

IMPLEMENTATION OF THE DOUBLE TRACK SYSTEM IN THE ACEH QANUN AND INDONESIAN LAWS

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ABSTRACT

The implementation of the Double Track System, adopted in Law No. 11 of 2012 on the Juvenile Criminal Justice System, recognizes that child offenders may face either a criminal sentence or a social measure, placing these two sanctions on equal footing within judicial policies. The research problem is how the application of the Double Track System aligns with the Aceh Qanun and Indonesian legislation. The method used in this study is a normative juridical approach, which aims to obtain normative knowledge regarding the relationship between one regulation and another and its practical application. The study finds that the application of the Double Track System in the Aceh Qanun and Indonesian laws aligns with the fundamental principles of criminal law, particularly regarding the elements of the crime, criminal responsibility, penalties, and sentencing. However, some provisions related to the criminal system and social measures are considered vague and overlapping in their application.

Keywords: *Criminal Law, Social Measures, Regulations*

INTRODUCTION

The Indonesia is a rule-of-law state, as stipulated in Article 1, paragraph (3) of the 1945 Constitution. In this legal state, all societal issues are regulated by law. Article 28B, paragraph (2) of the 1945 Constitution guarantees that "every child has the right to life, growth, and development and the right to protection from violence

and discrimination." This constitutional provision has led to government policies aimed at protecting children, including the issuance of Law No. 11 of 2012 on the Juvenile Justice System, which replaced Law No. 3 of 1997 on the Juvenile Court, as the latter was no longer adequate to address the legal protection needs of children facing the law.

In essence, children cannot protect themselves from actions that cause mental, physical, and social harm. Children need assistance in protecting themselves, especially in the criminal justice system, which is unfamiliar to them. They need protection from the wrongful application of laws that could harm them. This protection is referred to as legal protection. Criminal law is the law that determines criminal offenses and assigns liability to offenders. In Indonesia, criminal law is divided into two categories: general criminal law, codified in the Indonesian Penal Code (KUHP), and special criminal law, spread across various regulations on specific issues. Violations of criminal law can be classified as crimes or infractions. As the legal landscape for children facing the law evolves, more regulations are emerging to address these issues, including the Aceh Qanun No. 11 of 2008 on Child Protection, although it has not fully protected children from punitive measures.

In Law No. 11 of 2012 on the Juvenile Justice System, Article 69 states:

1. A child can only be subjected to a criminal penalty or measure as stipulated by this law.
2. A child under the age of 14 (fourteen) may only be subjected to a social measure.

In the Aceh Qanun No. 11 of 2008 on Child Protection, Article 40 stipulates:

1. A child facing a criminal act may be resolved outside of court if:
 - a. the child is under the age of 12;
 - b. the offense carries a penalty of up to 1 year;
 - c. the offense causes only material damage and not harm to the body or life;
 - d. all theft cases not involving bodily harm or death; and
 - e. fights that do not cause physical injury or loss of life.
2. Resolution outside of court, as referred to in paragraph (1), emphasizes the principle of the best interest of the child using customary law or local cultural practices.
3. Resolution outside of court, as referred to in paragraphs (1) and (2), involves community participation.
4. Community participation, as referred to in paragraph (3), includes the involvement of community leaders, religious leaders, and other institutions concerned with child protection.

Regarding the age of criminal responsibility, Islamic law holds that children are not accountable if they have not yet reached puberty (baligh). In contrast, under

positive law, the legal threshold for adulthood is often determined by the age of 17, when individuals are eligible for an ID card (KTP). Children below this age are considered incapable of bearing legal consequences.

Children involved in criminal acts are an inseparable part of human life and the continuity of a nation. In Indonesia's constitution, the state guarantees the rights of every child to life, growth, development, and protection from violence and discrimination. The best interest of the child must be seen as essential for the survival of humanity.

2. RESEARCH METHOD

The research method used in this study is a normative juridical approach, which deductively analyzes the articles in regulations governing the issues under study. This research aims to acquire normative knowledge about the relationship between different regulations and their practical application.

3. RESULTS AND DISCUSSION

The implementation of the Double Track System in the Aceh Qanun and Indonesian laws is a formulation of the criminal and social measure system in Indonesian legislation. The system aligns with the basic principles of criminal law, particularly in terms of the elements of the act, criminal responsibility, and the structure of criminal sanctions and measures. However, some articles related to the criminal system and social measures remain ambiguous and overlap in their application.

The legislation on criminal sanctions, especially in relation to imprisonment, shows a general policy that imprisonment is primarily intended for crimes, not infractions. However, in practice, there are infractions that also carry the threat of imprisonment, raising questions about whether this policy should be maintained. Additionally, the legislative policy does not clearly formulate guidelines for the imposition of prison sentences, making it difficult to rationalize sentencing decisions.

In Indonesian legislation, criminal sanctions often take precedence, and imprisonment is the most commonly applied penalty. However, there is little legislation that does not include criminal sanctions, even in cases involving child protection. The types of criminal sanctions most often applied include imprisonment, detention, and fines, while the death penalty is only found in a few laws. The focus on imprisonment reflects a limited approach to crime prevention, focusing more on punishing the perpetrator than on preventing the crime from occurring.

Criminal law is primarily individualistic in nature, as it addresses the perpetrator's actions rather than considering the broader social or environmental factors that may have contributed to the crime. This narrow focus limits the effectiveness of criminal law in addressing the root causes of crime.

CONCLUSION

Based on the discussion in the preceding chapters, the following conclusions can be drawn: The implementation of the Double Track System in the Aceh Qanun and Indonesian laws is in principle consistent with the foundations of criminal law, particularly in terms of the elements of the act, criminal responsibility, and the overall structure of penalties and sanctions. However, some provisions regarding criminal sanctions and social measures remain vague, with significant overlap between the two types of sanctions.

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