

The Risk of Imprisonments on Children of Terrorism Perpetrators in Indonesia: Rehabilitation, Radicalization, or Prisonization Efforts?

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Abstract

The purpose of this article is to find a justification reason for improper of imprisonment on all children of terrorism perpetrators (child terrorists) in Indonesia, to find the types of criminal which can achieve the purpose of punishment as the judge wants, and to find a formulation of a deradicalization program that can avoid children out of recidivism. The discussion of the problem is done by the legislation approach, which is to analyze the purpose of punishment that the judge wants in the judicial verdict and the correctional law then find the right type of criminal for child terrorist as regulated in Act of Juvenile Justice System (Act-JJS). Based on the discussion, it is concluded that (a) the judge of child is prohibited to make imprisonment as the first choice for all children, since it is jurisdictionally against the Act-JJS, Penologically imprisonments in Indonesia are difficult to use as rehabilitative means, criminologically imprisonments can lead criminogen of Children, practically the prisons in Indonesia are limited in their capacity and do not carry out specific models of guidance for child terrorist; (b) If a judge imposes punishment to a child terrorist, then the type of "criminal under the terms of guidance outside the institution" must be the first choice of the judge, while the imprisonment would be the last alternative. (C) Deradicalization program based on religious and Pancasila ideology would be the core of a guidance material, with the involvement of the parties concerned to carry out a guidance through a multidimensional approach inside and outside prisons.

Keywords: imprisonments, child, terrorism acts, rehabilitation, radicalization, prisonization

1. Introduction

The judge of Child (next referred to a judge) may impose a punishment on child of terrorism perpetrators (next referred to child terrorist) in Indonesia above the ages of 12 but has not reached 18. However, the type should be appropriate because if the punishment is used sparingly, accurate and humane then the punishment can become the guarantor of society. While, if the punishment is used carelessly and forcibly it will become the main threat of human freedom.¹

The Judges in Indonesia tend to imprisonments on children, in all types of criminal acts,² even though the imprisonment leads to dehumanization, *negative stigma*, and may encourage recidivism.³ The causes of the judge's tendency are: 95% of criminal acts in Indonesia are threatened by imprisonment, positivist-oriented judges,⁵ children already detained in state custody,⁴ imprisonment is believed to be a logical consequence of a crime committed by a child,⁵ a very serious criminal act,⁶ type of fine penalty on child is less effective in achieving the purpose of punishment,⁷ the child would be hard to educate outside prison, the child would endangers the community, imprisonment fulfills the principle of moral justice and community justice.⁸ As a result of this tendency, on February 23, 2017, the number of child prisoners in Indonesia is increasing, they are 2,464 convicted child prisoners (2,427 male and 37 female).⁹

To minimize the bad impact of imprisonment for children, since the enactment of Act number 11 of 2012 on the Juvenile Justice System (Act-JJS), the imposition of imprisonment for children is limited, i.e. by regulating the principle that deprivation of liberty and punishment as a last resort (Article 2), imprisonment can

¹Herbert L. Packer *The Limits of the Criminal Sanction*, Stanford University Press, Stanford California, 1968, p.366

² Anggara, Erasmus A. T. Napitupulu, dan Alex Argo Hernowo, *Studi Implementasi Penanganan Anak di Pengadilan Berdasarkan UU-SPPA*, Institute for Criminal Justice Reform, 2016, p. 46.

³Muladi, 1992, *op.cit.* p. 235.

⁴ NS Wardhani, Sudirman Sitepu, Joko Susetyanto, *Penerapan Pidana Alternatif pada Anak Pelaku Tindak Pidana di Pengadilan Negeri Bengkulu*, Jurnal Kriminologi Indonesia Volume V Nomor II Agustus 2009, p. 57

⁵ Dwi Putri Melati, *Pemidanaan Anak sebagai Pelaku Tindak Pidana Pembunuhan*, Jurnal Keadilan Progresif, Volume 6 Nomor 2 September 2015, p. 157

⁶ Ike Cahyani Putri Setiyawati, *Dasar Pertimbangan Hakim Menjatuhkan Pidana Penjara bagi Anak sebagai Pelaku Tindak Pidana Narkotika*, 2014, Jurnal Ilmiah, <http://download.portalgaruda.org>

⁷M. Faal, *Penyaringan Perkara Pidana oleh Polisi: Diskresi Kepolisian*, Pradnya Paramita, Jakarta, 1991

⁸Madhe Sadhi Astuti. *Peran Hakim dalam Peradilan Pidana Untuk Mewujudkan Perlindungan dan Kesejahteraan anak*. Pidato Pengukuhan Guru Besar Ilmu Hukum UNIBRAW. Malang. 1998.

⁹ Sistem *Database* Pemasarakatan, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, *Data Terakhir Jumlah Penghuni Perkanwil*, <http://smslap.ditjenpas.go.id>

only be imposed as a last alternative, and should be in only the shortest time (Article 3). To provide an alternative choice for judges in choosing the type of criminal which meets the needs of the child, in Article 71 Act-JJS provided numbers of alternative criminal types.

Although imprisonment is more harmful to children,¹³ namely frustration, stigmatization, prisonization,¹ yet the Indonesian judges still impose imprisonment to all child terrorists. This fact is based on documentary study on the Directory of the Supreme Court Judgment of the Republic of Indonesia (<https://putusan.mahkamahagung.go.id>), since the enactment of the Act on Terrorism, there were 5 children committed terrorist acts, they were; AW (2 years)² MA alias M (1 year),¹³ IAH (5 years and 2 months),⁴ RPP alias R (2 years),⁵ and JA (2 years).⁶ All children are male and still the first time to commit a crime. Among the 5 convicted persons, only IAH has committed physical assault on people and endangered the community, while the other 4 only committed acts related to terrorist acts.

