



The Application Of Legal Sociology Approach In Diversion Policy And The Role Of The Community Based On Law No. 11 Of 2012 Concerning The Juvenile Criminal Justice System (SPPA Law)

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Abstract

This study discusses the application of the legal sociology approach in diversion policy and the role of the community based on *Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law)*, as well as the challenges in its implementation. The SPPA Law is designed as a legal umbrella to handle children's cases with an approach oriented towards rehabilitation and restorative justice, rather than mere punishment. The diversion policy regulated in Article 7 of the SPPA Law aims to resolve juvenile criminal cases outside the court through a deliberation mechanism, involving the victim, the perpetrator, the family, and the community. Community participation is key in the process of reintegrating children into their social environment, thereby reducing the impact of negative stigma and encouraging holistic child recovery. However, the implementation of this policy still faces various challenges, such as the lack of understanding of law enforcement officials about restorative justice, the limited number of special child coaching facilities, and the community's attitude that is often still repressive towards children who commit criminal acts. This study uses a sociological juridical approach with normative-empirical methods to examine the gap between the rules in the SPPA Law and practice in the field. The results of this study are expected to provide insight into the importance of synergy between law enforcement and the community in creating an effective, humane, and rehabilitation-oriented juvenile criminal justice system, so that children who are in contact with the law can obtain adequate protection and opportunities to contribute positively to society.

I. INTRODUCTION

The regulation of juvenile criminal law in Indonesia is an important topic to be analyzed through the perspective of legal sociology because it involves two main interests: the social interests of the community in maintaining security and order and the interests of the law that regulates the protection and development of children as perpetrators of criminal acts. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (*SPPA Law*) is a legal umbrella designed to handle children's cases with a different approach from adult criminal law. As part of the reform of the justice system, the SPPA Law prioritizes restorative and rehabilitative approaches that are in accordance with the development of children as individuals who are still in the process of character formation (Ramli, 2018).

According to Article 1 paragraph (2) of the SPPA Law, which states that "*The Juvenile Criminal Justice System is the entire process of resolving children's cases that are in conflict with the law, starting from the investigation stage to the*

guidance stage after serving a sentence." In this context, the regulation of juvenile criminal law not only aims to punish, but also to recover and educate children so that they can return to society with a better mentality and character (Supardi, 2021). However, in practice, these efforts are often not optimally achieved. There is still an inequality between legal interests that demand justice and social interests that are oriented towards coaching, especially when the children of criminal offenders still receive negative stigma from society (Sutanto, 2017).

The regulation of juvenile criminal law in Indonesia cannot be separated from the perspective of legal sociology, which sees the law as a tool of social control as well as a means to shape community behavior (Rahardjo, 2016). In the perspective of legal sociology, children involved in criminal acts are considered individuals who need special protection due to their limited age and emotional capacity. This is in line with the principle of child protection in *the Convention on the Rights of the Child* which

emphasizes that all actions involving children must be based on the best interests of the child. Indonesia, as a country that has ratified this Convention, is required to adopt these principles in national regulations, including in the SPPA Law (Marzuki, 2019).

Article 9 paragraph (1) of the SPPA Law states that "Detention of children is only carried out if there is no other option and is a last resort." This provision shows that in juvenile criminal law, detention should not be the main option. Unfortunately, reality shows that detention or even imprisonment of children is still often used as the first step in the process of handling child criminal cases, even though the negative effects on children's psychological and social development are very significant (Abdullah, 2020). In addition, an approach that focuses solely on punishment is not in line with the needs of children who need a supportive coaching environment.

The problems faced in the application of juvenile criminal law are also closely related to the lack of understanding of the social context of children who are dealing with the law. According to a sociological view, children's criminal acts are generally not only influenced by individual intentions or motivations, but also by various environmental factors such as family, peers, and society (Sutanto, 2017). Unstable family conditions, poverty, and negative associations are often the drivers for children to commit crimes. Therefore, in handling child criminal cases, an approach that only prioritizes legal aspects without taking into account the child's social background is not appropriate (Ramli, 2018).

