

Penerapan sanksi pidana adat dalam perkara pidana anak

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Abstrak

In reaching a decision, a judge shall not only view and refer to the written regulation in prevailing (positive) law, but also reflect on rules or customs and other values as living laws in the society. This is what can be observed from the Decision Number 247/Pid/B/2012/PN.Pdg which imposes penal sanction of imprisonment to a juvenile offender, even though the public prosecutor's indictments are not proven in court. Judge gives the juvenile a sentence since he had violated the Minangkabau criminal adat law. The arising questions are: 1) what is the consideration of the judge in imposing penal sanction in criminal adat law case committed by a juvenile?; and 2) how to link the implementation of criminal adat law to the judicial lawmaking? The purpose of this analysis is identify the basic consideration of the judge in ruling the criminal case of adat law and explain about the relationship between the implementation of traditional criminal law with the judicial lawmaking. The consideration of the judge in making the decision and imposing criminal sanction is based on the formal juridical and non-juridical reasons and unwritten rules. In this respect, it shall be in accordance with the provisions in Emergency Law Number 1 year 1951, Article 5, paragraph (3), letter b, and article 10, paragraph (1) of Law Number 48 year 2009 on Judiciary Power.