

## Ratio Decidendi to Impose Sanctions in the Best Interests of The Child

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### Abstract

*Law enforcement, in order to provide justice, must consider the benefits of imposing sanctions, especially on children, and prioritize the principle of the best interests of children. However, in practice, in imposing sanctions on children, judges have not optimally considered the benefits of imposing sanctions on children and have not prioritized the best interests of children because prison sentences are used more often than other alternatives, as in Article 71 paragraph (1) of the law. Number 11 of 2012 concerning the Juvenile Criminal Justice System. The research method used is normative juridical, namely a type of library research, which is sourced from primary legal materials in the form of laws, secondary legal materials in the form of books in libraries, and tertiary legal materials sourced from, among others: the internet, journals to obtain norms and rules that support the implementation of research. It is hoped that the results of the research will mean that when imposing sanctions on children, judges must really consider the benefits of the sanctions imposed on children. Sanctions are imposed to prioritize the best interests of the child's future so that it does not create a stigma that could actually damage the child's future.*

**Keywords:** *Children in Conflict with the Law, Best Interests*

### INTRODUCTION

Article 1 point 11 of the Criminal Procedure Code (KUHAP) states that a judge's decision is "a judge's statement made in open court, which can be in the form of a sentence or acquittal or discharge from all charges in matters and according to procedures regulated by law." The judge in the decision states his opinion about what he has considered and decided (Dong et al., 2022). Based on this, the concept of "judge's statement" means that the judge finds reasons and considerations to use as a basis for punishment, acquittal, or release from all charges. Therefore, the decision is a manifestation of the judge's discovery of the legal facts obtained from the examination process at trial.

In criminal procedural law, 2 (two) legal interests must be guaranteed, namely: 1. The interests of society that someone who violates a criminal law regulation must receive a punishment commensurate with their mistake for the sake of public security, and 2. It is in the interest of the person being prosecuted that he or she must be treated fairly in such a way that the innocent person does not receive punishment, or if he does sin, he does not receive a punishment that is too severe, disproportionate to his actions.

Thus, criminal procedural law is aimed at ensuring harmony and balance between these two legal interests (Abravitova et al., 2023; Guo et al., 2024). On the other hand, the existence of criminal procedural law gives the authorities the power to guarantee legal certainty. On the other hand, it limits the authorities' power from arbitrary actions in enforcing the law so that the protection of human rights is guaranteed (Spano, 2021).

In the context of criminal procedural law, Sudarto emphasized that criminal investigation activities carried out by police, prosecutors, judges, and other officials must prioritize the interests of children or look at what criteria are best for the welfare of the child concerned without reducing attention to the interests of society.

From what has been emphasized by Sudarto, the best interests of the welfare of children must be the main priority in carrying out criminal investigation activities by the relevant law enforcement officials, in this case,

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the police, prosecutors, and judges, however, without reducing attention to the interests of the community, especially those affected by these criminal acts.

Meanwhile, from the perspective of criminal science, Paulus Hadisuprpto believes that criminal penalties for delinquent children tend to be detrimental to the child's mental development in the future.

A form of accountability for children so that it does not give rise to a bad stigma/brand/label for children after undergoing it. The judge should consider other aspects, such as the considerations of a psychiatrist or psychiatric expert. The punishment that will be imposed on children who commit criminal acts, apart from looking at the severity of the threat of sanctions, is also no less important to pay attention to is the treatment in handling children, facilities, and infrastructure that can support the running of the juvenile justice process, as well as the best punishment without damaging the future. In front of children, avoiding stigmatization due to punishment is based on the philosophy of providing the best for children. Based on this background, the author is interested in writing this article with the title "Ratio Decadence for Imposing Sanctions in the Best Interests of Children".

Problem formulation for this research are; 1) How can sanctions be imposed that better reflect the best interests of the child? And 2) what is the stigmatization after the imposition of criminal sanctions on children in conflict with the law?

## **METHODS**

Research methods are processes, principles, and procedures for solving a problem by conducting research. The type of research used is normative legal research, namely legal research with literature study. Library research is legal research carried out by examining library materials or secondary data. Law is conceptualized as norms/rules based on principles, norms, rules from statutory regulations, court decisions, and doctrines. Using primary legal materials in the form of laws, jurisprudence, secondary legal materials in the form of library materials, legal opinions, teachings (doctrine), research results, scientific journals, and related literature. Data analysis is qualitative descriptive, the nature of which is to explain or describe the applicable regulations, then relate it to the reality that occurs in society, and finally draw conclusions.

## **RESULTS AND DISCUSSION**

### **Imposing the Best Sanctions for Children in Conflict with the Law**

According to (Lewis et al., 2021), several theories or approaches can be used by judges when considering a decision in a case, namely as follows:

#### **1. Balance Theory**

Theory of Balance in the court process: Before making a decision, the judge should consider the balance between the conditions determined by the law and the interests of the parties involved or related to the matter (Zhao et al., 2021).

