

# Restoration of Children's Rights after Imprisonment in the Perspective of State Responsibility

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## ABSTRACT

Sensitivity to a sense of justice and concern for the next generation of a nation should also be measured by their attention to efforts to protect the rights of troubled children, especially the rights of post-prison children. This research aims to examine the weaknesses of the regulation of children's rights after imprisonment and to examine the state's responsibility in restoring the rights of children after imprisonment. This research uses normative legal research methods with statutory and conceptual approaches. The results of the study show that, basically, the rights of children who are post-convicted, as previously mentioned, are regulated in the Child Protection System Law and generally regulated in the Child Protection Law. In an effort to fulfill human rights by the Indonesian State, it must be carried out thoroughly, including in terms of fulfilling children's rights as part of human rights in general, and the fulfillment of children's rights itself must be carried out for all children who live, grow and develop under the umbrella of Indonesian law, including children after being convicted. The regulation of children's rights as stipulated in the Child Protection System Law and the Child Protection Law is not enough, so in addition to the need to explicitly emphasize the rights of children after being released from prison, it is also necessary to regulate the mechanism for restoring their rights after being released from prison.

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## 1. INTRODUCTION

The decision in the form of punishment against children is still used by the court in most crimes committed by children tried by the court as part of criminal law enforcement, even though there are more alternative options that can be used by law enforcement officials. The imposition of punishment is indeed possible based on Article 82 and Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), where the Law has provided a lot of space for judges to be able to not impose punishment in the form of imprisonment alone.

One example of a case that has occurred related to the application of criminal sanctions against children whose rights must be restored is the case in decision Number 1/Pid.Sus-Anak/2019/PN Sbg., that the chronology of the child Nurul Bintang Fradilla alias Dinda together with Nepin Dwi Jaya Sinulingga alias Nepin and Sayyid Riski Ananda alias Evril Ananda Sayyid alias Nanda (separate file) on Sunday, February 10, 2019 at around 01. 30 WIB or at least at a certain time in February 2019 at Jalan Elang, Pancuran Bambu Village, Sibolga Sambas Subdistrict, Sibolga City, precisely in the boarding room belonging to Nepin Dwi Jaya Sinulingga alias Nepin (separate file) or at least at a certain place which is still included in the jurisdiction of the Sibolga District Court, "attempted conspiracy to commit a criminal offense, unlawfully or unlawfully possessing, storing, controlling or providing Narcotics Group I not Plants".

Based on the setting of the case in the case of narcotics abuse committed by the minor, the Panel of Judges who examined and tried the case imposed a sentence by declaring the Child Nurul Bintang



Fradilla alias Dinda mentioned above to be legally and convincingly proven guilty of committing the crime of "Jointly Abusing Narcotics Group I for Yourself" as in the second alternative charge; and sentenced the Child therefore to imprisonment for 7 months.

The certainty aspect requires that in his decision, the judge must be guided by the provisions of the legislation as the principle of the State of Indonesia is a state of law. Basically, the imposition of punishment according to the SPPA Law requires the juvenile justice process to prioritize and prioritize diversion efforts. This is intended to pull the settlement of juvenile criminal cases out of the realm of *justisi* into a family settlement with a consensus mechanism.

Based on the principle of expediency, the judge's decision is not necessarily guided by the provisions of the law (Fauzia et al., 2021). But more than that, judges must see that society and the state participate in the fulfillment of children's rights. This is a form of protection for the growth and development of children, both children in conflict with the law and child victims, in accordance with the principles of the SPPA Law, namely protection, justice, non-discrimination, the best interests of the child, respect for the child's opinion, survival and growth of the child, guidance and guidance of children, proportionality, deprivation of independence and punishment as a last resort. The imposition of this punishment becomes shock therapy for the defendant, with the hope that he will not repeat criminal acts in the future so that the judge's decision will benefit the defendant.

Based on the criminal punishment in the form of imprisonment imposed on children, in this case, recovery is also needed for children as perpetrators of crime after the punishment they have received. The importance of the recovery of children who are victims or perpetrators of criminal acts should receive serious attention. Because even though the child has committed a crime, he also has rights that must be fulfilled.

In this situation, it is necessary to seriously consider the involvement of the State in order to provide recovery measures to post-criminal children (Fauzia & Hamdani, 2021). In addition to recovery measures, the government should formulate a policy scheme to ensure that the future of the perpetrators (who are still children) can still be guaranteed. This policy scheme can be carried out by ensuring that children get education and health guarantees so that they can look forward to the future well. In addition, psychological recovery also needs to be carried out so that children's trauma can be resolved properly (Riyadi, 2016, p. 7).

