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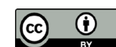

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Implementation of Juvenile Reprimand in Indonesia

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Abstract
Eight years on from the enactment of Law of The Republic Indonesia No. 11 of 2012 concerning the Juvenile Criminal Justice System, there is no implementing regulation that regulates the reprimand sanction imposed on children. In other countries, for example in the United States, a reprimand is called a judicial warning or reprimand, and is implemented in front of a pubic trial by a judge, who verbally warns children,, following which they are returned to their parents and have no obligation that must be met regarding the criminal acts they have committed. This type of penalty is mostly imposed on a juvenile who is guilty of their first offence, as well as against non-violent crimes. The placement of the reprimand in Article 77 Paragraph (1) of JCJS Act is not without purpose, but this is a form of protection for children of criminal offenders and provides choices for judges in imposing sanctions other than imprisonment. Using normative legal methods, this research examines the current practice of implementing the reprimand sanction and proposes possible suggestions for its improvement.
Keywords: Children; Reprimand; Sanction.

Introduction

Promulgated on 30 July, 2012, Law of The Republic Indonesia No. 11 of 2012 concerning Juvenile Criminal Justice System (the JCJS Act) contains new norms regarding criminal sanctions imposed on juvenile offenders and differs from Law of The Republic Indonesia Number 3 of 1997 concerning the Juvenile Court. The principal punishments referred to in Article 71 of the JCJS Act are reprimand, criminal charges with conditions, job training, coaching within the institution and imprisonment.

One of the criminal sanctions mentioned in Article 71 Paragraph (1) of the JCJS Act is reprimand. In Article 72 of the JCJS Act, reprimand is described a minor sanction that does not result in restrictions on a juvenile’s freedom. In

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addition to Article 71, mention of reprimand is also found in the Draft Criminal Code (R-KUHP) which resulted from the Discussion of the R-KUHP Working Committee of the Indonesian House of Representatives (24 February 2017).[1] Article 123 of the R-KUHP states:

The principal penalties as referred to in Article 122 letter (a) consist of:

a. Reprimand;
b. Criminal charges with the following conditions:
   1) coaching outside the institution;
   2) community service; or
   3) supervision.
c. Job training;
d. coaching within the institution; and
e. imprisonment.

In a similar manner to how reprimand is described in Article 71 of the JCJS Act, R-KUHP only explains in Article 125 that reprimand is a punishment that does not restrict juvenile freedom. However, when viewed from the history of the formation of the JCJS Act and the Draft Criminal Code contained in the Academic Paper, it is difficult to ascertain its origin and the basis for the inclusion of the concept of reprimand in the law.

In other countries, for example in the United States, a reprimand is called a judicial warning or reprimand and is implemented in front of a trial by a judge giving a verbal warning to the child in question in a publicly open trial, after which they are returned to their parents and are under no obligation that must be met regarding the criminal acts they have committed. This type of penalty is mostly imposed on juveniles who are the first to commit a crime as well as against juveniles who have committed non-violent crimes. It is further described by Kirk Heilbrun et al. as follows:[2]

> "Nominal dispositions are the least punitive options available to a juvenile court judge-beside dismissing the case-and they typically involve judicial warning and reprimands. In such dispositions, the judge verbally reprimands the juvenile in open court. Youth receiving nominal dispositions are usually

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[1] 'Rancangan Undang-Undang 2022 : KITAB UNDANG-UNDANG HUKUM PIDANA' (*Hukum Online*) <https://www.hukumonline.com/pusatdata/detail/17797/rancangan-undang-undang-2022> accessed 9 March 2021.

[2] Kirk Heilbrun, *Evaluating Juvenile Transfer and Disposition* (Routledge 2017).[211].

> released to the care of their parents or guardians and they have no additional legal obligations to fulfil relating to the offense that brought them into contact with the justice system. This type of disposition is most commonly used with the first time, non-violent offender".