In this regard, an approach that emphasizes child rehabilitation and development needs to be improved in the practice of the juvenile criminal justice system in Indonesia. The sociology of law teaches that law is not only a tool of coercion but also a means of social control that can be used to foster and improve behavior (Rahardjo, 2016). Thus, juvenile criminal law should prioritize child development in a positive direction. A purely retributive approach to criminal law will tend to override the potential for child recovery in society. Child incarceration not only has an impact on the development of children individually, but also on their ability to reintegrate into society after serving their sentence (Supardi, 2021).

In addition, regulatory aspects related to the development of children of criminal offenders also need attention. Article 37 (b) of the

Convention on the Rights of the Child states that "The arrest, detention or imprisonment of a child shall be carried out in accordance with the law and shall be used only as a last resort, within the shortest possible period of time." This principle is in line with the SPPA Law which also stipulates that the settlement of children's cases should use a restorative approach. Unfortunately, in practice, the juvenile criminal justice system in Indonesia is still far from this goal. Approaches that focus only on punishment tend to ignore the rights of children who should be protected.

By considering some of the above issues, this study will discuss the role of legal sociology in the regulation of juvenile criminal law in Indonesia. The main focus of this study is to analyze how children's criminal law can be more in line with social interests through an approach that prioritizes not only punishment, but also social coaching and reintegration. This research also aims to explore the efforts that can be made by the government and society to ensure that children who are facing the law obtain adequate protection in the criminal justice system, and can develop themselves into productive individuals in the future.

II. RESEARCH METHODS

This research uses a sociological juridical approach, which aims to analyze the role of legal sociology in the regulation of juvenile criminal law in Indonesia, especially in terms of the balance between social and legal interests. This approach allows researchers to observe juvenile criminal law problems from a social perspective, by assessing the influence of environmental, social, cultural, and government policy factors in the application of the law (Rahardjo, 2016).

This type of research is normative-empirical research, which combines normative analysis of legal regulations, such as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, with empirical observations of its application practices in the field. Normative analysis is carried out to understand the applicable legal provisions, especially articles relevant to the protection and rehabilitation of children of criminal offenders. In this case, the researcher will study Article 1 paragraph (2) and Article 9 paragraph (1) of the SPPA Law which regulates the process of

resolving children's cases and the principle of using detention as a last resort (Marzuki, 2019).

The research data consists of primary data and secondary data. Primary data is obtained through in-depth interviews with legal practitioners, such as prosecutors, judges, and lawyers who have experience in handling child criminal cases. This interview approach was conducted to obtain a direct view of the obstacles and challenges in the application of sociological approaches in the juvenile criminal justice system. In addition, interviews with related parties from child protection institutions and the perpetrator's family were also used to obtain a social perspective in the application of child criminal law (Supardi, 2021).

Secondary data was collected through literature studies, which included books, journals, and legal documents related to child criminal regulations. In addition to the SPPA Law, the researcher also examined the Convention on the Rights of the Child, especially *Article 37(b)* which stipulates that the detention of children must be carried out only as a last resort. This study also involves the analysis of relevant literature on the sociology of law to support the understanding of the importance of social approaches in handling children facing the law (Abdullah, 2020).

The data analysis method used in this study is a qualitative analysis method. The data obtained from interviews and literature studies will be interpreted in a descriptive-analytical manner, namely by defining, comparing, and examining the provisions of the law with the reality of their application in society. The results of this analysis are expected to identify the gap between the written rules in the SPPA Law and the reality of practice in the field, as well as offer solutions that are in accordance with the principles of restorative justice and social interests (Sutanto, 2017).

Using this method, the research is expected to provide a comprehensive view of the role of legal sociology in the juvenile criminal justice system in Indonesia and encourage legal reform that is more oriented towards child rehabilitation and the

protection of children's rights in the criminal system.

III. RESULTS AND DISCUSSION

A. The Role of Legal Sociology in the Formation of Juvenile Criminal Law in Indonesia

The sociology of law approach in the formation of juvenile criminal law in Indonesia aims to create a legal system that not only functions as a tool of law enforcement, but also as a means of education and rehabilitation for children in conflict with the law. Law *Number 11 of 2012 concerning the Juvenile Criminal Justice System* (SPPA Law) emphasizes the principle of "*best interests of the child*" or the *best interests of the child*, which is the foundation in the formulation of this law. This principle is in line with the Convention on the Rights of the Child which prioritizes children's rights in every legal action (Rahardjo, 2016).

