



RECONSTRUCTION OF THE AUTHORITY OF APPLYING JUDGES TO DARE ABOUT CHILDREN WHO VALUE JUSTICE

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Abstract

This research is focused on reviewing and analyzing, 1) The basis of the Appeal Judge's Authority to Detain Children Who Makes Appeals. 2) Reconstruction of Judges' Authority to Detain Children with Justice Values. This research uses a normative approach. The results of the study conclude: 1) The authority of judges including Appeals Judges or High Court Judges in detaining defendants is contrary to the principle of presumption of innocence, because detention is a realm of presumption of guilt that can only be used by investigators and public prosecutors, if the judge is burdened with the authority to commit detention, the judge is no longer independent, because in his decision he will consider the detention he has done, and the detention carried out by the judge even becomes his authority, indicating the judge has decided the defendant is guilty even though the verdict has not been handed down, because the basis for detention is that there is sufficient evidence obtained. Investigators and/or the Public Prosecutor, while the evidence has not been proven at trial, and it is impossible for a judge to dare to make an arrest if he does not assume that the defendant is guilty, and will be sentenced to imprisonment. 2) The ideal reconstruction of the judge's authority in carrying out detention based on the principle of presumption of innocence and the value of justice, is to revoke the judge's authority to detain the accused and delegate it to the public prosecutor in this case in stages delegated to the District Attorney's Office, the Head of the District Attorney's Office, the Public Prosecutor's Office High Court, the Head of the High Prosecutor's Office, the Attorney General and the Head of the Attorney General's Office, by reconstructing Articles 20, 23, 26, 27 and 28 of the Criminal Procedure Code. Suggestions are stated: 1) The regulation on the authority of judges to detain and extend the detention of suspects/defendants in the Criminal Procedure Code and the Juvenile Criminal Justice System Act should be revoked, and revised by transferring the authority of the judge to the Public Prosecutor. 2) The revocation of the authority of judges at all levels of the judiciary, from the District Court, High Court and Supreme Court, the transfer of such authority to the prosecutor's office in accordance with the levels of the judiciary and the prosecutor's office, namely the District Attorney's Office, the High Prosecutor's Office and the Attorney General's Office, must be accompanied by the establishment of a supervisory agency or institution. the detention, namely through the Supervisory Judge who in the 2012 Criminal Procedure Code Bill is called the Preliminary Examining Judge.

Keywords: Reconstruction, Authority, Judge Of Appeal, Detention, Children.

I. INTRODUCTION

National legal politics has established Indonesia as a country based on law (rechtsstaat), as regulated in Article 1 paragraph (3) of the 1945 Constitution. The concept of a legal state refers to

the spirit of the nation (volkgeist) contained in Pancasila and the Proclamation of Independence as the source of all sources. law and constitutionalism. The criminal law system as a form of political embodiment of criminal law should have been formed with the

inspiration of the 1945 Constitution as a juridical basis. Consequently, the criminal law system must be spelled out concretely in every statutory regulation. However, the spirit of Pancasila and the Proclamation of Independence in the criminal law system has not yet been realized properly, for example, the adoption of foreign elements. To realize this, the formation of criminal law politics and the draft of a national criminal law system should limit the applicability of foreign elements based on the concept of harmonization and synchronization with the Indonesian volk geist contained in the Pancasila and the Proclamation of Independence, therefore the state should not carry out its activities on the basis of mere power. but must be based on law. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, states that: "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law". Everyone referred to in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, including children.