All child terrorists in Indonesia are put in prison, whereas the younger the age of the perpetrators who were sentenced to imprisonment and guarded in prison, the more likely to become recidivists,⁷ so the British government reported that in 2006 and 2008, prisons in Britain became a place of radical development and The prisoners have successfully indoctrinated the youth and the easily influenced people to carry out acts of terrorism.⁸

Based on the many results of research that prove the bad impact of imprisonment for children then many experts find an alternative substitute for imprisonment for children. However, in juridical-empirical terms, it is necessary to examine the justification reasons for the refusal of imprisonment on child terrorists, what kind of criminal should be elected by a judge for child terrorists. Based on those questions, the aim of this article is to find justification reason for improper imprisonment imposed on child terrorists, to find the types of criminal which can achieve the purpose of punishment, and to find the formulation of deradicalization programs that can prevent child terrorists from recidivism. The findings in this study are useful for the prevention policy of child terrorist.

2. Theoretical Framework

Child is a person under the age of 18. They can commit a terrorism act, ie, the act of deliberately using violence or the threat of violence which leads to a situation of terror or fear to people widely or mass casualty by robbing another's property, or causing damage or destruction of Strategic vital objects or living environment or public facilities or international facilities.⁹ The perpetrators of the criminal are not only a person who directly commit a crime, but includes those who commit evil conspiracies, experiments or co-ordination of terrorism acts.¹⁰

The terrorism perpetrators are threatened with criminal sanctions, they are; the death penalty, imprisonment, fine, and criminal cage,¹¹ but for children the impose of death penalty and life imprisonment is replaced with a maximum imprisonment of 10 years. Under the Act-JJS, the imprisonment for children should be the last option of criminal sanction in forced circumstances to settle a crime.¹² Children sentenced to imprisonment are taken into Correctional Institutions (Article 1 Sub-Article 3 of the Correctional Law).

The purpose of punishment in Indonesia is not regulated in criminal law. The aims can only be known from the theories of punishment purposes, namely the absolute theory (*vergelding theorien*), relative theories (*doel theorien*), and the combined theory (*vernengings theorien*).¹³ According to absolute theory, the purpose of punishment is to provide a balance in order to create lawful order in society,¹⁴ and for justice.¹⁵ According to

¹ Barda Nawawi Arief. *op.cit.*, 1997, p. 44.

² *Putusan Pengadilan Negeri Klaten Nomor: 19 /Pid.Sus/11/PN.Klt*

³ *Melihat Persidangan Teroris "kecil" Bima*, <https://prasastiperdamaian.org>

⁴ *Perilaku Ivan, Pelaku Bom Medan, Berubah Sejak 2 Tahun Lalu*, 29 Agustus 2016, <https://M.Tempo.co>

⁵ *Putusan Pengadilan Negeri Jakarta No. 22/PID.SUD-ANAK/2016/PN.JKT.TIM*. Tahun 2016

⁶ *Bom Samarinda, Dua Pelaku Anak Dihukum 2 Tahun Penjara*, <https://news.detik.com>

⁷ Barda Nawawi Arief, 1997, *op.cit.*, p. 176

⁸ Imran Awan, *Radicalization of Muslim Prisoners*, Criminal Law and Justice weekly, <https://www.criminallawandjustice.co.uk>

⁹ Pasal 6 Undang-undang Nomor 15 Tahun 2003 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 tentang Pemberantasan Tindak Pidana Terorisme menjadi Undang-Undang

¹⁰ UU-Sistem Peradilan Pidana Anak

¹¹ Ali Masyar. *Gaya Indonesia Menghadang Terorisme*. Bandung : Mandar Maju. 2009, p. 139

¹² UU-Sistem Peradilan Pidana Anak

¹³ Adami Chazawi, *Pelajaran Hukum Pidana (Bagian I)*, Biro Konsultasi dan Bantuan Hukum Fakultas Hukum Universitas Brawijaya, Malang, 2001, p. 170.

¹⁴ J. J. M. van Dijk, H. I Sagel Grande, L. G. Toornvliet. *Actuele Criminologie*. Soemitro (Penerjemah). Universitas Sebelas Maret Press, Surakarta, 1996, p. 218.

¹⁵ J.E. Sahetapy, *Suatu Studi Khusus Mengenai Ancaman Pidana Mati terhadap Pembunuhan Berencana*, CV Rajawali, Jakarta, 1982, p. 201.

relative theory, the purpose of punishment is for the crime no longer commit, so that the past and future of the perpetrators become the main consideration in the punishment.¹ Therefore, in relative theory there are two purposes of punishment; the perpetrators will no longer commit a crime (special purpose), and that other members of society do not commit a crime (general purpose).² Whereas according to the combined theory; it is accumulating absolute theory with relative theory,³ criminal purpose will be achieved if there is separation and distinction between offenders and inter-types of criminal acts.⁴ The combined theory is divided into three groups: the combined theory of retaliation, the combined theory which prioritizes the preservation of the order of society without leaving the element of giving suffering to the offender, and the combined theory which puts the balance between giving retaliation to the offenders and protection to society.⁵

Based on the Correctional Law, it can be interpreted that the purpose of imprisonment for children is to make a whole person, to realize mistakes, to improve themselves, not to repeat criminal acts, to be accepted by the community, to actively participate in development, and to live as a good and responsible citizen.