Similar to the United States, Australian state Queensland also has reprimand in their act, but the Queensland Youth Justice Act (hereinafter abbreviated as Qld YJA) does not provide a definition of reprimand. The definition of this sanction is given by Queensland Courts Department Of Justice And the Attorney-General as a formal reprimand carried out by an authorised official.[3]

However, after 7 years of enactment of the JCJS Act, there is no implementing regulation that regulates the implementation of reprimands imposed on children. The initial placement of reprimand in Article 77 Paragraph (1) of the JCJS Act was not without purpose, but is a form of protection for children of criminal offenders and provides choices for judges in imposing sanctions other than imprisonment. According to Hadibah Zachra Wadjo, the purpose of punishment in the JCJS Act is different from the Criminal Code, where the goal of punishment is revenge or retaliation. The purpose of sentencing in the Criminal Code looks backwards to the crime itself rather than forwards to other goals, such as the welfare of the community or the improvement of prisoners.[4]

Prison is not the right place for children; in addition to killing growth and development, it creates a culture of violence, discrimination and labelling children as ex-convicts (Kompas, 2010). Imprisonment is actually the last resort of the law enforcers in dealing with the juvenile who committed crime, as is laid down in international conventions and legislation that regulates child crime. Article 37b of the United Nations Convention on the Rights of the Child states: "(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used

[3] Queensland Courts Department Of Justice And Attorney-General, *Youth Justice Benchbook* (Childrens Court of Queensland 2020).[234].

[4] Hadibah Zachra Wadjo, 'Pemidanaan Anak Dalam Perspektif Perlindungan Hukum Anak' (Universitas Airlangga 2017).[101].

only as a measure of last resort and for the shortest appropriate period of time." Meanwhile, Point 19.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) states: "(c) The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period." In the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Article 1 states: "The juvenile justice system should uphold the rights and safety and promote juveniles' physical and mental well-being. Imprisonment should be used as a last resort." In addition to international conventions, Article 66 paragraph (4) of Law of The Republic Indonesia Number 39 of 1999 concerning Human Rights states the following: "Arrest, detention or imprisonment of a child may only be carried out in accordance with applicable law and can only be carried out as a last resort." The JCJS Act Article 3 states that "Every child in the criminal justice process has the right: (g) not to be arrested, detained or imprisoned, except as a last resort and in the shortest time." Law of The Republic Indonesia No 23 of 2002 concerning Child Protection, in conjunction with Law of The Republic Indonesia Number 35 of 2014 concerning Amendments to the Law of The Republic Indonesia No 23 of 2002 concerning Child Protection Article 16 Paragraph (3) states that "the Arrest, detention, or imprisonment of children are only carried out if in accordance with applicable law and can only be done as a last resort".

The imposition of a juvenile reprimand on those who are criminals is intended to protect children by preventing them from being prisoned, but the implementation of a reprimand that is not in accordance with the best interest of the children principle will injure the child protection efforts contained in the JCJS Act.

On the basis of this description, the following problems can be formulated:

1) How is the juvenile reprimand implemented in Indonesia?
2) How is the implementation of juvenile reprimand in the future done in accordance with the principle of child protection?

Implementation of Juvenile Reprimand in Indonesia

According to the JCJS Act, juveniles in conflict with the law are those who

are at least 12 years old but not yet 18 and are suspected of committing a crime. The ratio legis for determining the age of criminal responsibility in the JCJS Act is based on sociological, psychological and pedagogical considerations, the need for parental guidance, whether the child can understand the consequences of the criminal acts committed, and emotional, mental and intellectual maturity factors.[5] A child 12 years or older already has criminal liability, based on Raymond Arthur's research, as follows: After the judge makes a decision in a criminal trial, the Prosecutor will immediately carry out the contents of the decision after a case is declared to have permanent legal force, namely when the public Prosecutor and the defendant do not state legal remedies against the decision. The authority of the Prosecutor in carrying out court decisions in criminal cases is explained in Article 270 of the Criminal Procedure Code, which states that the implementation of court decisions that have obtained legal force is still carried out by the Prosecutor, for which the clerk sends a copy of the decision letter to him.

