

THE FACTORS AFFECTING RECIDIVIST CHILDREN AGAINST THE CHILDREN'S DEVELOPMENT OF THE PENITENTIARY SYSTEM

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ABSTRACT

This research was aimed to analyze the factors that affecting the recidivist children against the children's construction of the penitentiary system. This research was also had as a starting point from constructivism paradigm. It is a paradigm where the truth of a social reality seen as a result of social construction, and the truth of a social reality which is relative. The method used is the approach of the Socio-Legal Research. The study of socio-Legal Research is a study which combines with the study of doctrinal law as the social study. The researcher used descriptive analysis. Descriptive analysis research is a research that attempts to describe the condition or a reality neither at the present time nor the research that has been done and then it is used to review the previous study and analyze it comprehensively. The results showed that the Factors Affecting the Recidivist Children Against the Children's Development of the Penitentiary System, that the children who committed criminal acts repeatedly happened when the ex-convict did not yet have the complete readiness of children in facing of the process of integration into the society. The return of an ex-convict to Correctional Facility of the Child or which could be referred to as a recidivist, was one of the effects of the presence of unpreparedness in an ex-convict. As the result, it caused the child repeating similar crimes, as the villain recurrent in the community. Consequently, to prevent the child repeating the similar crime, it was necessary a restoration effort, either in the form of curative as well as rehabilitative in handling the children as the ex-convicts which were helpless in facing the community disapproval over their whereabouts. Indonesia Penitentiary System was more emphasized in the development of the Child through education, rehabilitation, reintegration and still had to go through restorative justice approaches.

Keywords: The Recidivist Children, Development, Penitentiary System.

A. Background of the Study

The process of the construction of the inmates of children with adult inmates must be different. Since the enactment of the law number 11 of the year of 2012 about the criminal justice system of the child, the child was renamed Correctional Institution construction of Special children (LPKA). Coaching children in LPKA aimed to let the child criminal when he returned to society could comply with the values and norms of the law and not did a repeat criminal offence again.

After seeing the principle of substance setting in correctional legislation still yet to make room for the prisoners. In correctional legislation, there were no substance regulations governing educational material. For example, a drug but he was not a hustler, however, he was only users by way of imitation. Instead of the boy's soul had no hold so easy once the process of imitation lapsed behavior a crime, therefore, needed to be highlighted that the construction of the substance that was not regulated in detail in the regulatory process of the development of the child.

Thinking of a thought, a drug, but not a hustler, then he would be recovered with rehabilitation. Preferably about inmate also had to think of it, so that the children must be strengthened so that mental illness had staying power. Things that were not in one setting about coaching kids.

So not only in the formal context of establishing the institutions, but also with an intense transfer the value of the child so that the child had staying power. Culprit and children as prisoners were not regulated in detail as it was in the child's coaching arrangements, so that should be examined further.

One of the causes of the less effective coaching was not the integration process of the construction of social life. The construction of the physical, mental, social and correctional facility were not sufficient to provide confidence over the readiness of the Protege Correctional Facility towards the process of integration into the society.

According to Gultom,¹ in addressing the problems of ex-convict child, required an effort to raise public awareness that the well being of the children and preparing the child back to the community was a form of social services is very essential. Therefore, it needed to be taken of specific steps to open the relationships between children in the community. Socialization for former inmates of the child could be described as a process of adaptation to social life again. The need for the process of socialization of a teenager in an effort the fulfillment of needs was also influenced by the State of the social environment, especially in a family environment and communities already could not accept the existence of her back as before. Based on

¹Gultom, Maidin, 2008, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Anak Pidana di Indonesia*, Refika Aditama, Bandung, pp. 78.

that explanation, the author moved to investigate more about the readiness of the Protege Correctional Facility in the face of the process of integration into the society was one of the causes of the cases recidivist children in the community.

The background reasons, so that needed to be dug up again, that Correctional legislation had not yet been set up in the urgent coaching so that children had the endurance back in the life of society. Therefore, with regard to children who were doing the repetition of criminal acts that had not been provided for in the legislation needs to be enhanced with Value-based Justice Dignity.