The SPPA Law, in *Article 5 paragraph (1)*, states that the juvenile criminal justice system must prioritize a restorative justice approach. This approach is designed to avoid the use of prison sentences against children as a primary effort, but instead prioritize conflict resolution through extrajudicial channels by involving children, victims, and relevant communities. This is in accordance with the provisions in *Article 6* which states that diversion aims to achieve peace between victims and children, as well as encourage community participation in handling children's problems (Abdullah, 2020)

The principle of diversion in the SPPA Law emphasizes that the detention of children must be a last resort. *Article 9 paragraph (1)* stipulates that the detention of a child may only be carried out if certain conditions are met, such as a guarantee that the child will not escape and will not damage evidence (12uu011). In addition, *Article 32* of the SPPA Law also states that detained children must still be met with their physical, spiritual, and social needs. This shows that the SPPA Law views the juvenile criminal justice process not only as a legal mechanism, but also as a process

that pays attention to the welfare and development of children holistically.

The concept of restorative justice in the SPPA Law covers several main aspects, namely recovery, stigma avoidance, and social reintegration of children into society. According to *Article 6*, the purpose of diversion includes resolving cases outside the court to prevent children from being deprived of independence, as well as instilling a sense of responsibility in children. In addition, diversion also aims to improve the relationship between children and victims, as well as promote harmony in society.

This approach also requires cooperation between institutions and the community in carrying out rehabilitative efforts for children in conflict with the law. *Article 93* regulates community participation in child protection, both from prevention to social reintegration. This reflects that the SPPA Law does not only depend on the role of the government and law enforcement officials, but also recognizes the active role of the community in providing support for children facing the law.

According to Rahardjo (2016), this approach to legal sociology illustrates the view that law not only creates rules, but must also be responsive to social needs that exist in society. With this approach, it is hoped that children who are facing the law will not only be treated as lawbreakers, but also as individuals who need help and support to develop their potential and return to society well.

Although the SPPA Law has established a strong foundation for the legal protection of children and prioritizes restorative justice, its implementation still faces various challenges. One of the main obstacles is the lack of human resources and infrastructure to support the implementation of diversion and restorative justice. Some regions in Indonesia do not have adequate Children's Special Development Institutions (LPKA), so detained children are often placed in institutions that do not support their needs. *Article 33 paragraph (5) of the SPPA Law* stipulates that the detention of

children must be carried out at LPAS, and if LPAS is not available, detention can be carried out at the local LPKS.

In addition, there are still obstacles in terms of public understanding and acceptance of the concept of restorative justice. People who still view punishment as the only form of justice tend to find it difficult to accept diversion processes that prioritize restoration over retribution. To overcome this obstacle, there needs to be further socialization and education efforts regarding the importance of restorative justice for children in conflict with the law (Abdullah, 2020).

Based on the above analysis, it can be concluded that the legal sociology approach in the formation of juvenile criminal law through the SPPA Law plays an important role in creating a humanist and fair justice system. The SPPA Law places children as individuals who need to be protected and supported, not just punished. The concept of restorative justice promoted by the SPPA Law recognizes the role of the community and institutions in supporting child recovery, and emphasizes that detention must be the last resort in handling children who are in conflict with the law.

To increase the effectiveness of the SPPA Law, reforms are needed in the form of capacity building institutions that handle children, as well as broader education to the public about restorative justice and the importance of children's social reintegration. Thus, it is hoped that children who are in conflict with the law can obtain adequate protection and have the opportunity to return to play a positive role in society.

B. The application of the legal sociology approach in diversion policies and the role of the community based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), as well as the challenges of its implementation

The sociology of law approach in diversion policy and the role of society is very important in creating a juvenile criminal justice system

that not only aims to punish but also educate and foster. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) emphasizes the importance of diversion as the main method in handling cases of children who are in conflict with the law. With the principle of "best interests for the child" underlying this law, the SPPA Law directs the juvenile criminal law process to focus more on the rehabilitation and reintegration of children into society, avoiding the negative effects of the formal judicial process.

