confirms the complete achievement of the child's future protection and welfare.

CONCLUSIONS

Based on the normative-criminological description and analysis presented above, it can be concluded that juvenile delinquency is not a manifestation of innate criminal character, but rather a product of psychological identity crisis and social environmental dysfunction.

When this issue intersects with positive legal instruments, the Juvenile Criminal Justice System (SPPA) in Indonesia is still often empirically trapped in fulfilling procedural formalities oriented towards retributive justice (revenge).

As a result, children who are actually victims of social system failure are vulnerable to negative labeling or stigmatization. Failure to provide substantial legal protection has the potential to destroy children's character and deprive them of access to a better future.

Therefore, a reorientation of juvenile delinquency prevention policies is needed, one that fully places the principle of the best interests of the child as its philosophical foundation. Formal criminal (penal) policies must absolutely be positioned solely as a last resort (*ultimum remedium*). The repressive approach must be immediately replaced with the optimization of the Double Track System, which prioritizes sanctions (*maatregel*) and the application of conditional penalties, in order to prevent children from being sent to prisons, which often mutate into "schools of crime."

Ultimately, comprehensive solutions can only be achieved through the mainstreaming of preventive and cultural non-criminal measures, as well as the institutionalization of the concept of Integrative Shaming within the framework of restorative justice. Through this approach, the state no longer punishes and excludes, but rehabilitates and reintegrates children into their families and communities.

The paradigm shift from retributive justice to justice centered on the welfare of children is not merely a policy choice, but the only way to save the future of the younger generation from destruction.

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