



Child Judicial System: Islamic Criminal Law Concerning Criminal Enforcement of Children in The Court of Subang District

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Abstract

The development of communication technology is one of the causes of the increase in the crime rate in children so that they are caught in criminal acts. Regarding this matter, the Indonesian government has compiled a law on juvenile justice and implemented restorative justice. Likewise with Islamic law, which regulates punishment for children. This study uses a narrative method with a qualitative approach. The purpose of this research is to find out how child crime is enforced in the justice system. The results of this study indicate that the enforcement of juvenile crime can be attempted to use diversion, but still see what cases the children do first. Not all juvenile criminal cases can be resolved by means of diversion justice.

Keywords: *Islamic Criminal Law; Child Crime Law; Government; Restorative justice*

1. Introduction

Children as a gift and the greatest mandate that God entrusts to their parents. The existence of children is also inseparable from the survival of mankind. As the future generation, children should be prepared as a milestone in controlling the future of a country (Mustainah, 2017).

In order to guarantee the existence of a developed nation, the country needs a successor who is loyal and capable of fighting for the ideals of the nation. And for the sake of human survival, the nation and the child state have a very important role as stated in the law. In article 28B of the 1945 Constitution of the Republic of Indonesia concerning child protection. With the existence of the law on child protection, the State has guaranteed the rights of every child and their survival from violence and discrimination (Princess, 2018).

Criminal acts committed by children are very troubling for many parties. The phenomenon of child crime is not proportional to their age. Most of them are involved in cases of theft, decency and drugs. Deviations committed by children are caused by various factors. Among other things, it comes from the rapid flow of globalization in the field of information and communication, the development of science and

technology as well as changes in the styles and ways of life of parents which greatly influence children's behavior.(Farhan, 2014). In addition, the lack of attention, guidance and supervision from parents will also have a major effect on children's values and behavior. Of the several factors that cause deviation will be very detrimental to his personality, parents and the people around him

Efforts to protect children in conflict with the law have been listed in law number 11 of 2012 concerning the juvenile criminal justice system. This law is an update from law number 3 of 1997. In this law there is an approach in solving the problem of child crime. Using a restorative juvenile approach through diversion is considered easier in finding solutions to juvenile crimes. A restorative justice approach is solving problems fairly by deliberating together between the perpetrator, the victim and the two families involved. In other words, the concept of a justice restorative approach emphasizes the creation of justice and balance for the perpetrators of criminal acts and the victims themselves. (Budoyo, Sapto; Sari, 2019) By putting welfare first children are a form of social welfare (Ismawati, 2013).

2. Approach Method

To solve a problem in the research process, a data collection method is needed. This type of research used by researchers is qualitative research. Qualitative research is research aimed at describing and analyzing phenomena from events individually or in groups (Bachri, 2010). This research uses a narrative study method. The purpose of this study was to determine how criminal enforcers in juvenile justice. The data collected is only in the form of explanatory words or reasoning. The validity of the data depends from the facts in the field.

3. Result and Discussion

3.1 Islamic Criminal Law

The state of Indonesia is one of the countries that adheres to a rule of law. In regulating and resolving problems and problems the community has made the standard of law. In the era of globalization, there are many violent groups who intensively want to reactivate Islamic Sharia law, especially in the qisas punishment (life is rewarded with life) which is the death penalty for a criminal. One of the main objectives of imposing punishment in Islamic law is preventing and teaching and education, meaning that the existence of punishment will make the perpetrator learn not to repeat it (Hanafi: 255). However, this concept is a concept which should not be applied in the State of Indonesia which adheres to a rule of law. Because this is very contrary to universal values, namely the right to life for every human being.

Protection of human rights in the Constitution which applies in a country of law, one of the conditions is the guarantee of human rights (Aswandi & Roisah, 2019). Talking about human rights will not be separated from the viewpoint of Islamic criminal law. According to scientists, Islamic legislation is still at the root of deciding cases that violate human rights. In the term Islamic piana jurisprudence, it is often referred to as jinnayah fiqh. Jinayah fiqh is part of Islamic jurisprudence that manages the rules of criminal law. This criminal act is known as Jarimah. All the acts

of this Jarimah will be subject to punishment. Systemically, Islamic criminal law is taken from the sources of the Koran and Hadith. The passages of the Koran and the traditions of the Prophet serve as reinforcement in the development of Islamic criminal law studies. Specifically, criminal acts are divided into four types, namely: Physical punishment in the form of death, cutting off hands, whipping and stoning to death.(Asnawi, 2012).