With regard to the explanation of the above authors compiled a working paper with the title: "factors affecting Recidivist Children Against Coaching Children In Penitentiary Systems".

B. Problem Formulation

Based on the subject matter as expressed in the background of the issue in this research, it can be concluded into a problem formulation, that was: how is the factors affecting the children's recidivist against coaching children in the penitentiary system?

C. Purpose of the Study

Based on the background and problem formulation as mentioned above, then the research was done with a purpose, that was to find out the factors that affect the children's recidivist against the construction of the penitentiary system.

D. Significance of the Study

This research was expected to provide the advantages in both theoretically and practically, as follows:

- 1) Theoretically, this research can serve as a means of the development of the science of law, in particular the child protection law and the subject of the further research.
- 2) Practically, this research is expected to contribute thoughts to related parties in the construction of the children who did the repetition of criminal acts.

E. Research Method

1. Research Paradigm

This research was having as a starting point from constructivism paradigm, that is a paradigm where the truth of a social reality seen as a result of social construction, and the truth of a social reality which is relative.

2. Method of Approaches

The method that was used in this research was the approach to the socio legal research. Study of socio legal research is a study of the "blending" of the study of social study with a doctrinal law. This mixing study was based on by the belief that the rule of law had never worked in an emptiness. The rule of law was working in a space that is filled with a value system, where the interest could be dominant, not neutral. Therefore, in the study of socio legal research conducted the study of textual against clauses in the legislation. Further analysis conducted more specifically, whether those rules within the community can realize the justice, stability and welfare in the life in the society. For that reason, social research was done for accuracy and truth based on the achievement of the paradigm. Social research that could be summed up the rules of law that could provide justice or the opposite of it.²

3. Type of the Study

The type of this research was descriptive analysis. Descriptive analysis of research is a research that attempts to describe the conditions or reality, neither in the current time nor the research that has been done and then it is used to review the previous study and analyze it comprehensively.

4. Source of the Data

The resource of the data of the study consists of a source of primary data and secondary data, the researcher described the primary and the secondary data as follows:

- a. The primary data source, namely the data that is obtained directly through the source in the field of research. The primary data sources allowed the researchers to find the data or research results were authentic from a trusted source.
- b. The secondary data source, is a data source that includes a legal primary material, legal secondary material and tertiermaterial law which all of them can be found through legislation, books, writings, newspaper, magazines and other written data sources obtained from the results of a study of the literature, the study of the documentation and study the archive.
 - 1) The legal primary material is the legal materials that are binding.
 - 2) The secondary law material consisting of draft legislation, the results of the work of the scientific experts, both of which have been published that have not been or are not published, but are documented in the specific library institutions, research results, both which have been published as yet and the results of seminars and discussions.
 - 3) Legal tertier material, in this case consists of encyclopedias, dictionaries, General dictionaries and legal bibliography. This method is used to get data in the form of the document, for example, archives are needed for this research.³

²Fx.AdjiSamekto, MenempatkanParadigmaPenelitianDalamPendekatanHukum Non-DoktrinaldanPenelitianDalamRanahSosio-Legal, PedomanBagiMahasiswa S3 IlmuHukum UNDIP.

³SuharsimiArikunto, 1998, *ProsedurPenelitian, SuatuPendekatanPraktek*, RinekaCipta, Jakarta, pp. 236.

5. Method of Collecting the Data

- a. The Primary Data Collection Method
 - 1) Observation
 - 2) Interview
- b. The Secondary Data Collection can be classified in the following form:
 - 1) The legal primary materials, that is the legal materials which have the force of law in General (regulations) or have the force of law for the parties (contracts, conventions, legal documents and the decision of a judge).
 - 2) The legal secondary, namely the legal materials that give an explanation against the primary law materials (the book of law science, legal journals, legal reports and print and electronic media). Legal secondary material is all information about applicable laws or which ever applies or all information relevant to the legal issues. So the secondary law materials are the result of theoretical academic activities equalizer the legislative practice activities (or judicial practice as well).⁴
 - 3) The legal tertier materials, for example, materials law that gives an explanation against primary and secondary legal materials (legislation, legal dictionary, and encyclopedia).