Detention according to the Criminal Procedure Code can be seen in Article 1 Point 21 in conjunction with Article 20 of the Criminal Procedure Code Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with his determination, in the case according to the method regulated in this law. Detention as regulated in the Criminal Procedure Code is detention that is imposed on a suspect or defendant, while detention for child suspects or defendants is regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU-SPPA)

Officials or agencies that have detention authority according to HIR are different from the Criminal Procedure Code and/or UUSPPA. HIR determines that only two officials or agencies make detentions, namely prosecutors (magistraat) and assistant prosecutors (hulp magistraat) while judges only extend detention by prosecutors (magistraat), then the Criminal Code and/or UUSPPA determine that there are three kinds of officials or institutions authorized to make detentions, namely investigators or assistant investigators, public prosecutors and judges which according to the level of examination consist of judges of the district court, high court, and the supreme court. Each of these detentions can also be extended, in contrast to the previous HIR system, where the public prosecutor could not extend the detention of an assistant prosecutor. The detention authority as intended is targeted for certain reasons or interests as regulated in Article 20 of the Criminal Procedure Code, namely:

- a) For the purposes of investigation, investigators or assistant investigators on orders from investigators as referred to in Article 11 are authorized to make detentions.
- b) For the purposes of prosecution, the public prosecutor is authorized to make further detention or detention.
- c) For the purpose of examining the judge in a court session with his stipulation, he is authorized to make detention.

The order for further detention or detention is regulated in Article 21 of the Criminal Procedure Code, as follows:

- 1) An order for further detention or detention is carried out against a suspect or defendant who is strongly suspected of committing a crime based on sufficient evidence, in the event that there are circumstances that raise concerns

that the suspect or defendant will escape, destroy or destroy evidence and or repeat the crime.

- 2) Further detention or detention is carried out by an investigator or public prosecutor against a suspect or defendant by issuing a detention order or a judge's determination which includes the identity of the suspect or defendant and states the reasons for detention and a brief description of the criminal case suspected or charged and the place where he was detained.
- 3) A copy of the warrant for further detention or detention or the judge's decision as referred to in paragraph (2) must be given to his family.
- 4) Such detention can only be imposed on a suspect or defendant who commits a criminal act and/or attempts or provides assistance

The authority of the appellate judge in carrying out detention according to the author's opinion is based on Article 238 paragraph (3) of the Criminal Procedure Code Jo. Article 21 paragraph (4) of the Criminal Procedure Code, in connection with it is very rare and rare for an Appeals Judge to hear (examine) the defendant's testimony in the examination during the trial at the Court of Appeal (High Court).

The procedure for detention and extension of detention is as follows:

Detention:

- a) Detention of a suspect/accused may be ordered by investigators, public prosecutors, or by judges based on the provisions of the applicable law.
- b) In the case of detention, the remaining period of detention which is the responsibility of the investigator may not be used by the Public Prosecutor for the purpose of prosecution.
- c) The calculation of the reduction in detention period from the sentence imposed must start from the time of arrest/detention by the Investigator, Public Prosecutor, and Court.
- d) To avoid misunderstanding on the part of the Head of Correctional Institution in calculating when the suspect/defendant must be released from the Correctional Institution, the grace period for detention must be stated clearly in the decision.
- e) Since the case is registered in the District Court Register, the responsibility for the case is transferred to the District Court, and the remaining period of detention of the Public Prosecutor may not be continued by the Judge.

2. LITERATUR REVIEW

1. The Basis of Authority of the High Judge to Detain Children Who Make an Appeal

a. Child protection

The national definition of a child is based on the age limit of the child according to criminal law and civil law. Internationally, the definition of a child is contained in the United Nations Convention on the Rights of the Child or the United Nations Convention on the Right Of The Child in 1989. The United Nations minimum standard rules regarding the implementation of Juvenile Justice or United Nation Standard Minimum Rules for the Administration for the Administration of Juvenile Justice ("The Beijing Rule") in 1985 and the Universal Declaration of Human Rights in 1948.

The definition of a child according to the law, among others, states that a child is a person who has not reached the age of 21 (twenty-one) years or is not married. There are also those who say that a child is someone who is not yet 18 (eighteen) years old. Article 1 point 1 of Law no. 23 of 2002 in conjunction with Law no. 35 of 2014 concerning Child Protection states that a child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb, while Article 1 point 3 UUSPPA states that a child is a person who is 12 (twelve) years old, but not yet 18 (eighteen) years of age who is suspected of committing a crime.