There are several ways to solve criminal problems, one of which is by implementing restorative justice. Restorative justice is a process of diversion of all parties involved in a criminal act to jointly solve the problem for the better(Wahyudhi, 2014). The principle of justice of restorative justice is conciliasis (al-sulh). In terms of "Al-sulh" is a contract to resolve a problem or dispute to become peace (Puspa, 2014). Some fiqh scholars have allowed al-sulh to resolve disputes without going through legal channels (Ramzy, 2012). Al-sulh is in accordance with the verse of the Qur'an, surah al-Hujarat verse 9 which means:

"And if there are two groups of believers at war, then reconcile the two. If one of the two commits wrongdoing against the other (group), then fight against (the group) that commits the wrongdoing, so that the group returns to Allah's command. If that group has returned (to Allah's orders), then reconcile the two fairly, and act fairly. Indeed, Allah loves those who do justice. "

From the above verse it can be concluded that the process of al-sulh is solving problems peacefully. This means a peaceful settlement of both the perpetrator and the victim. In addition, the above paragraph contains an order for third parties to reconcile the disputing parties and uphold peace. Al-sulh is an agreement made by both parties without coercion. Although basically al-sulh is a process of exploitation on the part of the victim, the process is reciprocal because no one is harmed. So that the peace of society will be restored. But if there is no word of peace, the punishment according to the provisions of the law will still be accepted by the perpetrator(Mustainah, 2017).

3.2 Child Crime

Talking about criminal acts often makes people think negative and evil things. What they imagine is the eradication of crime by the police, prosecutors and judges. A criminal act is an act for which the perpetrator will be subject to punishment in accordance with the existing regulations in the law. According to M. Tresna, a criminal act is a human act that violates the rule of law, if the human being violates the rules and regulations, he will be punished. If human actions do not violate the rules, then there will be no punishment(Aisyiyah, 2018). Basically, crime focuses on the problem of crime in society. With the existence of a criminal act it is intended that the community is protected from crime(Harefa, 2019). The elements of criminal acts in the law have been classified into two, namely the subjective and objective elements. The definition of the subjective element is everything that is contained in the actor. Like committing a crime with an intentional and planned element. Meanwhile, the objective element is the wish that must be done by the actor(Aisyiyah, 2018).

In the country of Indonesia, there are currently many crimes that have made people uneasy. Such as pickpocketing or theft, robbery, even murder, sexual harassment, abuse of narcotics and other criminal acts which are increasingly

unstoppable. The obstacle experienced by the Indonesian state is how to make the perpetrators feel deterred and not repeat it is very difficult. And moreover, in the era of the development of technology, many children violate various norms that live in society. So that they are classified as naughty children who commit criminal acts (Hartanto An Gie Saputra. R, 2019). Etymologically, children are defined as humans who are still young, underage and immature. So that children still need supervision from their parents (Farhan, 2014).

The occurrence of an act of a child that is against the law in force in the State is classified as a disgraceful act. In law number 11 of 2012 concerning the juvenile justice system Article 1 paragraph (3) explains that children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing violations. Law, especially in the prevailing norms, will endanger its development and its future (Mustainah, 2017). So in deciding child criminal cases committed by the authorities, prosecutors, judges and parties concerned must base a principle, namely the welfare and interests of the child. (Wahyudi, 2004). Constitutionally, the 1945 constitution states that the State has assumed responsibility for and guarantees the welfare of children. Hierarchically it has been legalized in various laws which form the basis of policies and signs in the treatment of children (Ismawati, 2013). The strategy that must be taken in resolving cases of children who are involved with the law is that investigations are carried out carefully so that the child accused gets the welfare and interests of the child.