The state must use laws, regulations, and government instruments in carrying out its roles and responsibilities as a state of law (Wahid et al., 2022). In Indonesia, there are government agencies engaged in the social sector in providing protection to children caught in criminal cases and those who have undergone post-criminalization. In the field of social welfare, there are government agencies in charge of carrying out the general duties of the Government, namely the Ministry of Social Affairs. In addition, there are also other social agencies or institutions engaged in the field of child protection, especially children who are perpetrators of crime and post-criminalization or children as victims of criminal acts. In carrying out its duties and functions, the Indonesian Ministry of Social Affairs and other social institutions coordinate with law enforcement officials such as judges and lawyers in order to fulfill the rights of children after being convicted.

## 2. METHOD

Normative legal research methodologies, which combine a conceptual and statutory approach, are employed in this study. In order to implement the statutory method, all applicable laws and regulations pertaining to the legal issues under consideration must be examined (Ibrahim, 2007, p. 321). In this research, the researcher uses the SPPA Law and related legislation as the basis of reference for the application of norms related to the fulfillment of children's rights after imprisonment. In the conceptual approach, the researcher examines theoretical aspects related to legal objectives in the restoration of children's rights.

## 3. WEAKNESSES IN THE REGULATION OF CHILDREN'S RIGHTS AFTER IMPRISONMENT

The fulfillment of children's rights, especially children after being convicted, has not been fully provided by the Indonesian government. The SPPA Law only regulates the fulfillment of children's rights regarding rehabilitation and safety guarantees in Article 90 Paragraph (1). In addition to the rights that have been regulated in the provisions of laws and regulations as referred to in Article 89, child victims and child witnesses are entitled to:

- a) Medical rehabilitation and social rehabilitation efforts, both in institutions and outside institutions,
- b) Assurance of safety, whether physical, mental, or social,

c) Ease of obtaining information about case progress.

Regarding the regulation of the restoration of children's rights after being convicted, according to the author's analysis, it is almost the same as the regulation of the fulfillment of the rights of those in conflict with the law. According to the SPPA Law, children in conflict with the law have the right to be humanized by paying attention to their needs according to their age. Article 1, paragraph (6) of the SPPA Law emphasizes the restoration of children's rights back to their original state, not retaliation.

However, it can be understood that the focus of the regulation in the SPPA Law is only on the rights of children while undergoing legal proceedings. Therefore, the rights of children after imprisonment are not specifically regulated in either the SPPA Law or the Child Protection Law. The non-regulation of children's rights after imprisonment in the above legislation is philosophically due to the fact that children's rights after being released from prison must be considered equal to the rights of children in general. However, in the development of an ideal legal system, in the midst of the socio-cultural conditions of the Indonesian people who still have a negative stigma towards children who have been released from prison, there need to be affirmative action arrangements in the restoration of children's rights after being released from prison.

In the Child Protection Law, which regulates children's rights in general, some rights have been implemented well, and some rights have not been optimized. The rights that have been implemented well are generally rights related to education, social, and health guarantees as stipulated in Articles 8 and 9 of the Child Protection Law. However, the rights that have not been implemented optimally are the rights related to growth and development, as well as the avoidance of discrimination and violence in the community, especially among peers, as stipulated in Article 4 of the Child Protection Law.

Thus, the regulation of children's rights as stipulated in the SPPA Law and the Child Protection Law is not enough, so in addition to the need to explicitly emphasize the rights of children after leaving prison, it is also necessary to regulate the mechanism for restoring their rights after leaving prison. Therefore, the creation of a policy that is affirmative action in restoring the rights of children after leaving prison does not mean that children who leave prison and children, in general, are not equal, but this policy is needed to pressure the government through related institutions such as the Child Protection Agency (LPKA), social services, and the community to assist children in restoring their rights as also mentioned in the Child Protection Law.

The lack of post-conviction rights restoration also affects the child's adjustment to the surrounding community. The lack of protection from the state for post-conviction children will lead to greater potential, especially in terms of the child's psychology and the massive negative stigma from the community. There is a negative stigma about ex-convicts because there are many inmates who always return to repeat the same mistakes they made before, thus making society in general look down on them negatively. But in addition to the negative views of society, ex-convicts themselves have a sense of inferiority and also psychological barriers to plunging into the midst of society again after getting out of prison (Iskandar, 2017, p. 18). With the stigma that arises in the community, former prisoners try to adjust to their environment. Most people assume that prisoners are considered troublemakers, so most people reject and often discriminate against ex-prisoners. Society highlights from a negative perspective all forms of behavior and daily activities of ex-prisoners who have been released from custody, so ex-prisoners feel ostracized or alienated from the community. The difficulties experienced by ex-prisoners in regaining the little trust of the surrounding community and the difficulty of finding work to fulfill their daily needs, either for themselves or their families.

