

Policy Formulation Regarding Psychological Action Against Juvenile Offenders

Fitri Yani¹, Alvi Syahrin², Madiasa Ablizar³, M. Eka Syahputra⁴
{pidana80@gmail.com¹, alviprofdr@usu.ac.id², ablisar@yahoo.co.id³, m.ekaputra@usu.ac.id⁴}

Universitas Sumatera Utara, Indonesia^{1, 2, 3, 4}

Abstract. The government has not taken into account the psychological impact of criminal sanctions on juvenile offenders. In Indonesia, including in North Sumatra, they are only sentenced to job training. Such criminal sanction does not significantly reduce the number of offenders and does not positively improve the behavior of the offenders. The study aims at finding alternative criminal sanctions such as psychological sanctions instead of common sanctions based on the judge's decision, namely the imprisonment, fines, and/or social work. The problems in this research are: 1) what is the current criminal law formulation for juvenile offenders? 2) in the context of criminal law reform in Indonesia, how should the criminal law formulation for juvenile offenders be in the future? This normative juridical legal research aims to describe the current criminal law formulation for juvenile offenders stipulated in statutory regulation. The results show that in reforming criminal law, psychological impact needs to be taken into account in enforcing Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by enforcing psychological sanctions instead of fines. These include stimulus activities carried out by a psychologist to provide psychiatric therapies to improve the nature and behavior of juvenile offenders and ensure that they do not repeat their actions. This can be done through psychological interviews and tests, psychotherapy or counseling, therapy or training programs, and hypnotic therapy. Through these activities, criminal law can be reformed for the better.

Keywords: Policy Formulation, Psychological Action, Juvenile Offenders

1 Introduction

The 1945 Constitution is the foundation of the state, which guarantees the independence of the nation from colonialism, as it is not following humanitarianism and justice. Likewise, as the philosophy of Indonesia, *Pancasila* is also the foundation of the state. The second principle of *Pancasila*, just and civilized humanity, and the fifth principle, social justice for the whole of Indonesia, are the state's goals, which are interconnected with one another. The protection of the Indonesian people should be based on *Pancasila* to ensure that the goals of the state are achieved. It is crucial to ensure the protection of juvenile offenders so that the juvenile criminal justice system does not negatively impact offenders' intellectual, mental, and behavioral abilities in the future. Therefore, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was reformed. Job training was assigned as a substitute for fines; this was proven ineffective in reducing the number of juvenile offenders [1].

Based on the data obtained from the case tracing information system of the Medan district court, there were a total of 499 (four hundred and ninety-nine) juvenile cases from 2020 to 2021,

comprising narcotics, child protection, and theft [2]. The increasing number of juvenile cases proves that imprisonment and job training do not change the behavior of juvenile offenders.

In handling juvenile cases, Indonesia utilizes several legal products such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which aims to protect the legal interests of children. However, the Indonesian State Court has imposed imprisonment and restorative justice in quite a few cases [3].

From May 2016 to May 2017, the Prosecutor's Office of Kupang sentenced 5 (five) juvenile offenders to job training. This has become a benchmark for reforming criminal law, but even so, the job training fails to reform the offenders and the number of juvenile cases has even increased. Therefore, the problems faced in this research are as follows: 1) what is the current criminal law formulation for juvenile offenders? 2) in the context of criminal law reform in Indonesia, how should the criminal law formulation for juvenile offenders be in the future? There are weaknesses and deficiencies in the current application of criminal law. Criminal policies need to be formulated to protect juveniles and improve themselves and not repeat criminal acts. This will be realized through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. However, these laws have several weaknesses and shortcomings. Therefore, the author proposes that these laws take into account the psychological side of the juvenile offender in the process of criminalization, determining the aspects of jurisdiction and the subject of criminal acts, and formulating criminal acts, liability, sanctions, and guidelines.

In addition, this criminal policy formulation should be oriented to the concept of child protection, as the policy draft regarding juvenile protection is part of the national criminal law reformation. An integral policy must be adopted to effectively protect juvenile offenders, namely a combination of penal and non-penal means, specifically psychological sanctions.

2 Literature Review

2.1 Policy Formulation

The juvenile criminal justice system is being reformed through the formulation of policies regarding juvenile offenders. In handling these offenders, psychological action should be taken before court sessions and during the sentence. However, this has not been applied consistently in several provinces as no related regulations exist. Policy formulation is defined as the reformulation of sanctions. The term policy originates from the English language while also existing in the Dutch language as the word *Politik*. Reformulation policies can be identified with policies in reformulating the prevailing laws. In criminal law, policy formulation is defined as policies that formulate criminal law norms formed by the legislature [4].