Sentencing decisions containing reprimand are also carried out by the Prosecutor in reference to Article 270 of the Criminal Procedure Code. However, the absence of further regulation regarding the procedure for implementing reprimand in the JCJS Act and other laws and regulations has become an obstacle for prosecutors in carrying out the contents of the decision. As described in Article 72, the JCJS Act only stipulates that reprimand is a minor sanction that does not result in restrictions on children's freedom. This is different from the other punishments mentioned in the JCJS Act, namely criminal charges with conditions, job training and coaching in institutions, for each of which the procedures for its implementation are provided in the Act. The implementation of those punishments is subject to the conditions described in Article 73 paragraph (7) of the JCJS Act, which states: "During a criminal period on condition, the Public Prosecutor conducts supervision and the Community Counselor provides guidance so that the Child occupies the stipulated

[5] I Ketut Arjuna Satya Prema,[*et,.al.*] 'Pembatasan Usia Pertanggungjawaban Pidana Anak Dalam Peraturan Perundang-Undangan' (2019) 4 Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan.[239].

requirements." Thus, the implementation of the punishment is carried out by the public Prosecutor and community advisor by supervising the child within the period determined by the judge in his decision. The implementation of the job training punishment is regulated in Article 78 paragraph (1) of the JCJS Act and is carried out by prosecutors in institutions that carry out job training according to the age of the child within the period as determined by the judge in his decision. Finally, the implementation of criminal coaching within an institution is described in Article 80 paragraph (1) of the JCJS Act as being carried out by the Prosecutor at a job training place or coaching institution, either by the government or the private sector.

Apart from the above, the imposition of a juvenile reprimand has its own psychological impact on the child, considering the child now has the status as a convict as the decision against him has permanent legal force. The negative stigma of a criminal is attached to children even though Article 72 of the JCJS Act defines reprimand is a minor punishment. Today, there have been increasing developments in the labelling put forward by the community. Usually, the label proposed is a negative one and the target is individuals who are considered deviant. Children are particularly vulnerable to labels; childhood is a period of searching for identity and during this time children must be able to avoid crisis so that identity confusion does not occur. According to Howard S. Becker, the study of label theory emphasises two aspects, namely:[6]

1) Why and how certain people are labelled or labelled;
2) The influence/effect of the label as a consequence of behavioural deviation.

Furthermore, Edwin Lemert wrote that labelling theory is a deviation caused by society giving a stamp/label to someone who then tends to continue the deviation. Labelling theory was inspired by the perspective of symbolic interactionism and research on it has developed in various fields such as criminology, mental health, health and education. Labelling theory was pioneered by Lemert and the symbolic interactionism of Herbert Mead, then subsequently developed by Howard Becker

[6] Lilik Mulyadi, *Kajian Kritis Dan Analitis Terhadap Dimensi Teori-Teori Kriminologi Dalam Perspektif Ilmu Pengetahuan Hukum Pidana Modern* (Pengadilan Negeri Kepanjen 2009).[16].

in 1963. Labelling can also be referred to as a nickname or stamping. Initially, according to Structural Theory, deviation is understood as a behavior that exists and a deviant is a character that is contrary to social norms. Deviancy is a form of behavior. Becker stated that this criminal label would usually be attached to people who have appeared on trial, even though they might ultimately be found not guilty.[7]

Just as the imposition of imprisonment on children can harm children because society will give a stamp (stigma) to them, which can damage their careers and futures, so some will reject the presence of former child convicts, resulting in children being isolated from society. Children will therefore become better at committing crimes because they have learned to commit crimes while in prison.

Based on the description above, the judge in imposing a criminal sentence needs to consider several factors, including the defendant themselves, the ability of law enforcement to prevent crime, the types of crime and the seriousness of the crime. Some of these considerations include age, citizenship, characteristics, gender, education, health conditions, living environment conditions, position in the family and society, the seriousness of the type of crime, participation in committing criminal acts, the ability of law enforcers to carry out sentencing, and the characteristics of the type of crime.