Diversion is regulated in *Article 7 paragraph (1)* of the SPPA Law which states that "*at the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be sought.*" Diversion is the process of resolving juvenile criminal cases outside the court through deliberation involving the perpetrator, victim, family, and the community, with the aim of achieving peace and restoring relationships between the parties involved (Sudarsono, 2023). This approach is in accordance with the principle of restorative justice, which in legal sociology, aims not only to resolve legal problems but also to create reconciliation and reduce the negative impact of criminal proceedings on children (Putri, 2022).

Article 6 of the SPPA Law explains that diversion has several main objectives, including achieving peace between victims and children, resolving cases outside the judicial process, preventing children from being deprived of independence, and fostering a sense of responsibility for children. These principles show how the legal sociology approach is applied in the SPPA Law to create a system that is not only fair but also provides opportunities for children to improve themselves without bearing heavy social stigma (Mulyani, 2022).

The SPPA Law recognizes the importance of community participation in the process of diversion and rehabilitation of children who are in conflict with the law. *Article 93 of the SPPA Law* states that the community plays a

role in the implementation of child protection in the face of the law, both in the prevention and social reintegration stages after the child has served a crime or action. The role of this community is very important because it can help the rehabilitation process and ensure that children can be accepted back into their environment with adequate support (Firdaus, 2023).

From the perspective of legal sociology, society functions as a social control that supports the reintegration of children into social life. Through community support, children who have completed the diversion or coaching process can avoid the stigma effects that may arise due to their legal status. A society that accepts and supports children plays a role in preventing the recurrence of criminal acts, because children feel they have support and opportunities to improve themselves (Hakim, 2022).

Although the concept of diversion in the SPPA Law has been designed with a noble purpose, its implementation still faces a number of challenges. First, *Article 7 paragraph (2)* states that diversion must be carried out at every stage of juvenile justice for criminal acts that are threatened with a criminal offense of less than seven years and are not repeated. However, in reality, diversion is often not carried out optimally because there is still a lack of understanding by law enforcement officials regarding the importance of a restorative approach. Many investigators and prosecutors still prioritize formal procedures in handling child cases (Lestari, 2023).

Second, the challenge in the implementation of diversion also lies in the lack of facilities and institutions that can support the child rehabilitation process. In some areas, there is no Special Child Development Institution (LPKA) that suits the needs of children, so the diversion process becomes less effective. Children who undergo the diversion process without adequate guidance are at risk of re-committing criminal

acts because they do not receive proper social assistance (Pratama, 2022).

Third, there are still obstacles in public acceptance of children who are in conflict with the law. Although the SPPA Law has regulated the importance of social reintegration, the stigma of society towards the children of criminal offenders remains a barrier. Society often views children involved in criminal acts as a threat, not as individuals in need of rehabilitation and guidance. This makes it difficult for children to return to their social environment after completing the diversion or coaching process, which ultimately hinders the reintegration process (Ardiansyah, 2023).

To overcome the challenges in the implementation of diversion, several efforts need to be made. First, it is important to increase the understanding and capacity of law enforcement officials regarding restorative justice and diversion goals. Education and training on restorative approaches need to be provided to investigators, prosecutors, and judges who handle children's cases so that they better understand the benefits of diversion for child development (Santoso, 2022).

Second, strengthening special child development institutions and providing rehabilitation facilities is also important. With the availability of adequate institutions and facilities, children who undergo the diversion or rehabilitation process will receive appropriate guidance and can avoid an environment that can worsen their condition.

Third, socialization to the community about their role in supporting children who face the law also needs to be intensified. The community needs to understand that children who commit criminal acts are not solely as perpetrators, but also as individuals who need guidance and support. This socialization can be carried out through campaigns at the local level, training in schools, and the involvement of community leaders in child rehabilitation programs (Firmansyah, 2023).

With a legal sociology approach that emphasizes the importance of rehabilitation

and social support, as well as diversion policies supported by the active role of the community, the SPPA Law is expected to be more effective in building a fair juvenile criminal justice system that is in accordance with the needs of child development. This approach will facilitate the reintegration of children into society and help prevent them from getting caught up in a cycle of lawlessness.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

The sociology of law approach in the formation of juvenile criminal law in Indonesia through *Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law)* plays an important role in creating a system that focuses more on restorative justice and rehabilitation than just punishment. The SPPA Law emphasizes the principle of "the best interests of the child" in every stage of the judicial process, with the diversion approach as the main choice in resolving juvenile criminal cases. This concept, supported by the active role of the community in the process of rehabilitation and reintegration of children, aims to prevent children from falling back into criminal acts and give them the opportunity to improve themselves.