6. Analysis of the Data

To analysis of data the researchers used descriptive qualitative. Analysis qualitatively in this regard was the efforts that made by the way of working with data, organizing data, classifying into a unit that could be managed, search and find patterns, find what's important and what is learned, and decide what can be told to others.⁵

F. Analysis of the Results and Discussions

Someone did the outlawed behavior because of the conscience, or his superego was so weak or not perfect. Consequently, his ego (which acts as a mediator between the id and superego) were not able to control the impulses from the id (the part of the personality that contains a desire and a strong urge to marinate in and abounding).⁶

Recidivist was the result of a person's symptoms, that could arise from the social behavior of his immoral and became a habit of the perpetrator of that criminal act, in the prisoners' assembly one of the purpose was to suppress the recidivist rate after they returned to society. Aside from the error of the application of inmates coaching there were many factors that became advocates of the occurrence of Criminal deeds including the repetition of the environmental community's return.

Within the community of people who violate norms or deviant practices agreed upon it. It would be an unpleasant backlash variety results. There could be a positive and a negative result. Among the consequences that if positive then the form would generate a change and social symptoms and it could provoke the commencement of this human creativity and seek settlement in accordance with the norms violated it, while the negative effects arising from the distorted behavior that would cause a threatening peace and harmony would not cause the creation of order in society and this would obviously cause the response from the community because they felt threatened because it was an aberration.

One of the response from the community being threatened by the tranquillity of its environment and order of society, then gave rise to stigmatization towards individuals who did such aberrant behavior. Stigmatization which has been explained previously was the process of awarding a cap by the community through actions which were done in the trial, that he was a wicked man. More and more the granting of the cap was experienced by offenders of the law in question, more than likely his portrayal of himself as totally lawless criminal and in turn greater rejection of the community against the concerned member of the public who could not be believed.⁷

Basically, if we observe this stigmatization was caused due to the fear of the society against the ex-convict, since there were fears that would affect other people and bring that person to do break the law.

The existence of the younger generation in Indonesia influence the taking action against the sustainability of national development based upon the independence and personality of the nation. The younger generation was part of the expectations of Government in undertaking social restoration as expressed in one of the missions of the leadership of the President of the Republic of Indonesia at the moment, Joko Widodo, to fix the back range deviations from the norm expected by society. However, in fact Indonesia had a number of cases of juvenile delinquency were quite high with the number of 2,716 inmates.⁸

Based on Act No. 12 by the year of 1995 concerning of the Rectifications, coaching for the inmates of the child conducted in accordance with the concept of the prisons with a view to provide the guidance to the protege correctional facility in order to realize his error, to improve themselves and not repeat the crime later on in the hope that the children could be

⁴SoetandyoWignjosoebroto, 2002, *Hukum (Paradigma, MetodedanDinamikaMasalahnya)*, ELSAM dan HUMA, Jakarta, pp. 155.

⁵Lexi J. Moleong, 2007, *MetodePenelitianKualitatif*, RemajaRosdakarya, Bandung, pp. 248.

⁶TopoSantoso& Eva AchjaniZulfa, 2011, *Kriminologi*, Raja GrafindoPersada, Jakarta, pp. 51.

⁷Didin*Masalah-MasalahAktualTentangPemasyarakatan, PusatPengembanganKebijakanDepartemenHukum Dan HakAsasiManusia*Sudirman, 2006, GandulCinereDepok, pp.52.

⁸DirektoratJenderalPemasyarakatan, 2015, *Sistem Database Pemasyarakatan*, <http://smlap.ditjenpas.go.id/public/grl/current/monthly> , diakses pada tanggal 2 Juli 2017 Jam 14.00 WIB.

accepted back in the community environment and could run the status and role as a responsible citizen and active in development.