Regarding the implementation of the reprimand, there is no Government Regulation that has been stipulated in accordance with the provisions of Article 71 Paragraph (5) of the JCJS Act. However, reprimand in the Draft Government Regulation concerning Implementing Regulations for Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is regulated in Chapter V concerning Forms and Procedures for Implementing Crimes. Articles 99 and 100 in full read as follows:[8]

Article 99

(1) Reprimand is a minor punishment that does not result in restrictions on children's freedom.

[7] K. Sunarto, *Pengantar Sosiologi* (Lembaga Penerbit FEUI 2004).[26].

[8] Lilik Mulyadi, *Wajah Sistem Peradilan Pidana Anak Indonesia* (Alumni 2014).

(2) The reprimand as referred to in paragraph (1) may be imposed on the child with the aim of preventing the child from repeating his or her actions.
(3) The Reprimand Decision as referred to in paragraph (1) is pronounced by the judge in the trial and stated in the decision
(4) In the event that the child or his legal representative or the public Prosecutor does not take legal action, the Prosecutor will immediately implement the decision after receiving a copy of the court decision
(5) Community advisors supervise children who are sentenced to a reprimand
(6) The supervision as referred to in paragraph (5) is carried out no later than 3 (three) months as of the execution of the decision by the Prosecutor
(7) The community supervisor reports the results of the development of the supervision to the supervisory judge

Article 100

The warning punishment as referred to in article 99 can only be imposed for:

a. Violation crime
b. Minor crime
c. Crime without victims
d. The value of the victim's loss is not more than the local provincial minimum wage.

The only regulation regarding the implementation of a reprimand is contained in Guideline Number 3 of 2019 Concerning Criminal Prosecutions in General Crime Cases dated December 3, 2019 issued by the Attorney General. It contains regulations regarding the criteria for imposing reprimand, and the procedures for doing so:

Criteria:

- The victim and/or the victim's family and perpetrator have forgiven each other.
  People don't mind what the perpetrator did
- The impact/loss is not too large;
  Criminal impact or loss does not exceed the provincial minimum wage
- The child's parents are cooperative, capable and competent to educate and nurture their child;
  The child's parents are able to educate their child who committed the criminal act.
- The child does not need medical and social rehabilitation;
  The child does not need medical and social rehabilitation from the impact of criminal act.
- It is not a repetition of a crime; and

The child is a first time offender.
- The child is not threatened with cumulative principal punishment.

Claims for reprimand:

- Therefore, in imposing a “reprimand” sentence on a child; the child is given a warning so they can realise their mistake and not repeat the crime;
- The Community Counselor is to provide assistance, guidance and supervision of the Child during a maximum of 30 days and is to report the child’s progress to the Prosecutor

Procedure for implementation:

- Prosecutors summon the children and parents/guardians, community counselors, and advocates or other legal aid providers (if any)
- The Prosecutor gives a warning to the child by reading the warning sentence in the form of the verdict in front of the parents/guardian or community supervisor and advisor, and an advocate or other legal aid provider (if any);
- If the child does not understand the warning sentence that has been read out, the Prosecutor will explain the warning in question;
- Prosecutors make minutes of implementation of court decisions and send copies to the District Courts;
- Prosecutors receive reports on the results of mentoring and mentoring from community counselors.

Although the issuance of a reprimand against a child, the order of prosecution and the implementation of a reprimand are not mentioned in the legislation, the procedures contained in Guideline Number 3 of 2019 can illustrate how a reprimand decision can be implemented by the Prosecutor and can be used as a reference in the formation of implementing regulations of the JCJS Act, especially in the formation of Government Regulations in the implementation of the Criminal Code.