In order that a type of criminal is effectively able to be used as a means of rehabilitating child terrorists, the judges must be careful, rational, and humane in imposing criminal sanction, and always consider the characteristics of children and the characteristics of Indonesian terrorism. The capability of penitentiary as a place of imprisonment on child also needs to be considered before imposing the imprisonment. Since, if the child is imposed to imprisonment, while the guidance program in penitentiary is not optimal, it will harm the children, such as radicalization, repetition of crime, and prisonization. Radicalization is the process of getting someone to support terrorism and extremist ideology associated with terrorist groups,³⁵ even in some cases, the person then participates in terrorist activities.³⁶ Repetition of criminal act means that the nurtured-prisoners in penitentiary commit a criminal act again. While the prisonization according to Clemmer is influenced-behavior of the prisoners by bad subculture of other prisoners in prison.⁶ Those bad behaviors are brought by prisoners out of prison,⁷ so someone who comes out of prison will be more evil than before.⁸

Many critics at the use of imprisonment for the reduction of crime, either moderate (ie restricting the imposition of imprisonment) and extreme (abolish imprisonment as championed by *International Conference on Prison Abolition (ICOPA)* in 1985.⁹ However, removing the imprisonment is also a big risk as there are some convicts so dangerous to society that need to be isolated in prison. While, let child terrorists taken into un-conducive prison is also a wrong act. Therefore, based on the weaknesses of the imprisonment implementation, the characteristics of the terrorist, and the characteristics of the child, the author argues that the imposition of imprisonment and taking child terrorists into conducive prison should be the last option. While the main choice of criminal sanction is coaching and mentoring outside prison, for example, criminal under the terms, social work penalty. If the imprisonment be the choice of judges, then the process implementation of imprisonment on children must be addressed by formulating a special model of child terrorist guidance through deradicalization program based on the best interests of the child.

3. Research Methods

This research is based on the approach of doctrinal-legal research, which is research conducted by analyzing the correlation between the provision of punishment purpose in the Correlation Law, the types of criminal in the Act-JJS, the purpose of the judge to impose the imprisonment, and the capability of penitentiary in guiding children, to find some types of criminal which can rehabilitate child terrorists in Indonesia. Legal materials (primary, secondary, tertiary) and non-legal materials (eg research books and reports in psychology, penology, criminology, and sociology) are used as a basis for analyzing problems. This analysis needs to be done because the nature of legal research is a legal finding process that regulates activities of social intercourse involving legal provisions enforced by the state along with comments explaining or analyzing the legal provisions.

4. Result And Discussion

a. Justification Basis for The Judge Not to Imprisonment as A First Choice for Child Terrorists in Indonesia

The following description is the justification basis that the imprisonment should not be the judge's first choice to

¹*Ibid.*, p. 32.

² Andi Hamzah dan Siti Rahayu, *op cit*, 1983, p. 26.

³ J. J. M. van Dijk, *et all, op. cit.* 1996. p. 224

⁴*Ibid.*, p. 226.

⁵ J.J.M. van Dijk, *et all, op. cit.* p. 224.

⁶ Muladi, *op. cit.*, 1992, p. 141.

⁷ Edwin H. Sutherland dan Donald R. Cressey, *Principles of Crimonology*, J.B. Lippincott Company, Chicago, Philadelphia, New York, 1960,p. 498.

⁸ Romli Atmasasmita, *Dari Pemenjaraan ke Pembinaan Narapidana*. Alumni, Bandung, 1984, p. 45.

⁹ Barda Nawawi Arief, *op.cit.*, p. 93

be imposed on all child terrorists in Indonesia.

1) The imposing of imprisonment on all child terrorists violate the provisions of the Act-JJS

In a juridical perspective, the imprisonments on all children of terrorism perpetrators as currently happened in Indonesia violate the Act-JJS. Based on the type of criminal (*strafrecht*), the imposition of imprisonment violates (a) Article 2 which contains the principle that the deprivation of liberty and criminalization as a last resort; (b) Article 3 letter g, that the child can not be imprisoned, except as a last resort and in the shortest time; And (c) Article 81 section (5), that the deprivation of liberty (imprisonment) is the last option and only imposed to solve the problem. Children are not eligible for imprisonment because in fact they are still the first time to commit a criminal act, 4 children only commit criminal acts related to terrorism, not a direct perpetrator of terrorism. Both of these facts have not indicated "forced circumstances" that can not be used as a basis for judges to impose imprisonment. While reviewed from the side of the duration of the punishment (*strafmaat*), the imposition of long-term imprisonment (over 1 year) on all child terrorists in Indonesia is also contrary to the content of provision article 3 letter g which regulates that if the child is imprisoned it must be in the shortest time.

In the Act-JJS, imprisonment can only be imposed if it meets the following 3 cumulative requirements: the child commits a serious crime or a violent crime (Article 79 section (1)), the condition and the actions of the child will endanger society (81 section 1)), as the last penalty option and only imposed for being forced to settle the problem (Article 80 section (5)). From the five children, only IAH committed physical violence: attacking people and carrying a packed bomb in Medan. Nevertheless, the judge did not immediately impose imprisonment on IAH, since normatively the judge has the opportunity to choose another type of criminal sanction (Article 71),. For example, a criminal with the requirement to follow a guidance outside institution as recommended by a counselor of society, IAH's parent, and IAH's advocate; imposed a criminal under the terms following a guidance outside the institution, namely in Islamic Boarding School of Darusy Syifa.¹

2) Penitentiary in Indonesia is not capable yet to be used as the Rehabilitation means of Child terrorist