2.2 Psychological Action

Psychology is a science and applied science that studies human behavior, mental functions, and mental processes through scientific procedures. A person who practices psychology is known as a psychiatrist. A psychiatrist tries to improve a person's life through specific interventions on mental functions and individual and group behavior, which are based on

physiological, neurological, and psychosocial processes. psychiatric action is taken to ensure that juvenile offenders change for the better and realize their mistakes through stimulus measures. These include psychological therapy in the form of advice, counseling, and therapy towards the values of religion, morals, and ethics as alternative sanctions for these offenders [5].

2.3 Juvenile Offenders

A juvenile is a person under 18 (eighteen) who is suspected of committing a criminal act. Children are the next generation; the future of the nation depends on their actions. Therefore, it is a common obligation to ensure that they grow and develop properly for the sake of the nation. Everyone needs to know the rights and the obligations of children. As a vulnerable group, children require protection of rights. Humans are supporters of rights from birth, and among these rights, some are absolute, which requires the protection of everyone. Such rights also apply to children. However, children have special rights that arise due to their vulnerabilities. These vulnerabilities have made the world realize that protecting children's rights is necessary to create a better future for humanity. The definition of a juvenile offender is a child who has broken the law. Juvenile delinquency occurs in children with social disabilities [6].

3 Research Methodology

This is normative juridical research that reviews/analyzes secondary data in legal materials, mainly primary and secondary legal materials. The law is approached as a set of regulations or positive norms in the statutory system that regulates human life [7].

4 Results and Discussion

The current policy formulation has been implemented as a form of criminal law reformation by following per under the socio-political, socio-philosophical, and socio-cultural values of Indonesia that act as social, criminal, and law enforcement policies [8]. The reformation uses both a policy-oriented and a value-oriented approach [8]. It is part of the social policies as it is intended to solve social problems, including humanitarian issues, to achieve the goal of the state to protect society and enforce the law. The reformation is part of an effort to renew the legal substance to increase the effectiveness of law enforcement. Viewed from a value-oriented approach, the criminal law reformation is an effort to reorient and reevaluate the socio-political, socio-philosophical, and socio-cultural values that act as fundamentals and provide normative and substantive content of the ideal criminal laws. Sanctions associated with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and applied in several cases such as in Kupang are fines, job training, and others. These cases usually utilize restorative justice and impose imprisonment. Examples can be seen in Table 1.

Table 1. Examples of Juvenile Cases that are Subject to Job Training

| No. | Name | Case | Details |
|-----|-----------------------|-------------------------------------|--|
| 1. | MMT (15 years old) | Suspect charged with sexual assault | The defendant was sentenced to criminal sanctions as stated in Article 82 of Law |

| | | |
|----|---|---|
| | against the victim named BT, 3 years old | Number 23 of 2002 concerning Child Protection, based on decision Number: 268/Pid.Sus-Anak/2015/PN.Kpg. The verdict is a cumulative penalty in imprisonment and fines; the fine penalty is replaced with job training. |
| 2. | MAL MK is a 17-year-old child charged with repeated sexual assault against the victim, ASL, 6 years old. | These acts are regulated and subject to criminal sanctions in Article 81 Paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The suspect was found guilty based on decision Number 270/Pid.Sus-Anak/2015/PN. Kupang and the verdict is a cumulative penalty in imprisonment and fines; the fine penalty is replaced with job training. |

Source: Widiantari [1].

4.1 Current Formulation of Criminal Policies

Criminal law must consider the objective of national development, namely creating a just and prosperous society that is evenly distributed spiritually and materially based on *Pancasila*. Therefore, criminal law is aimed at tackling crimes and reforming the sanctions for the welfare and protection of the public. Actions that cause (material and/or spiritual) harm must be prevented or overcome by criminal law. The use of criminal law must also take into account the cost and benefit principle and the abilities of law enforcement institutions to ensure that there are no cases of everlasting [9].

The formulation of criminal policies must take into account the criteria for criminalization, conduct comparative studies, use policy and value approaches, and aim to improve public welfare. It is expected to produce a law product that is more effective and efficient in overcoming and eradicating crime in society [10].

The limitation of a penal facility is that it demands the optimal use of non-penal facilities, as it can eliminate/erase the causes of crimes. In addition, non-penal means can be more effective because of their preventive nature, while penal means are more repressive, namely taking action and eradication after a crime has occurred [10].

In the future, criminal policy formulations should focus on juvenile offenders in reforming criminal law in Indonesia. According to Barda Nawawi Arief, not all drafts of the criminal law are included in the General Section of Book I, including the guidelines on criminalization. Both used and unused drafts are taught in criminal law lessons, mentioned in law books, and generally taught to law students. However, because it is not explicitly stated in the Criminal Code, these drafts are often forgotten; they may even be forbidden to be used in court decisions. According to the author, the existence of an explicit criminalization guideline, for example, Book I and the elucidation of the Criminal Code for Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, does not mean that criminalization is only limited to the provisions stated in the guidelines. In general, criminal law, both contained in and outside the Criminal Code, only serves as guidelines and does not rule out the possibility of other provisions that are not mentioned to be applied [11].