The imposition of a reprimand in the Directory of Decisions of the Supreme Court, among others, is contained in the Decision of the Barabai District Court Number 9/Pid.Sus-anak/2016/PN Brb dated 4 April, 2016 which states as follows:[9]

- “To declare that the child I Muhammad Alkarim Alias Karim bin Abdul Galib and child II Muhammad Ananda alias Nanda Bin Landang have been legally and convincingly proven guilty of committing the crime of “Theft in Aggravating Circumstances”, as stated in the single indictment;
- Sentencing the child I Muhammad Alkarim Alias Karim Bin Abdul Galib

[9] ‘Barabai District Court Verdict Number 9/Pid.Sus-Anak/2016/PN Brb’ <http://putusan.mahkamahagung.go.id/putusan/23c54f42978b0eaa3086f738d7c7a2a. (2018, October 25)>.

therefore with a job training for 1 (one) year at the "Budi Satria" Youth Social Institution Banjarbaru, while the child II Muhammad Ananda Alias Nanda bin Landang therefore with a reprimand.

- Ordered that child II Muhammad Ananda Alias Nanda Bin Landang be released from the Temporary Child Placement Institution (LPAS) of the Barabai State Detention Center;
- Determine evidence in the form of:
  1 (one) Yuasa brand battery /
  Returned to witness Safruddin Alias Parkap Bin Musrifin.
- Encumbering the Children to pay court fees of IDR 5,000 (five thousand rupiah)."

Court Decision Number 9/Pid.Sus-Anak/2016/PN Brb states that Muhammad Alkarim alias Karim bin Abdul Galib (Child 1) and Muhammad Ananda alias Nanda bin Landang (Child 2) were brought to court for stealing one Yuasa brand battery belonging to Safrudin alias Parkap bin Musrifin. This resulted in a loss of Rp. 150,000 (one hundred and fifty thousand Rupiahs). Child 2 was sentenced to reprimand with the consideration that they had never been convicted before, and he was judged to have committed a criminal act with Child 1. Child 2, who from the beginning of the investigation had been detained by the Temporary Child Placement Agency (LPAS) at the Barabai State Detention Center, was also ordered by the judge to be released from the LPAS.

The implementation of the Decision by the Prosecutor in the case is based on the Order for the Implementation of the Court's Decision (P-48) Number Print- 20/Q.3/15/Epp.3/PA/04/2016 dated 4 April, 2016 followed by the Minutes of Execution of the Decision on the Child Muhammad Ananda Alias Nanda Bin Landang, who was sentenced to reprimand by removing him from LPAS because he had previously been detained. Regarding the detention previously carried out by Child 2, the arrangement was not stated in the judge's decision. Didik Endro Purwoleksono, explained the reduction of the detention period as follows: (Didik Endro Purwoleksono, 2015, p.78).

1. The period of arrest and or detention is deducted entirely from the sentence imposed.

2. For city detention, the reduction is one-fifth of the total length of detention, while for house arrest it is one-third of the total length of detention.
3. KepmenKeh: M.14.PW.07.03/1983

   The sentence imposed is 12 months

   10 months city detention

   Criminal time to be served: 12-(10x1/5)=12 – 2 = 10 months

Regarding the implementation of the reprimand in this case, it can be seen that the detention period that has been served by the child in LPAS is not considered, so that after the execution by removing the child from LPAS, the detention period appears useless, considering that the warning penalty is carried out by the Prosecutor by notifying the child[10]. The detention carried out by the children results in their rights, such as not being separated from their parents and their education, being neglected, even though the detention provided for in the JCJS Act has been regulated in Articles 33 to 38 of the Act. The period of detention, starting from the investigation to the judge's decision at the District Court, lasts 50 days.

In addition, detention, as one of the coercive measures that can be carried out by investigators, public prosecutors and judges, is actually one of the factors inhibiting the ability of public prosecutors and judges to implement sanctions other than imprisonment. This is explained by Erasmus A.T Napitupulu in his research for the Institute for Criminal Justice Reform, as follows:[11]

> "….. when someone has been detained and then charged with a criminal sanction other than imprisonment, it will open up space for the Prosecutor to be sued by the defendant and his family.
> Detention is one of the factors causing the non-maximum application of non-prison sentences. Under certain conditions, the detention of a suspect or defendant actually hinders the application of non-imprisonment sentences.