Penitentiary is a place for the guidance of children who have been sentenced to imprisonment (Article 1 Sub-Article 3 of the Correctional Law). Referring to the content of the judicial verdict that was used as a legal basis of imprisonment for child terrorists, the judge has not included the general purpose of punishment, that is, the members of the community will not commit a crime. However, in the judicial verdict, the special purpose of child punishment has been stated, so that children do not repeat criminal acts, conduct mental rehabilitation, for the child's future interests, protection of children's rights, and the fulfillment of the rights of criminal victims and community justice. Thus, it is clear that the purpose of the judge imposing imprisonment for child terrorists is so that the offender does not repeat the crime, rehabilitating mental and spiritual of offenders, protecting the rights and the future of offenders. Furthermore, in the judicial verdict in the case of another child, it is known that the purpose of the judge to impose imprisonment on child terrorist is to rehabilitate the child, which is to educate the child to realize his mistake, not repeat the crime, and be active in the community. Based on the judicial verdict, it is also known that the judge is still concerned with the element of retaliation in the punishment of child, because in the verdicts there is a sentence "... Punishment is not purely retaliation ...", the word "purely" means the element of retaliation on children is still contained in the purpose of punishment. Based on the elaboration of the consideration in the judicial verdict, and in relation to the three theories of punishment, it is understandable that the judge is oriented to a combined theory, since the judge calls the need for retaliation and his desire to prevent the child from becoming a recidivist and protecting society. This is in line with Vos's idea that the combined theory focuses on retaliation to perpetrators, protectors (perpetrators and victims), and the interests of society.²

Unfortunately, the judge's wants in imposing the imprisonment is hard to achieve by penitentiary (as a place of imprisonment) because there are limitations on the capability of penitentiary in performing their duties and functions. This is based on the fact that in the Class IIB penitentiary of Klaten (AW's guidance place), although there is a distinction of guidance between children and adult prisoners (eg children are not enrolled in vocational training), yet there is no specific method of guidance on certain perpetrators. In this penitentiary is not available yet the allocation of special block for children, children's special guidance room, psychologist, and teachers.

¹Hakim Diminta Jatuhkan Hukum Rehabilitasi bagi Pelaku Teror Bom Medan, <http://www.tribunnews.com>

²Yesmil Anwar dan Adang, *Pembaruan Hukum Pidana: Reformasi Hukum*, PT. Gramedia Widiasarana Indonesia, Jakarta, 2008, p. 137

It is also limited in facilities equipment of sports, medicines, medical devices.¹ While Children Special Development Institution (CSDI) of Salemba (IAH, RPP, and JA's guidance place) and male's CSDI of Tangerang (MA's guidance place) have applied separation of children category based on educational level.² However in most of CSDI in Indonesia there has no separation based on the stages of guidance and based on the type of crime.³ Equation of places, materials, methods, facilities and infrastructures, schedules and the guide in the process of child guidance between one another takes place in every child's penitentiary, including terrorism convicts. The supervisor and observer judges do not visit the CSDI, whereas the judges play a role in monitoring and recommendations on the effectiveness, efficiency and suitability of the needs of the children with the guidance process in CSDI.⁴ The main obstacles to the implementation of guidance on children in male and female's CSDI of Tangerang are the lack of correctional officers who understand the psychology and children's problem, and the limited number of skilled workers and health workers, and the occupants exceed the capacity.⁵

Based on the results of the research, it can be seen that the guidance of child terrorists in adult penitentiary and CSDI actually endanger the children as they are affiliated with adult prisoners, and children are not educated proportionally according to their needs because there is no curriculum and lack of supporting resources.

If it is linked between the purposes of the judge to impose the imprisonment as contained in judicial verdict with the implementation of child guidance in penitentiary, it can be seen that there is no suitability between the rehabilitation purpose as the judge's want and the imprisonment of children in CSDI in penitentiary. As a result, the purpose of punishment of child terrorists as contained on judicial verdict, and correctional purposes as contained in the Correctional Law is difficult to achieve. It is based on Zora A. Sukabdi's research; terrorist guidance should lead to rehabilitation efforts for behavior transformation, while child terrorist guidance has not led to systematic efforts to direct positive thinking through deradicalization programs. To achieve the goal of rehabilitation, six elements need to be developed by CSDI and penitentiary and it seemed still unreached, namely social skills, personal skills, vocational skills, spiritual maturity, housekeeping skills, and contextual insights,⁶ due to special guidance on child terrorists has not done yet.

- 3) Implementation of Imprisonment in Penitentiary has Bad Risk for Children as Can Lead to Criminogen
If the guidance of child terrorist in the penitentiary is still not effective as in Indonesia today, then the child has a bad risk, such as prisonization, radicalization and may become a recidivist. All of these risks can be the cause of crime for children (criminogen) after child out of penitentiary. Thus, criminologically, it is true that prisons can be criminogen for children because child guidance in Indonesian penitentiary has not been optimally implemented.⁷

a) Prisonization

Prisonization is getting infected of bad habits in penitentiary to the prisoners both inside and outside of penitentiary. This can happen to a child, either coached in CSDI or in adult penitentiary. In CSDI for children, child terrorists are able to interact with other children whole day so that they can learn criminal techniques from each other. The child is placed with other children in one complex of prison moreover there is no border at all in the afternoon (at 7am to 5pm) then they can freely interact during the day. In the evening, (5pm to 7pm) they can interact with their roommate. They form a separate subculture. Therefore, prisonization has already occurred in some children through the learning process. This prisonization process is in line with the contents of differential association theory, that crime is learned through intensive communication between child and prisoners groups for a long time.⁸ At adult penitentiary is more likely being prisonization,

¹ Vivid Asyida, *Pola Pembinaan Narapidana Anak Di Lembaga Pemasyarakatan Kelas 2b Kabupaten Klaten*, Fakultas Ilmu Sosial, Universitas Negeri Semarang, 2015, p. 75

² Mukhamad Tri Setyobudi, *Pembinaan Anak Pidana Di Lembaga Pemasyarakatan Anak Tangerang*, Tesis, Universitas Indonesia, 2012, p. 126