In his book "Comparative Law in a Global Context: The Legal Systems of Asia and Africa," Werner Menski states that legal studies must be directed to find alternative perceptions around the world, justice, and various practices in solving practical problems by accommodating opposing interests while fulfilling the requirements of substantive justice. Legal issues concern the way we perceive and place ourselves in our environment [12]. Juvenile cases have developed from committing traditional to modern crimes. They are the product of the environment and modern technology. As an instrument that plays an essential role in combating juvenile cases, the law should continue to develop and be one step ahead to ensure that it is never late in preventing and eradicating crime, including those committed by juveniles. Satjpto Rahardjo states that law is not a static institution; it develops and changes over time due to the close reciprocal relationship between law and society [13].

4.2 Subsequent Criminal Policy Formulations

Policy formulation is the initial stage of crime prevention in the penal policy. It can be interpreted as an effort to formulate a law that can be used to tackle crime. The formulation stage is the most crucial, as errors can render prevention and control efforts ineffective at the application and execution stages. Subsequent criminal policy formulations are part of the criminal law reformation, particularly the reform of material criminal law. According to Sudarto, the reform of criminal law must be comprehensive, covering material and formal law and the enforcement of the law itself. The reformation must be concurrent; otherwise, problems will arise in its implementation [11]. It is necessary to reform the system for formulating criminal sanctions against juvenile offenders, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In addition to imprisonment and fines, sanctions should be aimed at improving the psychological behavior of the offender to ensure that they do not repeat their actions. Psychological sanctions will help protect juvenile offenders through activities that provide psychological stimulation, which will, in turn, help them change for the better.

5 Conclusions

Currently, juvenile offenders are subject to sanctions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002, as well as several criminal regulations such as the Criminal Code, which impose cumulative criminal sanctions, namely imprisonment and fines in which job training are imposed instead of fines. Several decisions apply restorative justice in sentencing juvenile offenders.

The criminal law should be reformed to protect juvenile offenders and ensure they change for the better. Therefore, it is necessary to formulate alternative forms of sanctions that must be conceptualized in statutory regulations. Psychological sanctions are a better alternative in preventing juvenile crimes and rehabilitating offenders than fines and/or job training which have a negligible impact on the behavior of offenders.

In reforming the criminal law, subsequent formulations of criminal policies regarding juvenile crimes should bind psychological sanctions to statutory regulations to ensure that they are applied to protect juvenile offenders for the sake of the country.

References

- [1] K. Widianari, "Perlindungan Hukum Terhadap Anak Yang Berkonflik Dengan Hukum Yang Dijatuhi Pidana Pelatihan Kerja," *Masal. Huk.*, vol. 46, no. 4, pp. 299–307, 2017.
- [2] Pengadilan Negeri Medan, "Sistem Informasi Penelusuran Perkara," *Pengadilan Negeri Medan*. [Online]. Available: <https://sipp.pn-medankota.go.id>.
- [3] M. Gultom, *Perlindungan hukum terhadap anak dalam sistem peradilan pidana anak di Indonesia*. Refika Aditama, 2014.
- [4] D. Priyatno, "Reorientasi dan Reformulasi Sistem Pertanggungjawaban Pidana Korporasi dalam Kebijakan Kriminal dan Kebijakan Hukum Pidana," *Syar Huk.*, vol. 9, no. 3, pp. 202–217, 2007.
- [5] Kamus Besar Bahasa Indonesia Online, "Psikoterapi," *Kamus Besar Bahasa Indonesia Online*. [Online]. Available: <https://www.kbbi.co.id/arti-kata/psikoterapi>.
- [6] Pemerintah Republik Indonesia, *Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak*. 2012.
- [7] S. Soekanto and S. Mamudji, "Penelitian hukum normatif: Suatu tinjauan singkat," 2001.
- [8] B. N. Arief, "Bunga rampai kebijakan hukum pidana," 2000.
- [9] B. N. Arief and B. Nawawi, "Teori-Teori dan Kebijakan Hukum Pidana," *Bandung: Alumni*, 1993.
- [10] B. N. Arief, *Beberapa aspek kebijakan penegakan dan pengembangan hukum pidana*. Citra Aditya Bakti, 1998.
- [11] B. N. Arief, *Tujuan dan Pedoman Pemidanaan dalam Konsep RUU KUHP*. 2007.
- [12] W. Menski, "Perbandingan hukum dalam konteks global sistem Eropa, Asia dan Afrika." Bandung: Nusa Media, 2016.
- [13] S. Rahardjo, *Pembaharuan Hukum Pidana*. Yogyakarta: Genta Publishing, 2009.