Legal protection for children is one way to protect the nation's future generations. Legal protection for children concerns all applicable legal rules. This protection is necessary because children are part of society who have physical and mental limitations. Therefore, children need special protection and care. Child protection is an effort that provides conditions in which every child can carry out their rights and obligations. The protection of children is the embodiment of justice in a society.

Child protection is an effort that provides conditions in which every child can carry out their rights and obligations. Therefore, child protection must be sought in various fields of state and social life. Therefore, to find out whether there is good or bad child protection, right or wrong, it is necessary to pay attention to relevant phenomena, which have an important role in the occurrence of child protection activities. Basically, child protection efforts exist in various fields of life for the benefit of children and have a positive impact on parents. That it can be concluded that child protection is the embodiment of justice in a society.

b. Juvenile Criminal Justice System

There is a place to realize Children in Conflict with the law as placed in the Juvenile Criminal Justice System. The definition of the word system according to the General Indonesian Dictionary states that: "The system is an orderly arrangement of a theory, the principle of a mechanism, for example, a government, the running of an organization

The narrow meaning of the judicial system is a place to administer justice on behalf of the state that can solve a problem or case that makes analysis material for the judiciary that handles it. According to Mardjono Reksodiputro, the criminal justice system is: The criminal justice system is a system in a society to deal with crime problems. Tackling means here the effort to control crime so that it is within the tolerance limits of society."

c. Children's Rights in Criminal Justice Process

Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 2 The Juvenile Criminal Justice System is implemented based on the following principles:

- 1) protection;
- 2) justice;
- 3) non-discrimination;
- 4) the best interests of the Child;
- 5) respect for the opinion of the Child;
- 6) survival and growth and development of children;
- 7) Child development and guidance;
- 8) proportional;

- 9) deprivation of liberty and punishment as a last resort; and
- 10) avoidance of retaliation.

d. Child Detention

Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with his determination, in terms of and according to the method regulated in this law (Article 1 paragraph (21) of the Criminal Procedure Code). Detention is one form of deprivation of one's freedom of movement, here there is a conflict between two principles, namely the right to move a person which is a human right that must be respected on the one hand, and the interests of public order on the other hand which must be defended for the people or society from evil deeds. suspect. Therefore, detention should be carried out if absolutely necessary, because if there is an error in detention, it can result in fatal or detrimental things to other parties. In the Criminal Procedure Code, it is regulated on compensation in Article 95, Compensation in the case of wrongful detention has also become a universal provision.

Child detention is a temporary physical restraint against a child based on a court decision or while the child is in the criminal justice process. A child who commits a crime during detention must receive assistance to provide protection and fulfillment of the child's psychological needs. In handling cases of children, the police must take careful consideration to detain a child who, according to initial investigations, is a suspect in a criminal act. The police can carry out investigative actions without having to detain a child by supervising the child and requiring the child to report himself regularly to the police during the investigation against him. The police can refer children's cases to other pillars in the juvenile justice system so that various interventions in children's cases can be carried out immediately. Efforts to avoid detention of children can be carried out while still giving freedom to children in the supervision of their parents or other appropriate and responsible persons, such as the police, public prosecutors, courts, correctional centers, the Ministry of Social Affairs, and others. Supervision given to children is carried out to ensure that children who are under investigation are released without detention, but receive guidance and supervision as well as protection from the actions of the victim or the victim's family.

3. Research methods

The approach method used in this research is a normative juridical approach, namely a normative approach, focusing on an inventory of positive law, legal principles and doctrines, legal discovery and legal history. . The study was carried out through a literature study to obtain secondary data related to the Reconstruction of the Authority of the Appeal Judge to Detain Children with the Value of Justice.

4. RESULT DISCUSSION

A. Reconstruction of Judges' Authority to Detain Children with the Value of Justice Value Reconstruction

Value reconstruction is defined as the process of rebuilding or re-creating or reorganizing. Reconstruction is the interpretation of psychoanalytic data in such a way as to explain existing developments and their material meaning. The Indonesian people need to reconstruct the basic values of Pancasila, Divinity, Humanity, Unity, Democracy and Justice because Pancasila is the nation's philosophy and way of life (national wisdom).