³ Widodo, *op.cit.*, p. 23

⁴ Dwi Andriani, *Pembinaan Narapidana Anak di Lembaga Pemasyarakatan Anak Kelas II A Medan*, 2015, <http://etd.unsyiah.ac.id>, p. 2

⁵ Mukhamad Tri Setyobudi, *Pembinaan Anak Pidana di Lembaga Pemasyarakatan Anak Tangerang*, Tesis, Universitas Indonesia, 2012, p. 126

⁶ Zora A. Sukabdi, *Terrorism in Indonesia: A Review on Rehabilitation and Deradicalization*, Journal of Terrorism Research, Volume 6, Issue 2–May 2015, p. 37, jtr.st-andrews.ac.uk

⁷ Paulus Hadisoeparto, *Peradilan Restoratif: Model Peradilan Anak Indonesia Masa Datang*. Pidato Pengukuhan Guru Besar di Fakultas Hukum Universitas Diponegoro, 18 Februari 2006., p.p. 22-23.

⁸ Widodo, *op.cit.*, p. 25

especially if there is no special block for children as in penitentiary of Klaten, as children can socialize and see subculture of adult prisoners so it is possible to imitate the customs of adult prisoners. Prisoned children have the potential to become terrorists because the majority of terrorists are young, unmarried, coming from middle-class, male sex, and have followed some left-lean political philosophy training.¹

b) Radicalization

The imprisonment of child terrorist can make child more radical because there is a process of radicalization, namely the process of supporting the violence ideology that leads to acts of terror. The radicalization of child in prisons is very likely in Indonesia because child terrorists are not coached yet according to the need, called deradicalization. The process of guidance has not been done adequately based on the characteristics of children and the characteristics of terrorism in Indonesia, so that the guidance must not focus on the root cause of terrorism.

Although child terrorists are placed in one cell but still in one block with adult prisoners it is more likely that child are getting further indoctrinated by adult terrorists, as they can interact with each other. The process of radicalization on child have done according to the results of investigation and data collection conducted by ICPC (the Indonesian Child Protection Commission) in penitentiary of Cipinang.²

Psychologically, 5 child terrorists in Indonesia who are sentenced to prison are aged between 16 and 17 years so categorized as late adolescents,⁵³ their characteristics are usually sensitive, emotionally contradictory and unstable, rebellious and defiant,⁵⁴ so potential to be the object of radicalization by other terrorist prisoners in prison. According to the Secretary of the National Agency for Combating Terrorism (NACT) of Indonesia, Abdul Rahman, between 80% to 90% of the main target of radical groups in Indonesia are teenagers. Radicalization is done by brainwashing through internet media, social media, and enter into religious educational institutions and regular studies.³ Chairman of the Indonesian Child Protection Commission (ICPC), Asrorun, asserted that child terrorist radicalization takes place in prison due to the interaction and indoctrination of adult terrorist prisoners,⁴ as the prison is a potential place for radicalization and recruitment of new terrorists.⁵

Radicalization inside the prison as happened in Indonesia also occurs in England, for example Richard Reid, Saajid Badat, Tariq al-Daour Muktar Ibrahim, and Abbas Boutrab.⁶ Studies in 15 countries prove that prisons are the almost perfect place for radicalization of prisoners,⁷ as prisoners are already mingling in the prisoners subculture through prison gangs and they have extremely interpreted religious teachings to inspire prisoners to commit intolerance, hatred and violence act.⁸ The results of studies in some countries, that in the 21st century, the speed of the formation of terrorist networks that are much radical by prisoners in penitentiary is even higher, especially through kinship network, illegal communication systems, religious beliefs, and most importantly is the presence of charismatic leadership.⁹

c) Residivism

Recidivism of terrorism may occur because the penitentiary has not yet integrated the substance of imprisonment, the in-depth involvement of prisoners, and the prevention efforts.¹⁰ Terrorist often takes the time in prison to mobilize support from others, radicalize other prisoners, and if any chance they would try to create a structured operational command.¹¹ Based on the data of the National Agency for Combating Terrorism, at least 15% of Indonesian terrorism perpetrators

¹Jonathan R. White, *Terrorism and Homeland Security*, Wadsworth, Belmont, 2012, p. 49

²Komisi Perlindungan Anak Indonesia

³Kenali 6 Ciri Orang Yang Terdoktrin Kelompok Teroris, 17 January 2016, <http://media.iyaa.com>

⁴KPAI: Pelaku Terorisme Anak-anak yang Ditahan Harus Dipulihkan, <http://www.srikandipp.com>

⁵Gaetano Joe Ilardi, *Prison radicalisation—the devil is in the detail*, <http://artsonline.monash.edu.au>

⁵International Centre for the Study of Radicalisation and Political Violence (ICSR), *Prisons and Terrorism Radicalisation and De-radicalisation in 15 Countries*, <http://icsr.info>, 2010

⁶Imran Awan, Radicalization of Muslim Prisoners, Criminal Law and Justice weekly, <https://www.criminallawandjustice.co.uk>

⁷Gabrielle Garton Grimwood, *Radicalisation in prisons in England and Wales*, Briefing Paper Number 07487, 14 April 2016, <http://www.parliament.uk>, <http://www.parliament.uk>, <http://www.parliament.uk>

⁸Mark S. Hamm, *Prisoner Radicalization: Assessing the Threat in U.S. Correctional Institutions*, <https://www.ncjrs.gov>

⁹Mark Hamm, *Prisoner Radicalisation in the United States*, Prison Service Journal Special Edition Combating Extremism and Terrorism, September 2012, No. 203, p. 4, <https://www.crimeandjustice.org.uk>

¹⁰D.S. Narendra, *Teror Bom Jamaah Islamiyah*, Pionir e-book, p.p. 68-69

¹¹International Centre for the Study of Radicalisation and Political Violence (ICSR), *Prisons and Terrorism Radicalisation and De-radicalisation in 15 Countries*, <http://icsr.info>, 2010

become recidivist whose crime intensity is increasing, and the recruitment process occurs in penitentiary, they were Omen and Juhanda.¹

- d) Indonesia Penitentiary has no special guidance model for child terrorists yet.