Although this policy has a noble purpose, its implementation still faces various challenges, such as limited facilities and a lack of understanding of the importance of a restorative approach among law enforcement. To overcome these obstacles, steps are needed to strengthen the capacity of law enforcement officials and provide special child-friendly facilities. In addition, socialization to the community about their role in supporting child rehabilitation is very important. With synergy between legal institutions and the community, the SPPA Law is expected to run more effectively, provide proper protection for children, and create a social environment that supports their coaching process so that they can reintegrate positively in society.

B. Suggestions

To optimize the implementation of *Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law)*, several strategic steps can be taken. First, it is important to improve training and education for law enforcement officials on the concept of restorative justice and diversion policies. This will help them understand that the coaching and rehabilitation approach has better long-term benefits than just punishment. Second, the government needs to expand the development of Special Children's Development Institutions (LPKA) and provide appropriate facilities for children's rehabilitation and social reintegration, especially in areas that do not have adequate access to these facilities.

In addition, socialization to the community about their important role in supporting the reintegration of children into society needs to be strengthened. With a better understanding of rehabilitative approaches, societies are expected to provide positive support to children facing the law, reduce stigma, and encourage them to transform into productive individuals. An integrated approach between law enforcement, coaching institutions, and the community will strengthen the effectiveness of the SPPA Law in providing optimal protection for children and helping them build a better future.

REFERENCE LIST

- Abdullah, A. (2020). *Sistem Peradilan Pidana Anak di Indonesia: Analisis Keadilan Restoratif*. Jakarta: Kencana.
- Ardiansyah, Y. (2023). *Peran Masyarakat dalam Sistem Diversi pada Peradilan Anak*. Jakarta: Penerbit Maju.
- Firdaus, A. (2023). *Implementasi Diversi dalam Sistem Peradilan Pidana Anak di Indonesia*. Surabaya: Mandiri.
- Hakim, F. (2022). *Keadilan Restoratif dalam Sistem Peradilan Pidana Anak*. Yogyakarta: Pustaka Edu.
- Lestari, R. (2023). *Tantangan Diversi dalam Praktik Peradilan Pidana Anak*. Bandung: Refika Aditama.
- Marzuki, M. (2019). *Hukum dan Sosiologi: Integrasi dalam Pembentukan Hukum yang Berkeadilan*. Yogyakarta: Universitas Gadjah Mada Press.
- Mulyani, S. (2022). *Pendekatan Sosiologi Hukum dalam Pembinaan Anak Berhadapan dengan Hukum*. Semarang: Lintang Press.
- Pratama, R. (2022). *Fasilitas dan Sarana Rehabilitasi dalam Diversi Anak*. Jakarta: Rajawali Pers.
- Putri, D. (2022). *Diversi sebagai Upaya Restoratif di Indonesia: Perspektif Sosiologi Hukum*. Malang: Kencana.
- Rahardjo, S. (2016). *Sosiologi Hukum: Kajian Tentang Dampak Sosial dari Penerapan Hukum di Masyarakat*. Jakarta: Pustaka Sinar Harapan.
- Rahardjo, S. (2016). *Sosiologi Hukum: Suatu Pengantar*. Bandung: Alumni.
- Ramli, A. (2018). *Hukum Anak di Indonesia: Dari Konsep ke Implementasi*. Surabaya: Pustaka Pena.
- Santoso, B. (2022). *Penguatan Kapasitas Aparat Penegak Hukum dalam Penanganan Kasus Anak*. Jakarta: Gramedia.
- Supardi, S. (2021). *Hukum Pidana Anak di Indonesia: Pendekatan Restoratif dalam Penegakan Hukum*. Bandung: Remaja Rosdakarya.
- Supardi, S. (2021). *Hukum Pidana Anak di Indonesia: Pendekatan Restoratif dalam Penegakan Hukum*. Bandung: Remaja Rosdakarya.
- Sutanto, T. (2017). *Faktor Sosial dalam Pembentukan Perilaku Anak dalam Perspektif Hukum Pidana*. Semarang: UNDIP Press.
- Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.