

The Legal Protection for Children as Criminal Actors

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Abstract.

The purpose of this research is to analyze the legal protection of children as perpetrators of criminal acts, to analyze the obstacles in the legal protection of children as perpetrators of criminal acts, and to analyze solutions to obstacles in the legal protection of children as perpetrators of criminal acts. This research uses a normative juridical approach, with descriptive research methods that are analyzed qualitatively. The research problem was analyzed using the theory of justice and the theory of the operation of law. The results of the study concluded that the form of legal protection given to children as perpetrators in criminal acts is in accordance with Act No. 11 of 2012 concerning Juvenile Justice and the Criminal Code, namely returning to parents (Article 45 of the Criminal Code), rehabilitation, detention processes (Article 32 of Act No. 11 of 2012). The obstacles faced are the psychological condition of the child who is still unstable, the origin of the perpetrator, and the time required to administer the judicial process, and the lack of cooperation and coordination between the perpetrator, the victim, and the Fathers. The solution that can be given is coordination between stakeholders in handling children in conflict with the law (ABH) must be more intense, it is necessary to involve the community and non-governmental organizations (NGOs) in prevention programs and after care programs for children in conflict with the law (ABH), encourage various parties to intensify case resolution using the principle of restorative justice by means of diversion

Keywords: Children; Crimes; Justice; Perpetrators; Restorative.

1. Introduction

Children are the nation's assets, as part of the younger generation, children play a very strategic role as the successor of a nation. In the context of Indonesia, children are the successors to the ideals of a nation's struggle. In addition, children are the hope of parents, the hope of the nation and the state who will continue the baton of development and have a strategic role, have special characteristics or characteristics that will ensure the continuity of the existence of the nation and state in the future. Therefore, every child must get coaching from an early age, children need to get the widest opportunity to be able to grow and develop optimally, both physically, mentally and socially. Moreover, childhood is a period of formation of character, personality and character of a human being.¹

Every year children who become perpetrators of criminal acts always increase, in cases in certain cases, children who become perpetrators are of special concern to law enforcement officers. Therefore, various prevention and control efforts against children in conflict with the law need to be carried out immediately. One of the efforts to prevent and overcome children who are in conflict with the law today is through the implementation of the juvenile criminal justice system. To carry

¹Maidin Gultom, (2008), *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak di Indonesia*, Bandung: Refika Aditama, p. 1.

out guidance and provide protection for children, support is needed, both concerning institutions and legal instruments that are more stable and adequate. Therefore, the provisions regarding the administration of courts for children need to be carried out specifically. The purpose of the implementation of the juvenile criminal justice system is not solely aimed at imposing criminal sanctions for child perpetrators of criminal acts.²

Children who violate the law or commit criminal acts are strongly influenced by several other factors outside of the child such as association, education, playmates and so on, because criminal acts committed by children in general are a process of imitating or being influenced by negative actions from adults or other people. When the child is suspected of committing a crime, the existing formal justice system ultimately places the child in prisoner status, of course, it brings considerable consequences in terms of child development. The process of punishment given to children through the formal criminal justice system by putting children in prison did not succeed in deterring the child and becoming a better person to support the process of growth and development.³

Legal protection of children is an effort to protect the law against various freedoms and human rights of children. Forms of legal protection for children such as assistance from community officials, shorter detention periods compared to adults, facilities by law enforcement officers specifically for children, including the separation of juvenile detainees from adult detention is one form of legal protection for children. Criminal acts committed by children always draw criticism from law enforcers who are considered by many to be ignoring the procedures for handling children who have problems with the law, and there is an impression that they are often treated as adults in "small form" who commit criminal acts.⁴

Legally, the State of Indonesia has provided protection to children through various laws and regulations including Act No. 3 of 1997 concerning Juvenile Court, Act No. 39 of Human Rights and Act No. 23 of 2002 concerning Child Protection. One solution that can be taken in handling cases of child crimes is the restorative justice approach, which is carried out by diversion. Restorative justice is a settlement process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties with an interest in a crime that occurred to reach an agreement and settlement. Restorative justice is considered a way of thinking/paradigm new in looking at a crime committed by someone.⁵

The criminal system which until now sometimes still treats the children involved as perpetrators of criminal acts is like the perpetrators of crimes committed by adults. Children are placed in a position as a criminal who deserves to receive the same punishment as adults and applies in Indonesia.⁶

²Fiksa Ananda, 2018, *Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana*, Vol. 1, No. 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2566/1923> accessed on 19 March 2022, at 19.44. p. 77-78.