Based on the results of research in penitentiary which guide child terrorists, it is known about the absence of a special guidance model. This result is in accordance with the acknowledgement of the Directorate General of Corrections, that there has still no special guidance program for terrorists due to limited data and information about terrorism convicted, lack of facilities and infrastructure in penitentiary, over capacity, coach, and human resources.²

In the perspective of penology, imprisonment of every child terrorist in penitentiary who does not have a prospective guidance model like in Indonesia will harm and suffer the children. The imprisonment is clearly contrary to the direction of the criminal policy on children in conflict with the law, which aims to protect and prosper the child. Empirically, Children in penitentiary get violence from the state through their apparatus and violence due to unequal pattern of relations, including violence among children,³ thus contradicting the nature of criminal sanctions for children.

- 4) Criminal under The Terms, and Imprisonment as A Criminal Type Which Can be Made as Facilities of Rehabilitating Child Terrorsim in Indonesia

Sanctions in the form of punishment is needed by society because human life is impossible to eliminate criminal.⁴ Imprisonment is still used as a mainstay in the prevention of crime. However, if the imposing of criminal is carelessly, inaccurate, and inhumane execution, including the imposition of imprisonment for all child terrorists, such as in Indonesia may harm the society because the imprisonment is not merely effective in preventing the child from recidivism, even the child becomes more deeply learning into ideology violence.

Based on the above idea, then the imposing of criminal sanction must be selective, especially to the child. The imposition of imprisonment on all (5 children) of terrorist perpetrators as conducted by the Judge may not necessarily achieve the purpose of punishment. It should be remembered, however, that a good criminal sanction type for a child is a criminal which (a) may prevent a child from repetition of a criminal act; (b) Suitable with the child's needs for rehabilitation, re-education and re-integration; (c) Not degrading the child's dignity; d) Protect the rights of the child at this time and in the future. Based on this idea, and referring to the provisions of Article 71 of the Act-JJS, criminal sanction that can be used as an alternative replacement to the imprisonment to child terrorists is criminal under the terms of guidance outside the institution, and imprisonment.

- 5) Criminal under the term of Child Guidance Outside Prison as the First Choice of Judge

According to the Act-JJS, the definition of criminal under the terms of guidance outside the institution (Article 71) is that child terrorists are required to follow the guidance and counseling program conducted by the official (Article 75 section (1) a) outside the prison, The place which has been determined by the judge in the judicial verdict (Article 74) which is not longer than 3 years (Article 73 section (6)). During conducting the criminal under those term, the child must follow the 9-year compulsory education program (Article 75 section (8)), and must meet the general and special requirements (Article 73 section (2), (3), (4)). The supervision of the implementation on criminal under the term shall be conducted by the Public Prosecutor and the community counselor (section 7), and if the child violates the terms, then the length of the criminal under the terms may be extended (Article 75 section (2)).

The type of criminal under the terms the child follows guidance outside institution is the most prospective for rehabilitation, since (a) the child congregates and interacts with Non-criminal children with good subcultures so able to prevent the child from prisonization, (b) the deradicalization program has been prepared based on the child's needs and terrorist characteristics in Indonesia so that the deradicalization program is in accordance with the needs, (c) the coach and the mentor for child have been prepared both from the community and government who understood the deradicalization method so that the child acquires adequate knowledge and skills, (d) the child may be more comfortable because they do not live in iron bars, adequate guidance facilities, not over occupants, (e) The child

¹ *Mantan Napi Teroris Kembali ke Jaringan Lama karena Dapat Dukungan*, <http://nasional.kompas.com>, Selasa, 15 November 2016 | 11:31 WIB

² *Ma'mun: Pembinaan Napi Teroris Banyak Tantangannya*, <http://www.ditjenpas.go.id/>

³ Yayasan Pemantau Hak Anak, *Praktek-Praktek Penanganan Anak Berkonflik Dengan Hukum Dalam Kerangka Sistem Peradilan Pidana Anak (Juvenile Justice System) Di Indonesia : Perspektif Hak Sipil Dan Hak Politik*, Laporan Disampaikan sebagai bahan masukan bagi upaya penyusunan Laporan Alternatif (Inisiatif) Implementasi Kovenan Hak Sipil dan Hak Politik yang dikoordinasi oleh HRWG, www.ypha.or.id, p. 44

⁴ *Ibid.*, p. 364

has the full support of the family because the family and friend can visit and support the activities.

In the judicial verdict, the judge need to point an institution for education and guidance of a child who meets the requirements, and it must be: (a) legally established by the government or community, (b) security is assured (secure from person interference or natural disaster), (c) have a prospective deradicalization program. (D) have reliable facilities and human resources; (e) conducive situation for child terrorist guidance (either conducive to de-radicalization, life skills training, general education). The judge know which institution is likely to be used as a guidance place from the Correctional Officer as stipulated in the result of community research, because the Judge shall consider the results of community research (Article 60 section (3)).