Value reconstruction is defined as the process of rebuilding or re-creating or reorganizing. As for what is rebuilt in this case is the value (value). According to Azyumardi Azra, the revitalization of Pancasila is the most feasible ideological joint line for the Indonesian nation-state and therefore more beneficial for this nation in the future. The law as a product of national legislation will be more perfect if Pancasila is used as a way of life based on the values of Pancasila. With the revitalization of Pancasila values, it can improve the quality of existing laws and regulations, by eliminating the slightest discrimination.

Pancasila has provided a cultural basis, namely just and civilized humanity. This is the principle of humanization in Pancasila which is divided into two parts, among others:

- 1) Humanity is just; and
- 2) Civilized humanity.
- 3) Legality or legal certainty.

: The placement of Pancasila as the source of all sources of State law is in accordance with the purpose of the opening of the 1945 Constitution of the Republic of Indonesia in the fourth paragraph, namely, Belief in One Supreme God, Just and Civilized Humanity, Indonesian Unity, Democracy Led by Wisdom in Deliberation. /Representation, and Social Justice for All Indonesian People.

B. Norm Reconstruction

Article 1 point 1 of the Law on Judicial Power states: "Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the State of Law of the Republic of Indonesia". Article 3 paragraph (2) of the Law on Judicial Power also states that: "Any interference in judicial affairs by outside parties outside the jurisdiction of the judiciary is prohibited, except in matters as stated in the 1945 Constitution of the Republic of Indonesia". Judicial power is indeed independent in administering the judiciary to enforce law and justice. Independence means freedom without intervention or influence from the legislature or the executive. However, this freedom is not absolute because every case that is tried must be decided to uphold law and justice based on Pancasila. In other words, judges have freedom in carrying out their duties but are limited by law and justice based on Pancasila. So it is not freedom that is irresponsible but must still be based on the values of Pancasila.

Based on the description above, the author is of the opinion that judges should not be burdened with the authority to make detentions, because:

- 1) Judges must prioritize the principle of presumption of innocence over the principle of presumption of guilt
- 2) The judge's authority to make detention is a burden for the judge which will damage the independence and independence of the judge because it has implications for the punishment that must be imposed on the defendant.
- 3) The examination process requires the presence of the defendant only in the trial process at the first level, namely in the District Court, while in the case of an appeal trial at the High Court and/or cassation at the Supreme Court, the trial process does not require the presence of the defendant.

Based on this, the detention authority since the defendant was delegated to the court, the detention authority should be transferred to the Public Prosecutor in this case the District Attorney, the High Prosecutor's Office, and the Attorney General's Office. The

rationale for this is because the Public Prosecutor, in this case, the District Attorney, the High Prosecutor's Office, and the Attorney General's Office, has since received the delegation of the suspect from the Police Investigator, applying the principle of presumption of guilt, so that the suspect is upgraded to a defendant's status, and is charged and charged with guilt in court.

CONCLUSION

1. The authority of judges, including Appeals Judges or High Court Judges in detaining defendants is contrary to the principle of presumption of innocence because detention is a realm of presumption of guilt that can only be used by investigators and public prosecutors. independent, because the decision will take into account the detention that has been carried out, and the detention carried out by the judge even though it is his authority, indicates the judge has decided the defendant is guilty even though the verdict has not been handed down because the basis for detention is that there is sufficient evidence obtained by the Investigator and/or Public Prosecutor. , while the evidence has not been proven in court, and it is impossible for a judge to dare to make an arrest if he does not assume that the defendant is guilty, and will be sentenced to prison
2. The ideal reconstruction of the judge's authority in carrying out detention based on the principle of presumption of innocence and the value of justice is to revoke the judge's authority to detain the accused and delegate it to the public prosecutor in this case in stages delegated to the District Attorney's Office, Head of the District Attorney's Office, High Prosecutor's Office, The Head of the High Prosecutor's Office, the Attorney General and the Head of the Attorney General's Office, by reconstructing Articles 20, 23, 26, 27 and 28 of the Criminal Procedure Code.

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