³Ibid.

⁴Ibid.

⁵Mohammad Taufik Makarao, dkk, (2014), *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, Jakarta: Rineka Cipta.p. 1.

⁶Ibid.

The diversion program provides benefits to the community in early and fast handling of deviant behavior. This initial treatment also saves costs which are the burden incurred by the local police. Children as perpetrators of these crimes will be given instructions by the police, criminal advisors, officers from the justice department, and schools. Then the child voluntarily participates in appropriate consultation and/or education and social activities. If the person concerned is successful in this program, the prosecutor will not prosecute the case and will not record in the case file the act⁷

The juridical basis for the formation of diversion refers to Article 28 paragraph (2) of the 1945 Constitution, Act No. 3 of 1999 concerning Human Rights, Act No. 23 of 2002 concerning Child Protection which in its provisions still considers aspects of special protection for children facing By Law (ABH). The guarantee of other forms of protection for children's human rights can also be said to be a driving factor for the importance of diversion being accommodated in a law.⁸

The problem that exists in this study is that legal protection efforts against children have not been carried out optimally, there are still law enforcement officers who still have not made diversion efforts and put forward criminal sanctions in prison, this is certainly an obstacle in providing legal protection to children as perpetrators of criminal acts, so we need to find a solution.

2. Research Methods

The approach method used in this study uses a normative juridical method. The specifications in this study are analytical descriptive. Sources of data used in this study are primary data sources, and secondary data in connection with legal protection of children as perpetrators of criminal acts. The data collection method used interviews with resource persons and document review, while the data analysis method used was qualitative data analysis.

3. Results and Discussion

3.1. Legal Protection of Children as Criminal Actors

Criminal cases committed by children are generally the provisions that are violated are criminal regulations contained in the Criminal Code (KUHP), so the investigation is carried out by general investigators, in this case Polri investigators. In line with the enactment of the Juvenile Criminal Justice System Law, it has been emphasized that investigations into juvenile delinquent cases are carried out by Polri investigators on the legal basis of Article 26 Paragraph (1) Number 11 of 2012 concerning the Juvenile Criminal Justice System, which in essence states that "investigations against Children's cases are carried out by investigators who are

⁷Ibid.

⁸Purniati, Mamik Sri Supatmi, & Ni Made Martini Tinduk, 2003, *Analisa Situasi Sistem Peradilan Anak (Juvenile Justice System) di Indonesia*, Departemen Kriminologi Universitas Indonesia & UNICEF. p. 4.

determined based on a Decree of the Head of the Indonesian National Police or other officials appointed by the National Police Chief.⁹

Legal protection for children in the judicial process is carried out starting from the level of investigation, investigation, prosecution, examination in court until the implementation of the court decision. During the judicial process, the rights of the child must be protected by applicable law and therefore must be carried out consistently by the parties concerned with resolving the problem of the naughty child.¹⁰

The investigation of the child must be in a family atmosphere as regulated in Article 18 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System which stipulates that: Social Welfare Personnel, Investigators, Public Prosecutors, Judges, and Advocates or other legal aid providers must pay attention to the best interests of the Child and strive to maintain a family atmosphere.¹¹

As for Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, criminal provisions for children have undergone improvements compared to Act No. 3 of 1997 concerning Juvenile Court and are explicitly regulated in Chapter V on Crime and Action in articles 69 to 83. At the beginning, Article 69 paragraph (1) clearly stated that a child can only be sentenced to a crime or subject to action based on the provisions of this Law. On the other hand, there is an age restriction. Children who are not yet 14 (fourteen) years old can only be subject to action.¹²

Broadly speaking, the investigation tasks consist of carrying out field operations and legal administration tasks. Based on Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, there are duties of investigators related to duties which include:

First, Arrest. The arrest authority in dealing with children in conflict with the law must also pay attention to the principle of criminal law, namely the Presumption of Innocence. In making an arrest, attention should be paid to the rights of the child as a suspect, such as the right to obtain legal assistance at every level of examination according to the procedures determined by law (Article 54 of the Criminal Procedure Code). KUHAP does not explicitly regulate whether evidence is sufficient or not. This does not reflect legal protection for children, therefore, it needs to be strictly regulated in the Criminal Procedure Code which applies specifically to children.¹³