One of the causes of the low level of readiness of the ex-convict child to socialize again in the community was the process of the construction of the correctional facility in children who had not been effective. Based on the results of the research conducted by Artyawan,⁹ conducting educational programs in Correctional skills only contributed to the readiness of inmates return to society only amounted to 44.7%. One of the causes of the less effective coaching was not the integration process of the construction of social life. The construction of the physical, mental, social and correctional facility were not sufficient to provide confidence over the readiness of the protege correctional facility towards the process of integration into the society.

According to Gultom,¹⁰ in addressing the problems of ex-convict child, required an effort to raise public awareness that the well being of the children and preparing the child back to the community was a form of social services was very essential. Therefore, it needed to be taken of specific steps to open the relationships between children in the community. Socialization for former inmates of the child could be described as a process of adaptation to social life again. The need for the process of socialization of a teenager in an effort the fulfillment of needs was also influenced by the State of the social environment, especially in a family environment and communities already could not accept the existence of her back as before. Based on that explanation, the author moved to investigate more about the readiness of the protege correctional facility in the face of the process of integration into the society was one of the causes of the cases recidivist children in the community.

According to Gultom,¹¹ juvenile delinquency was formulated as a disorder behavior, deeds or actions of teenagers who were asocial, contrary to religion, and legal provisions in force in the community. In this case, juvenile delinquency would be associated with this form of behavior diverge and the social environment that shaped them.

Through further study, then the juvenile delinquency was one result of the existences of inequality in the social environment that shaped them. Loeber¹² in his work entitled From Juvenile Delinquency to Young said that one of the processes that shaped the child or teenager to perform deeds of which distorted the driving factor and social risks that include family environment, school, and peers. To handle this, Loeber said that there was required a more effort on just my assessment of needs and risks of teenagers as well as plan interventions in teenagers with deviant behavior improve.

Children with deviant behavior that violated the law would be subject to sanctions by bears the status of the Protege Correctional Facility (Andikpas). Construction held in the Child Correctional Facility aimed to provide training, guidance and religious personalities, with the goal of keeping protege correctional facility could realize his mistakes and did not repeat again after returning to the community. In this case, the thought of Loeber aligned with Seiter, Kadela,¹³ in his work entitled Prisoner Reentry: What Works, What Does Not, and What Is Promising. Seiter, posited that there were Kadela world that would be accessed by an ex-convict.

Although the construction which was given in Correctional Institutions, that aiming to provide readiness physically, mentally, and socially to the Protege correctional facility, but this was separate from the 'world' that will be encountered in the real after coming out of Correctional Facility. Family support, resources in the life of society, and the willingness of moral support from the community into different things and affect the reintegration of child ex-convict in the middle of the life of society. This thinking was very relevant to one scientific report from The Pew Charitable Trusts about The Rise in Prison Inmates Released Without Supervision, that although there were a coaching and supervision after the inmates out of the correctional facility, but not yet guarantee the effectiveness of the reduction of the number of recidivist.

Indonesia has a number of cases of juvenile delinquency were quite high with the number of inmates as much child 2,716. West Java is the second highest after the province of North Sumatra that have the number of children the most criminal in Indonesia. The child or children are dealing with Criminal law (ABH) is handled in a coaching in Correctional and Correctional after Hall out of the correctional facility.

The return of an ex-convict to correctional facility the child or which could be referred to as recidivist was one of the effects of the existence of a vulnerability within an ex-convict to socialize children back in the community as a responsible teen in the midst of a negative view of the community against him. According to Seiter, Kadela,¹⁴ in a study titled Prisoner Reentry:

⁹Artyawan, Adetyo, 2013, *Pengaruh Program*

Pendidikan Keterampilan Terhadap Kesiapan Narapidana Kembali ke Masyarakat, NFECE 2 (1), Januari 2013, pp. 55.

¹⁰Maidin Gultom, 2008, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Anak Pidana di Indonesia*, Refika Aditama, Bandung, pp. 78.

¹¹*Ibid.*, pp. 123.