Carrying the title of an ex-convict is a burden that must be borne by lawbreakers who are serving prison sentences in correctional institutions (LAPAS). Because an ex-convict, after being released from a correctional center, often experiences discrimination by his or her environment. Stigma about ex-prisoners often arises in society, which makes it difficult for ex-prisoners to adapt and makes them have to have the strength to survive the difficulties and obstacles faced in social life.

Stigma itself is an attribute that damages a person's self-image, which is any trait that clearly has a great influence on a person's personality so that he is unable to behave as usual (Formaninsi, 2014, p. 37). Stigma is a negative thought, view, and belief that a person gets for the behavior he has done as a form of social reaction from society or his environment. If a person has been exposed to social stigma, then personally, he or she is very disadvantaged. It is very difficult to remove the stigma that has already been attached. Even the impact of the stigma stamp often leads to ostracism in the environment.

Goffman mentions in his theory of stigma that if a person has attributes that make him different from people in the same category as him (such as being worse, dangerous or weak), then he will be assumed to be a tainted person. This attribute is called stigma. The stigma is something that worsens the image of an ex-prisoner. These attributes are (Retnowati, 2012, p. 11):

- a) A person who has unrighteous deeds,
- b) A person who has deviant behavior,

- c) A person who is abnormal,
- d) A person who is immature and unable to determine the direction of their life.

The correctional concept's implementation is a step toward modernizing the jail system by giving prisoners' human rights a higher priority. According to the correctional concept, the only rights that state-deprived inmates have are the right to freedom; beyond that, the state is in charge of regaining the rights of formerly incarcerated individuals as members of society and citizens. Restoring social tensions between prisoners and their communities is the state's responsibility in upholding social rights within the confines of the correctional concept with a social reintegration method. Social conflicts in this context are crimes that inmates commit.

One of the causes of the low readiness of former child prisoners to re-socialize is the ineffective coaching process in the Children's Correctional Institution. Based on the results of research conducted by Artyawan, the implementation of skills education programs in correctional institutions only contributes to the readiness of prisoners to return to society only 44.7% (Artyawan, 2013, p. 55). One of the causes of ineffective coaching is the lack of integration of the coaching process with community life. Physical, mental, and social development in juvenile correctional institutions is not enough to provide confidence in the readiness of prison students towards the process of integration into society.

In addressing the issue of former juvenile offenders, an effort is needed to raise public awareness that caring for children and preparing children to return to society is a very important form of social service (Gultom, 2010). Therefore, certain steps need to be taken to open up the relationship between children and society. Socialization for former child prisoners can be said to be a process of self-adaptation back into social life. The need for a teenager's socialization process in an effort to fulfill their needs is also influenced by the state of the social environment, especially if the family and community environment cannot accept their existence back as before.

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Ex-convicts are very likely to still be considered a social stain as a result of deviations from the social values and norms that apply in certain societies. In fact, former prisoners, after being released from correctional institutions, still have hope to be able to return to society and continue their lives towards a better direction. However, the facts show that ex-prisoners will automatically get pressure from the environment and tend to face difficulties to continue their life and livelihood.

For example, when there are former prisoners as perpetrators of criminal acts, even though they have received guidance and education in correctional institutions, they still get the label of criminals from the surrounding community, and this makes former prisoners rejected from the community to gather again with them and other forms of environmental rejection which are also very visible in relation to the scope of work. Not only the negative stigma received by former prisoners from the community but also from companies. The negative label or stigma received by ex-convicts leads to difficulty in finding work because many companies are not willing to accept or employ ex-convicts as employees or employees in their companies. In addition to the labeling of former criminals, this is also due to the requirement of good treatment known as the Police Record Certificate (SKCK), which was previously known as the Certificate of Good Conduct (SKKB).

#### 4. RESTORATION OF CHILDREN'S RIGHTS AFTER IMPRISONMENT: A STATE RESPONSIBILITY PERSPECTIVE

The government must create two materials in the form of presidential regulations and six materials in the form of government regulations in accordance with the SPPA Law. But as of right now, not all of the enabling regulations are accessible. Only two government regulations—the Presidential Regulation on Training for Apparatus and the PP on Diversion and Handling of Children Who Are Not Yet Twelve (12) Years Old—have been finalized by the government (Saputra & Subroto, 2022, p. 8613). The absence of new institutions to take the role of juvenile detention and arrest facilities, however, is one of the most alarming problems. The establishment of four institutions—LPKA, LPKS, RPKA, and LPAS—as an alternative to juvenile detention, coaching, and penitentiary facilities has been facilitated by the SPPA Law (Institute for Criminal Justice Reform, 2017). Juvenile Special Development Institution (LPKA) is an institution or place where children serve their sentences, while Lembaga Penempatan Anak Sementara (LPAS) is a temporary place for children during the judicial process (Institute for Criminal Justice Reform, 2016).