#### **2. Theory of Art Approach and Intuition**

The decision made by the judge is the judge's discretion or authority. As a matter of discretion, in handing down decisions, the judge will adjust to the circumstances and a reasonable punishment for each perpetrator of a criminal act. In handing down a decision, the judge uses an artistic approach, determined more by instinct or intuition than the judge's knowledge (Ramanayaka et al., 2023).

#### **3. Scientific Approach Theory.**

The starting point of this science is the idea that the criminal imposition process must be carried out systematically and with great care, especially in relation to previous decisions, in order to ensure the consistency of the judge's decisions.

#### **4. Experience Approach Theory.**

The experience of being a judge is something that can help him deal with the things he faces on a daily basis.

## 5. Ratio Decidendi Theories.

This theory is based on a fundamental philosophical basis. It considers all aspects and looks for laws and regulations that are relevant to the subject of the disputed case as the legal basis for passing a decision. The judge's considerations must be based on a clear motivation to uphold the law and provide justice for the litigants (Clark et al., 2022).

## 6. Theory of Wisdom

This aspect of theory emphasizes that the government, society, family, and parents share the responsibility to guide, develop, educate, and protect children so that in the future, they can become useful human beings for the family, society, and nation.

These six theories, which can be used as a reference for judges before deciding a case, must consider the following:

- a. Balance between the conditions determined by law and the interests of the parties involved or related to the matter.
- b. the judge's instinct or intuition.
- c. the principle of prudence and consistency with previous judge decisions.
- d. stick to experience.
- e. laws and regulations that are relevant to the subject of the disputed case based on a clear motivation to uphold the law and justice for the litigants.
- f. The participation of the government, community, family, and parents is responsible for guiding, developing, educating, and protecting children

When imposing a crime or action, the judge must pay attention to the severity of the crime or delinquency committed by the child (Watamura & Ioku, 2023). The judge is obliged to consider the condition of the child, household conditions, parents/guardians/foster parents, relationships between family members, environmental conditions, and the Community Guidance Report. As stipulated in Article 60 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, if the social research report is not considered in the judge's decision, the decision is null and void.

Overcoming juvenile delinquency through imposing sanctions cannot be separated from the working of the Criminal Justice System, which in Indonesia is known as the Integrated Criminal Justice System. The work of children's law enforcement officers: children's investigators, children's public prosecutors. Children's Judges, Children's Appeal Judges, Children's Cassation Judges, Community Counselors, Professional Social Workers, Social Welfare Workers, Children's Families, Guardians, Advocates for Children, Special Children's Development Institutions, Temporary Child Placement Institutions, Social Welfare Organizing Institutions, Correctional Centers are very supportive the success of the State in directing children who were originally in conflict with the law.

These agencies each establish laws in their field and authority. This view of the administration of criminal law is called the steering model. These are all parts of activities in the context of law enforcement or criminology, which is called "crime control." A principle in dealing with crime is that these actions must be in accordance with the values that live in society (Abraham & Ceccato, 2022):

In this regard, Mardjono Reksodiputro believes that the Criminal Justice System is a system in society for dealing with crime, with the aim of:

First, prevent people from becoming victims of crime; second, resolve crime cases that occur so that the public is satisfied that justice has been served and the guilty have been punished And Third, ensure that those who have committed crimes do not repeat their crimes.

Child delinquency is often referred to as juvenile delinquency, which is defined as a child who is socially disabled. The definition of juvenile delinquency according to several experts:

According to Romli Atmasasmita Delinquency is an action or act done by a child that is considered contrary to the provisions of the law in force in a country and by the society itself is felt and interpreted as a reprehensible act.

According to Wagiaty Soetodjo and Melani Children's delinquency is taken from the term juvenile delinquency, but this child's delinquency is not delinquency as intended in Article 489 of the Criminal Code. Juvenile means Young, children, young people, characteristic features of youth, and typical characteristics of the teenage period. Meanwhile, delinquency means doing wrong, neglecting/neglecting, which was then expanded to mean being evil, a-social, criminal, breaking the rules, making noise, being a troublemaker, being a terrorizer, being irreparable, being evil, being ungrateful, and so on.

According to Sudarsono an act is said to be Delinquency when the acts are contrary to the norms in the society where it lives, or an anti-social act that contains normative elements.

It can be said from the three definitions of child delinquency that child delinquency is an act that, according to society, is deviant both in terms of law and norms in society.

Sri Widoyanti identifies several factors that can impact child involvement in crime. These include coming from a broken home family, economic circumstances, community attitudes towards its members, population density, the educational environment, the influence of media and entertainment, feelings of exclusion from peers, and the individual nature of the child themselves.

The decision handed down by the judge shows that the attitude of the judge deciding the case was strong or influenced by a positivist/legalistic mindset. This means that a new law is declared a law if it is formulated in law. Alternatively, in other words, what is normed in law is what is applied, including for children who commit murder. With this understanding, indeed, for children who commit delinquencies, the Law on Juvenile Justice regulates that for children who are threatened with imprisonment, imprisonment, and fines, the threat is reduced to ½ of the basic criminal threat intended for adults . If connected with Sri Widoyanti's opinion and to produce consistent and fair decisions, the factors that can influence criminal acts by children should be taken into consideration.