[10] The issue of the pre-trial detention of children in conlict with the law has remained controversial for decades. It refers to detention children awaiting the finalisation of their trial. Aminuddin Mustaffa and Nazli Nawang Ismail, 'Pre-Trial Detention of Children; A Comparative Analysis between Malayian Juvenile Justice System and International Standars' (2017) 35 World Applied Sciences Journal.[1764].

[11] Erasmus AT Napitupulu, *Hukuman Tanpa Penjara : Pengaturan, Pelaksanaan, Dan Proyeksi Alternatif Pemidanaan Non Pemenjaraan Di Indonesia* (Institute for Criminal Justice Reform (ICJR) 2019).[80].

> …. detention is not a forced effort that must or must be carried out. In practice, detention is actually seen as an obligation for investigators, public prosecutors and judges, with the reason being to facilitate the examination, so that there is no need to summon repeatedly which causes a protracted case examination. The practice of making detention a mandatory thing to do without realizing it has a domino effect”.

From this research, it can be concluded that detention by investigators, public prosecutors and judges is an obstacle for public prosecutors and judges to apply punishments other than imprisonment. This is because it opens up space for prosecution when a punishment other than prison has been imposed and the child has previously been detained and when the detention carried out becomes a punishment. This creates an obligation for investigators, public prosecutors and judges to facilitate an examination of the punishment.

Implementation of Juvenile Reprimand in the Future

From the research conducted by Napitupulu as previously explained, the use of detention will hinder public prosecutors and judges when imposing sanctions other than imprisonment. In the future, for misdemeanour, the use of detention for children will be minimised as far as possible so that it will not be a factor that hinders public prosecutors and judges in imposing crimes other than imprisonment, just as in the practice of imposing reprimand in Queensland.

In Queensland, for a misdemeanour when the police have diverted a juvenile case but failed, the process will continue by summoning the child to court through a complaint and summons or a notice to appear as stated in Qld YJA section 12, namely: “A police officer starting a proceeding against a child for an offense, other than a serious offense, must start the proceeding by way of complaint and summons or notice to appear, unless otherwise provided under this Act.” A complaint and summons or notice to appear is submitted to the child of the criminal offender so that the child comes to the Children’s Court (Magistrate jurisdiction) at a predetermined time for the case to be examined and decided. The decisions that can be handed down by the Children Court as regulated in section 175 of the Qld YJA are as follows:

175 Sentence orders-general

(1) When a child is found guilty of an offense before a court, the court may—
(a) reprimand the child; or
(b) order the child to be of good behavior for a period not longer than 1 year; or
(c) order the child to pay a fine of an amount prescribed under an Act in relation to the offense; or
(d) subject to subsection (2), order the child to be placed on probation for a period not longer than—
(i) if the court is not constituted by a judge—1 year;
or
(ii) if the court is constituted by a judge and section 176 does not apply—2 years; or
(da) if a restorative justice agreement is made as a consequence of a presentence referral relating to the child—order the child to perform his or her obligations under the agreement; or
(db) order that the child participates in a restorative justice process as directed by the chief executive; or …

By minimising the use of detention in minor criminal cases involving children and implementing a simple procedure for resolving child cases, as has happened in Queensland, it is hoped that children's rights will be given more attention.

Conclusion

Reprimand in Indonesia is implemented by the Prosecutor summoning the child and parent/guardian, community advisor, and an advocate or other legal aid provider (if any). The Prosecutor then reads the warning sentence, which is the verdict, in front of the parent/guardian, community mentors and mentors, and advocates or other legal aid providers (if any).

In the future, it is hoped that children's rights will given greater consideration by the minimisation of the use of detention in minor crime cases involving children and by implementing simple procedures for resolving child cases.

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