The position of the child in the investigation examination process has nuances that give rise to the rights of the child in particular which can override coercive efforts and coercive actions from the investigation process. Initial contact between children and the police must be avoided in an atmosphere of physical and psychological violence so that in the investigation process there are children's rights

⁹Moh. Abd Basith & Anis Masdurohatun, 2019, *Efectiveness of Act Number 23 of 2004 Regarding Elimination of Violence in Household (PKDRT) Against Psychological Violence in Semarang*, Jurnal Daulat Hukum, Vol 2, No. 3, <http://jurnal.unissula.ac.id/index.php/RH/article/view/5673> accessed on 19 March 2022, at 19.46, p. 416.

¹⁰Ibid.

¹¹Ibid.

¹²Koesno Adi, (2015), *Diversi Tindak Pidana Narkotika Anak*, Malang, Setara Press, p. 121.

¹³R. Wiyono, (2016), *Sistem Peradilan Pidana Anak di Indonesia*, Jakarta: Sinar Grafika, p. 47.

such as: the child's family as a suspect must be notified in advance either by letter or verbally before the arrest process is carried out. using tools or weapons of coercion or coercive authority, the child suspect must immediately obtain legal assistance that is mandatory and free of charge (in the arrest of an investigator, the public prosecutor must include a lawyer who will later become the child's legal advisor),¹⁴

Second, Detention. Detention by a child investigator or child public prosecutor or child judge with a determination, in terms of and according to the method stipulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System and the Criminal Procedure Code, determining that the suspect or defendant can detained. Due to the term "can" be detained, it means that the detention of children does not always have to be carried out, so that in this case investigators are expected to really consider when detaining children. The detention of a child must take into account the interests of the child's growth and development, both physically, mentally and socially, and consider the interests of the community, for example, the detention of a child will make the community safe and peaceful.¹⁵

Places of detention of children must be separated from places of detention for adults and as long as the child is detained, the physical, spiritual and social needs of the child must still be met based on Article 33 paragraph (4) and paragraph (5) of Act No. 11 of 2012 concerning the Criminal Justice System. Child. Child detainees are placed in temporary child placement institutions (LPAS) or Social Welfare Organizing Institutions (LPKS) if they do not exist (LPAS), the place is separate from child prisoners. This is motivated by psychological considerations, to avoid negative consequences because children who are detained are not necessarily proven to have committed delinquency, associate with child prisoners, it is feared that they can transmit their experiences to children who are in detention, and affect their mental development. In practice, it is known that juvenile detainees are combined with adults, on the grounds that the place of detention in adult correctional institutions is not yet full. This is very dangerous and does not reflect child protection. Child prisoners and juvenile detainees have an effect on the attitudes and actions of adult detainees. Children may know experiences of committing crimes that have never been heard of or committed, or even children may become victims of sexual abuse while in detention.¹⁶

Protection in the process of investigating children against criminal acts committed by children is a form of special attention and treatment to protect the interests of children. The special attention and treatment is in the form of legal protection so that children do not become victims of the wrong application of the law that can cause mental, physical and social suffering.¹⁷

¹⁴Ibid.

¹⁵I Dewa Putu Gede Anom Danujaya, 2018, *Formulasi Model Sistem Pemidanaan Anak di Indonesia*, Jurnal Daulat Hukum, Vol. 1, No. 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2624/5117> accessed on 19 March 2022, at 19.47. p. 109.

¹⁶Ibid.

¹⁷Ibid.

3.2. Obstacles in the Legal Protection of Children as Criminal Actors

At the investigation stage, investigators are required to seek diversion, which aims to: achieving peace between victims and children, resolving child cases outside the judicial process, preventing children from depriving children of independence, encouraging the community to participate, instilling a sense of responsibility in children. In conducting an investigation of a child, the investigator is obliged to ask for consideration or advice from the community advisor, and if necessary may also ask for consideration or advice from education experts, mental health experts, religious experts, or other community officials.¹⁸