Based on the institutional requirements, one of the institutions that can be handed over to educate child terrorists who are imposed by criminal under the terms to follow the guidance in Islamic boarding School of Darusy Syifa Sei Mencirim, Deli Serdang, North Sumatra. This Islamic boarding school was founded and raised by Khairul Ghazali (former convicted of criminal acts of terrorism). The Islamic school (pesantren) which has 70 children from parents who are direct or indirectly involved in network of terrorism in 2017,⁷⁰ already has model of child deradicalization, so it can be a center for rehabilitation and deradicalization of children in Indonesia. The purpose of establishing this Islamic boarding school is to accommodate the children of terrorists who are likely to have radical ideology, and other children exposed to terrorist ideology (including children convicted of criminal acts of terrorism) in order not to commit a crime.¹

The Child terrorist in Indonesia are worthy imposed a criminal under the terms by requiring child to follow the guidance in Islamic Boarding School because the institution teaches the religious knowledge correctly and adequately. It is based on the general characteristic of Indonesian terrorists as the religious fundamentalist, as categorized by Sukawarsini Djelantik that based on its political and ideological background, there are four categories of terrorists, namely nationalism-separatist, religious fundamentalist, new religious group, and social revolutionist.² Usually the characteristic of terrorism in Indonesia is having a narrow, shallow, and wrong understanding of religious teachings,³ as well as religious fanaticism.⁴

In the implementation of criminal under the terms the child is also required to attend the 9-year compulsory education program in formal school so that the child gets an adequate Pancasila ideology education in order not to desire to establish a new state. Based on the results of the assessment conducted by the Correctional Institution, the explanation of the Head of penitentiary, and the ICPC's in-depth interview on child terrorist, the conclusion that the characteristics of child terrorists are still innocent and the doctrine of terrorism has not been too strong in his mind, so there is still a great chance of recovery and de-radicalization⁷⁵ in Islamic boarding schools and formal schools.

6) Imprisonment as the Judge's Last Choice

Imprisonment is the last alternative criminal type if the judge believes that the child is unlikely to be sentenced criminal under the term. Justification of imposing imprisonment is based on the consideration that criminal act of terrorism is a serious and dangerous and to solve it required many facilities, such as criminal should be the last resort. According to Pecker, criminal sanction is the best tool available in society to deal with big or dangerous crimes and because it can be used solve it.⁵

Based on that idea, if indeed there is no institution outside of penitentiary that is capable to educate child terrorists, then the imposition of imprisonment is more appropriate. However, the provisions of the Act-JJS cumulatively should be kept in mind that this type of imprisonment can only be imposed if: the child commits a serious crime or a crime by violence (Article 79 section (1)); The circumstances and actions of the child will endanger the community (81 verse (1)), and should be s the last resort to solve the problem (Article 80 section (5)).

If child terrorists are admitted to penitentiary, they are not nurtured through child guidance methods which currently used in Indonesia, as they do not use a prospective deradicalization model that is difficult to achieve the goal of rehabilitation. The prison is mandatory to nurture child terrorist in particular through deradicalisation programs for children, not the deradicalization of adult terrorists as enacted in Sentul, Bogor regency, West Java, because this program is specific to adult terrorists,⁷⁷ whereas the characteristics of child and adult are different. To fulfill the provision that imprisonment

¹Mengintip Pesantren Anak Teroris di Deliserdang, <http://m.metrotvnews.com>

²Sukawarsini Djelantik, *Terorisme: Tinjauan Psiko-Politis, Peran Media, Kemiskinan, dan Keamanan Nasional*, Jakarta, Penerbit Obor, 2010, p. 25

³Departemen Agama Republik Indonesia, 2006, *Jurnal Ikhlas beramal*

⁴Indiwan Seto Wahjuwibowo, *Terorisme dalam Pemberitaan Media: Analisis Wacana Terorisme Indonesia*, Deepublish, Yogyakarta, 2015, p. 46

⁵Herbert L. Packer, 1968, *op.cit.*, p. 365

should be in shortest time (article 3 letter g), so the criminal period can be reduce by giving remission of the anniversary commemoration of Indonesia and remission of religious festivities, and then giving parole after 2/3 of the criminal period.

b. Religious-Based Deradicalization and Pancasila Ideology-Based Deradicalization as The Core of Children Rehabilitation Program in or out of Prison

Asronun, Chairman of ICPC, asserted that specifically for child terrorists, the post-court judgment guidance process should be conducted with a rehabilitative approach, not a punitive approach.¹ The core of child rehabilitation programs inside and outside of prison is the process of deradicalization.

Deradicalization is the process of getting one to abandon his support for radical ideology that leads to terrorist activities, including not engaging in all activities of a terror. The indicator of the success of the deradicalization program on terrorism prisoners is the tendency to cooperate with the authorities, be informative, open in exchange of opinions, and admit Pancasila as the foundation of the state of Indonesia.² Based on that idea, the guidance program in penitentiary and de-radicalization conducted by NACT and the Ministry of Law and Human Rights are still not effective, because most of the terrorism perpetrators are the recidivists, the perpetrators of terror who ever been nurtured in penitentiary.³

Starting from the guidance experience in the penitentiary, the deradicalization program should serve as the main pillar of child terrorist rehabilitation in Indonesia, both outside and inside prison. Zora Sukabdi stated that terrorist guidance should lead to rehabilitation efforts in order to bring behavior transformation so that 6 elements needed to be developed; Social skills, personal skills, vocational skills, spiritual maturity, household skills, and contextual insights.⁴

The author states that the 6 elements are the needs of adult terrorists. However, since the aims of child terrorist guidance based on legal provisions in Indonesia prioritizes the elements of education, the most important elements are the development of social skills, personal skills, spiritual maturity, and contextual insights through religious-based deradicalization and Pancasila ideology-based deradicalization.