3.3 Settlement of Diversi Restorative Justice in Juvenile Justice

Diversion means the diversion of juvenile cases starting from the criminal justice process to those outside the criminal court (Mustainah, 2017). The diversion process can be applied to children who have received criminal threats under seven years of age, and not children who have committed a criminal act. Children who are not yet twelve years old cannot be brought to trial because they are deemed unable to account for their mistakes. Article 6 of the Juvenile Justice System Law states that there are several objectives of diversion, namely: achieving peace between the victim and the child. Resolving children's cases outside the court process, avoiding deprivation of children's freedom, encouraging the community to participate and instilling responsibility in children (Mulyani, 2015). Purpose is the application of restorative justice to restore a problem. Strive for diversion at the level of investigation and examination of children's cases. The judge obliged to make sure that the diversion process could always be carried out. The diversion process is carried out through deliberation involving the perpetrator, the victim, the parents of both of them as well as the parties involved such as aboutga or the surrounding community.

It is necessary to provide a rehabilitation process for perpetrators in the interests of changing attitudes. Rehabilitation activities need to be in the form of practical activities, so that children get new experiences. The rehabilitation process can develop opportunities for children (perpetrators) to practice, exercise their abilities and build partnerships with the community. Community involvement is very important, because the community acts as a mentor or provides input on child cases. This effort is seen as the supervision and defense of juvenile justice. This means that the handling of juvenile justice is in the nature of restoring or improving child prilsku.

Based on these provisions, the law will better fulfill the sense of justice for children. (Sianturi, 2016).

Like the case in the Subang District Court, there was a 17 year old child defendant with a drug crime case. The defendant is a child who has been proven to have committed an act that has violated the law, he has committed a transaction of dried marijuana leaves. Based on the law, offenders who are caught in the Narcotics Criminal Code will be subject to sanctions in accordance with Article 82 of Law Number 22 Year 1997 concerning the Circulation of Narcotics (class I), the punishment is in the form of death penalty or life imprisonment, or a maximum fine of Rp. 100,000,000,000.00 (one billion rupiah). If you look at this case, the marijuana dealers are minors and marijuana is a class I type of narcotics, without the permission of the authorities, marijuana cannot be traded. In this case the verdict is still being considered because the accused of a criminal offense is the judge's son who has sentenced him to 1 (one) year, 5 (five) months and a fine of Rp. 500,000.00 (five hundred rupiah)(Mahdi, 2010).

Marijuana is a type of intoxicating narcotics, in Islamic law it is called qiyas. The legal status of narcotics is equated with the law of khamr, which is intoxicating in nature(Mahdi, 2010). According to Islamic law doing narcotics transactions is a dangerous act (mupsid). When an adult who commits this action will be subject to severe ta'zir punishment, if the perpetrator is a minor, the punishment is still ta'zir but still observes the child's age limit. Based on age, the law still provides sanctions according to 3 age stages, namely before the age of seven the child does not get any punishment. The second stage, the weak thinking ability phase, this phase the child may be subject to ta'dib punishment. And the last phase is the ability to think fully in this phase, the child gets punishment from ta'zir and had(Listiyani, 2016).

4. Conclusion

From the above discussion, it can be concluded as follows:

- a. Children are the most valuable asset in continuing the struggle and the ideals of the nation. We recommend that children get the rights and obligations that are in accordance with those set out in the law because our country adheres to a state of law, in which we must obey written laws and laws.
- b. Restorative justice is a system of solving juvenile criminal cases outside the court. Resolving the problem by deliberating to find a way out between the victim, the perpetrator, the two families (victim / perpetrator) involved and aboutga or the surrounding community. However, this diversion process was not always successful in every case. In the above case, the judge sentenced him to 1 (one) year, 5 (five) months and a fine of Rp. 500,000.00 (five hundred rupiah) for the defendant as a child. In this case, the judge has reviewed various considerations from the facts and evidence that have been found.
- c. According to Islamic law, the penalty for criminal acts against children is not written down in the Koran and the hadith. Imposing sanctions on children by applying the imposition of the child's law according to the age / phase limits written in Islamic law.

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