Imprisonment sentences imposed on children who conflict with the law must be considered whether the benefits are greater or whether the opposite is bad for the child; this is because it is feared that after leaving prison, the level of delinquency of children will increase while socializing in prison.

Criminologist Abintoro Prakoso is of the opinion that Criminology seeks to gain knowledge and understanding of social phenomena in the field of crimes that occur in society, or in other words, why the Defendant committed his evil act. Regarding the imposition of sanctions on children, it is not only seen from the perspective of their actions. However, it must also be examined as to why the child made a mistake as well as other supporting factors so that the punishment imposed is not only retaliatory or deterring but rather rests on recovery.

All aspects relating to children can be taken into consideration by law enforcement officials in imposing the best sanctions on children. There are no sanctions imposed on children except for good and in the best interests of the child's future.

### **Stigmatization after the Imposition of Criminal Sanctions on Children in Conflict with the Law**

According to Wirjono Prodjodikoro, former Chief Justice of the Supreme Court, criminal procedural law is closely related to the existence of criminal law and is a series of regulations that contain how powerful government bodies, namely the police, prosecutors, and courts act to achieve the State's goals by implementing criminal law. This means that criminal law is a rule that serves as a guide for the police, prosecutors, and courts in implementing procedural law in order to achieve the objectives of criminal justice.

The aim of Juvenile Justice is not merely to prioritize punishment as the main element but rather to protect the future of children, which is the target to be achieved by Juvenile Justice. So, protection for the future of children must be prioritized by the Juvenile Justice body rather than the imposition of a crime.

An important goal in juvenile justice is to promote the welfare of children (avoiding sanctions that are simply punitive) and emphasize the principle of proportionality (based not only on considering the seriousness of the law violation but also on considering personal circumstances, such as social status, family circumstances, losses caused or other factors related to personal circumstances that will influence the appropriateness of the reactions).

In connection with this statement, an important objective in juvenile justice must be differentiated from adult justice, especially in the process and imposition of sanctions, namely that it must take into account all aspects related to the juvenile justice system, background, motivation, severity of legal violations and consideration of the benefits and consequences of imposing sanctions on the child.

Meanwhile, from the perspective of criminal science, Paulus Hadisuprpto believes that criminal penalties for delinquent children tend to be detrimental to the child's mental development in the future.

As Barda Nawawi Arief believes, imprisonment can create a stigma that will continue even if the person concerned does not commit another crime. The impact of applying stigma to children will make it difficult for them to return to being "good" children . The meaning that the author gets from this opinion is that imprisonment is indeed very easy to say, but what we need to follow up on is the impact and effects of the imprisonment imposed. Especially if it is imposed on a child, it will always leave an impression on him who feels that he has the stamp of being a former prisoner. He had been a resident and socialized with the inmates of the prison for some time. The stamp that the child feels is a stigma and has left an impression that will affect the child's mental development and future. Stigmatization for children, namely the evil label (stigma), is one of the negative consequences that arise from the imposition of imprisonment, which will continue even if the person concerned no longer commits a crime, especially if the perpetrator is a child , also in terms of its effectiveness it is considered relatively less effective in crime prevention.

Former prisoners in their social lives often receive stigma and are treated unequally or discriminated against. Kartono believes that the negative stigma attached to ex-convicts also causes many companies to not accept "ex-convicts" as employees . Former convicts who have been released from prison generally regret their past behavior. They want to atone for their past sins and start a new life. They also want to provide social participation so that their status is equal to other members of society. However, social discrimination is still imposed on them, making it difficult for them to get decent work. They are rejected in their efforts to improve their position status and carry out vertical mobility, which will automatically affect their children's future in working and having a career like children their age.

A form of accountability for children so that it does not give rise to a bad stigma/brand/label for children after undergoing it. The judge should consider other aspects, such as the considerations of a psychiatrist or psychiatric expert.

"It is the dream of criminal justice, for decision makers in the legal sector, especially the Supreme Court, Attorney General's Office, Department of Justice and Human Rights, Police and DPR to sit down together, discuss and produce criminal policy, based on a philosophy of punishment that is appropriate for Indonesia." Among other things, by holding Integrated Education and Training (training) between Judges, Prosecutors, Police, Bapas, and Advocates.

## **CONCLUSION**

Based on the results of the analysis and discussion of this writing, the following conclusions can be drawn:

Imposing sanctions on children does not only consider the value of legal certainty but prioritizes the values of justice and benefits for children. The background and driving/motivating factors for the creation of a criminal

act are so that the value of justice is not neglected, or the value of the benefits for children who are sanctioned is neglected.

Within the time determined by the judge in the decision and which must be served by the child, the child spends his daily life associating with prison inmates. It is feared that this will instill in children traits and attitudes that are much more aggressive than before they were in prison. Children will experience trauma and even feel that they have received a bad reputation from their environment after serving their sentence after being released from prison.

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