Religious-based deradicalization is necessary because it suits the characteristics of Indonesian terrorists. Besides shallow religious understanding factor, situational, dispositional,⁸² social,⁵ and psychological integrated into terrorist thought.⁶

If the child has a true religious understanding then his radicalism ideology will gradually fade. While Pancasila ideology-based deradicalization needs to be done considering the purpose of Indonesian terrorist is to establish an Islamic state, khilafah, and enforcement of Islamic law.⁷ If children understand the nature of Pancasila, then there is no desire to establish a state.

Deradicalization of children shall be carried out in the following manner: prison officials shall establish a trust with Muslim convicts, and the de-radicalization program undertaken should focus on the use of religion as a means of overcoming the problem of radicalization among prisoners.⁸ The deradicalization must be based on child's need, because according to Chris Dean, there are 5 things that can be used to help integrating terrorists after being released from prison: (1) serving them meet their needs and supporting them not to rejoin their group; (2) helping them to straighten their beliefs about radicalism; (3) supporting them to express their views in an open forum; 4) empowering them to gain self-identity; And (5) applying different ways to encourage them express their opinions.⁹

Based on the experience of NACT and the Ministry of Human Rights in conducting guidance and deradicalization in Indonesia, and linked to the characteristics of Indonesian terrorist and the characteristic of criminal act of Indonesian terrorist, in guidance program on child terrorists, a strategic action plan

¹KPAI: *Pelaku Terorisme Anak-anak yang Ditahan Harus Dipulihkan*, <http://www.srikandipp.com>

² Muh. Khamdan, *Pengembangan Bina Damai Dalam Penanganan Tindak Pidana Terorisme Di Indonesia*, Jurnal Cita Hukum, Fakultas Syariah dan Hukum UIN Jakarta Vol.4 No.1(2016), p. 128

³*Pengembangan Model Pembinaan Program De-radikalisasi di Indonesia: Alternatif Model Pembinaan Integratif bagi Narapidana Terorisme sebagai Upaya Pencegahan dan Pemberantasan Tindak Pidana Terorisme di Indonesia*, Laporan Akhir Penelitian Unggulan Perguruan Tinggi, Universitas Brawijaya, Desember 2014, <http://lppm.ub.ac.id/>

⁴ Zora A. Sukabdi, *op.cit.*, p. 37

⁵L. Dawson, *Personality Traits and Terrorism*, *Canadian Security Intelligence Service (CSIS)*, Working Paper Series No. 15-05 December 2015, <http://tsas.ca>

⁶ Jeff Victoroff, *The Mind of the Terrorist: A Review and Critique of Psychological Approaches*, Source: The Journal of Conflict Resolution, Vol. 49, No. 1 (Feb., 2005), p.p. 3-42 Published by: Sage Publications, Inc. Stable URL: <http://www.jstor.org>, p.3

⁷ Tablid Reformata, *Ansyaad Mbai, Kepala Badan Nasional Penanggulangan Terorisme, Tujuan Mereka adalah Negara Islam*, Edisi 139 Tahun IX, 1-31 Mei 2011, p. 5

⁸ Awan Imran, *Muslim Prisoners, Radicalization and Rehabilitation in British Prisons*, Journal of Muslim Minority Affairs, Volume 33, 2012, <http://www.tandfonline.com>

⁹ Chris Dean, *Intervening Effectively with Terrorist Offenders*, Prison Service Journal, September 2012, No.203, p.p. 31-36

focused on facilitation of deradicalisation is needed, ¹ Rehabilitation through the provision of psychological services, pharmacology therapy, and assistance from the child's family. ² The multi-dimensional approach of terrorist guidance is necessary because in general the causes of terrorism are psychological, economic, religious, and sociological so that for the control of terrorists through deradicalization programs cannot be analyzed based on one factor only. ³

4. Conclusion

Based on the result and discussion found 3 conclusions as follows.

- a. Indonesian judges in choosing a criminal type already oriented to the combined theory, yet the judge actually impose a imprisonment on every child terrorist. The justification reason that imprisonment is improperly imposed on child terrorists is because: (a) juridically, contrary to the Act-JJS, (b) penologically, imprisonment has many negative impacts on the child, (c) practically, the imprisonment can be a criminogen for child, and imprisonment in Indonesia is unreliable as a means of achieving the purpose of punishment due to the limited ability of the prison and the absence of a specific model of child terrorist guidance.
- b. Criminal under the terms that children is obliged follow a guidance outside institution as stipulated in the Act-JJS can be the first choice of judges to be imposed on child terrorists. While the imprisonment is only the judge's last choice if the child meets the 3 requirements in the Act-JJS. If imprisonment must be imposed by a judge then it should only be within the shortest time, and the government must always prioritize remission and parole programs to reduce the child crime.
- c. Based on the characteristics of children and the Indonesian terrorist motivation, deradicalization program based on religion and based on the ideology of Pancasila should be the core of the children's guidance material both outside and inside the prison. In order a guidance to be rehabilitative, the deradicalization program needs to be accompanied by the involvement of the stakeholders to carry out guidance with a multidimensional approach, especially the child's family.

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¹ Richard Pickering, *Terrorism, Extremism, Radicalisation and The Offender Management System*, Prison Service Journal Special Edition Combating Extremism and Terrorism, September 2012 No. 203, p. 10, <https://www.crimeandjustice.org.uk>

² Clark McCauley, Sophia Moskalkenko and Benjamin Van Son, *Characteristics of Lone-Wolf Violent Offenders: a Comparison of Assassins and School Attackers*, <http://www.terrorismanalysts.com>

³ Sukawarsini Djelantik, *Terorisme: Tinjauan Psiko-Politis, Peran Media, Kemiskinan, dan Keamanan Nasional*, Penerbit Obor, Jakarta, 2010, p. 26

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