¹²Loeber, Rolf, dkk, 2013, From Juvenile Delinquency to Young Adult Offending,

<https://ncjrs.gov/pdffiles1/nij/grants/242931.pdf>, diakses pada tanggal 21 Juli 2017 jam 13.00 WIB

¹³Seiter, Richard P., Kadela, Karen R, 2003, *Prisoner Reentry: What Works, What Does Not, and What Is Promising*, pp. 361-362.

¹⁴Marlina, 2009, *Loc. Cit.*, pp. 57.

What Works, What Does Not, and What Is Promising. It was suggested that the main thing to note the existence of ex-convict was the scrutiny of the community in the form of the stability of the support and social services. Where they were specifically given to him in the form of a program or activity that allowed former convicts not being recidivist. This was in line with the focus of coaching in child correctional facility based upon the concept of prisons with the aim of preparing protege correctional facility in order to be accepted back in the life of society.

Recidivist of children was the child after the ex-convict out of the correctional facility did similar crimes again or called as a recurrent villain. Based on primary data obtained from the daily journal correctional facility the child class III Bandung, note that 42.8% of occupants Correctional children per month of March 2015 at one of the cases, i.e. cases of burglary, child inmates were recidivist. This proves that the concerns of the community will be an assessment or stigmatization against child recidivist was right it was.¹⁵

According to the phenomenon, then the view of a form of stigmatization or rejected by society against the ex-convict child still applied. Helplessness ex-convict child to return to its social environment as it received in the past to be one of the things that could be a stress or for him to then expressed back in the form of deviant behavior. Minimal accessibility towards the fulfillment of the rights as a citizen was one of the effects of helplessness of the community in giving trust back to ex-convict child to run his role as a teenager and citizens.

The results of the keeping record on the coaching cards could be the basis for planning the next stage of construction in accordance with the needs and problems of children. Seiter, Kadela¹⁶ suggested that one of the things to note was that reintegration programs for former inmates to allow children to return to the life of society on the basis of the experience itself from the results of the coaching institutes Correctional.

On the basis of the phenomenon, then it could be known that required a restoration effort, either in the form of curative as well as rehabilitative in handling ex-convict child helpless in the face of the refusal of the community over the presence of himself. One of the efforts the fulfillment of rights and handling needs with social environments that could support was the reunification of families and communities.

G. Conclusion

The factors affecting recidivist children against the children's development of the penitentiary system, that was the children who repeated the similar criminal acts happened when the children as the ex-convict did not have readiness fully in facing the integration process into the community. The return of ex-convict child into a Children's Developmental Facility or well-known as recidivist was an effect on the exist of unpreparedness in the ex-convict child, as the results the ex-convict repeating similar crimes, as the villain recurrent in the community. One of the causes of the less effective coaching was not the integration process of the construction of the social life. The development of the physical, mental, social and correctional facility were not sufficient to provide confidence over the readiness of the children towards the process of integration into the society.

H. Suggestion

1. There was a restorative effort needed, either in the form of curative as well as rehabilitative in handling ex-convict child who was helpless in facing of the disapproval community over her/his whereabouts. One of the efforts of the fulfillment of rights and handling needs with social environments that gave support was the reunification of families and communities.
2. Indonesia Penitentiary System was more emphasized in the development of the Child through education, rehabilitation, reintegration and still had to go through restorative justice approaches.
3. Children as the young generation to prevent from, not to get involved in the criminal acts even in the repetition of criminal acts, so it was required among others are:
 - a. To give the planting and the coaching of religious morals since childhood, which starts from the family, because of religious and moral was a sturdy fortification to protect from the damage and destruction of the family including children's involvement in doing criminal offense.
 - b. To provide the understanding and the recognition that the deed or criminal offence could be sentenced.
 - c. To provide the understanding and the recognition that the involvement of the children in doing criminal acts would be punished by up to shy around the environment like friends, family and the social life.

¹⁵*Ibid.*, pp. 63.

¹⁶Seiter, Kadela, 2003, *Op. Cit.*, pp. 23.

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