The primary focus of this law is the clear regulation of restorative justice and diversion, which aims to keep kids out of the legal system and away from stigmatizing kids who run afoul of the law. Ultimately, the goal is for kids to be able to go back to normal social settings. This is one of the items included in the SPPA Law's General Elucidation section.

Legal protection is not only given to children who are victims of crime or victims of crime but also to children in conflict with the law (ABH); where the state provides legal protection in resolving the case, it must prioritize the Restorative Justice approach and make diversion (Tambah, 2010, p. 204). In addition, legal protection for ABH should not end with the legal process alone, but also when ABH leave prison and are returned to their families.

Children in conflict with the law are actually victims of what they see, hear and feel, as well as the influence of the environment around them (Gultom, 2010). Many factors are behind children who commit criminal offenses, including education, age, children's socialization and family environment. The situation is difficult for children when they are identified as children in conflict with the law (AKH). Children are thrown into prison, rehabilitated and returned after serving their sentences (Marlina, 2009, p. 87). However, their rights after being released from prison are sometimes not considered. Because when out of prison, they become vulnerable to treatment such as bullying and other discriminatory treatment.

In an effort to restore the rights of children after imprisonment, social reintegration can be carried out. However, as a result of the absence of specific regulations governing the mechanism of social reintegration, the current process is just running without any guidelines both in terms of policy and technical implementation. As a result, the interventions carried out in the social reintegration process did not work as expected. Many children do not get further education, do not get job training and fulfill other needs because the service providers are not well coordinated.

The importance of social reintegration is due to the major problem that children face when they leave prison, namely the uncertainty of their future. Many of them are further removed from their 'world', frustrated and even get caught up again in behavioral and legal problems that will drag children back into crime (Ernaningsih et al., 2017, p. 4896).

Regarding the model of social reintegration for children above, what is very important to emphasize is related to the involvement of the state. The involvement of the state in conducting social reintegration can be the authority or responsibility of the Ministry of Law and Human Rights of the Republic of Indonesia, namely through the Correctional Center (Bapas). This is because the role of Bapas in restoring children's rights after release from prison is in line with the main tasks of Bapas according to the SPPA Law, one of which is to provide community guidance (Article 87 of Law Number 11 of 2012 concerning the Juvenile Justice System). Although the duties of Bapas regarding the restoration of children's rights in the community through social reintegration have not been explicitly regulated in the SPPA Law, Bapas can still make efforts to restore children's rights while waiting for a legal instrument to be made that specifically regulates social reintegration mechanisms. Moreover, Article 2 of the SPPA Law states that one of the principles in the juvenile criminal justice system in Indonesia is related to the guarantee of the survival and development of children.

The state's obligation to restore and maintain children's rights after release from prison is also actually a mandate from the Child Protection Law; namely, children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, government, and local governments.

With this explanation, the Child Protection Law has the aim of ensuring the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and receive protection from discrimination for the realization of quality, noble, and prosperous Indonesian children.

The legal implications for the state when it does not fulfill its obligations in restoring children's rights after being released from prison currently do not exist. As described in the previous discussion, regulations governing the obligations of the state, for example, through Bapas, still do not exist. Therefore, considering the importance of accommodating and restoring the rights of children when they return to their parents, it becomes urgent for the state to make arrangements related to the restoration of children's rights.

## 5. CONCLUSION

1. Within the framework of the Child Protection Law, which regulates children's rights in general, certain rights have been implemented optimally, judging from various studies, while others have not. The rights outlined in Articles 8 and 9 of the Child Protection Law-relating to social security, health, and education- are generally well implemented. However, the right to growth

and development and the prohibition of violence and discrimination in society, especially among peers, as outlined in Article 4 of the Child Protection Law, have not been fully implemented.

2. Sometimes, upon release from prison, children's rights are neglected. This is because they are more vulnerable to discrimination and bullying after being released from prison. The government, therefore, needs to implement social reintegration, which can be used to restore children's rights after imprisonment. However, the current procedure operates without any guidance on policy or technical implementation due to the lack of legislation guiding social reintegration mechanisms. Social reintegration process interventions have not been as successful as planned. Many children miss out on opportunities for additional education, job training and other needs due to poorly coordinated service providers. Therefore, the government needs to create legal instruments in the form of guidelines both in terms of policy and technical implementation of social reintegration.

#### CONFLICT OF INTEREST

The authors declare that they do not have any conflict of interest.

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