However, in realizing it all, especially orders from the legal basis on Act No. 11 of 2012 concerning the Juvenile Criminal Justice System still finds several obstacles both normatively and practically. The normative obstacle in realizing the order of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System as a material legal basis is that it is still based on the formal law of the Criminal Procedure Code. As an example in practice, Article 32 Paragraph (3) of Act No. 11 Year 2012 concerning the Juvenile Criminal Justice System stipulates that the reasons for detention as referred to in Paragraph (1) must be stated explicitly in a detention order. Violations or omissions of Article 32 Paragraph (3) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System are not strictly regulated as a result of the law, so that they can harm children. The child detention, based on consideration of the interests of the child and the interests of the community which must be stated explicitly in the detention order. In practice in the Temanggung Police jurisdiction, this is one of the obstacles to legal protection for child perpetrators, as the reporting party and/or victim wants the child perpetrators to be detained, so that if the child perpetrators are not detained, the reporting party and/or victim assumes to the investigator that the report was not carried out in accordance with applicable law.¹⁹

Another obstacle in practice in the legal area of the Temanggung Police, as well as environmental factors which of course play a fundamental role, the children mostly hang out or socialize not in the environment they should be, these children hang out or socialize with other children, even they tend to hang out or socialize with people who are more mature, as a result many of these children are influenced by the habits of more mature people. Of course, the role of parents is needed here, but most of these children state that when their parents work or are not in the home environment, this is an opportunity for them to hang out and socialize freely and even cross boundaries.²⁰

¹⁸Muchammad Qomaruddin, Gunarto, & Aryani Witasari, 2020, 59. *Legal Flexibility in Children Diversion Which Conflict With the Law (ABH) Case Study At Ex Residency of Cirebon Jurisdiction*, Jurnal Daulat Hukum, Vol. 3, No. 1, <https://media.neliti.com/media/publications/324179-legal-flexibility-in-children-diversion-23dbf99f.pdf> accessed 19 March 2022, at 19.49, p. 60.

¹⁹Ibid.

²⁰Hadi Noor Cahyo & Maryanto, 2019, *Implementation of The Settlement of the Case Restorative Justice in Fights by Children Because The Effect of Liquor (Case Study in The Polres Kudus)*, Jurnal Daulat Hukum, Vol. 2, No. 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/4267/2938> accessed on 19 March 2022, at 19.50, p. 1029.

3.3. Solutions to Obstacles in Legal Protection of Children as Criminal Actors

Children are an inseparable part of human survival and the sustainability of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to have the widest opportunity to grow and develop optimally, physically, mentally, and socially. However, if a child becomes a perpetrator in a criminal act, the perpetrator can be charged with Act No. 23 of 2002 concerning Child Protection as amended by Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection.²¹

The principle of punishment imposed on children in conflict with the law should refer to the principle of the best interest of the child, where in all actions involving children carried out by the government, society, legislative bodies and judicial bodies, the best interests are the best interests of the child. The criminal justice process is best avoided from children if there is no other way (Ultimate Remedium) and the punishment must be non-custodial, so as to minimize the negative impact of the imposition of imprisonment. This can be seen from the criminal system in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.²²

View handling progress on Children Facing the Law (ABH) which is guided by Act No. 11 of 2012 concerning the Juvenile Criminal Justice System at the Temanggung Police Station which is getting better with more attention to children's rights, some solutions related to the handling of ABH in the future are as follows:

First, coordination between stakeholders in handling the children facing the Law (ABH) must be more intensive, especially in terms of prevention, legal handling processes and after the legal process is completed (after care) to be better at fulfilling children's rights according to the convention on children's rights.

Second, it is necessary to involve more elements of the community and non-governmental organizations (NGOs), especially in prevention programs on Children Facing the Law (ABH) and after care programs for Children Facing the Law (ABH).

Third, based on the principle of what is best for children, some institutions are places of care or places to undergo punishment of Children Facing the Law (ABH) such as the Child Special Penitentiary (LPKA) and other social institutions provide various facilities and infrastructure to support better child development.

Fourth, encouraging various parties to further intensify the settlement of legal cases for children (as perpetrators) through the principle of restorative justice by means of diversion, while ensuring that the diversion process is not only a means of compensation transactions, but is still able to provide a deterrent effect to children as legal actors. It is necessary to conduct socialization to the community related to the legal process for children which is different from the legal process for adults to prevent misunderstandings from the community about the ongoing legal process.

4. Conclusion

The conclusion in this study is that the forms of protection that can be given

²¹Ibid.

²²Ibid.

to children as perpetrators in criminal acts are returned to their parents (Article 45 of the Criminal Code), rehabilitation, namely medical rehabilitation (Article 56) and social rehabilitation (Article 58), the process of child detention (Article 32 Act No. 11 of 2012 concerning the Juvenile Criminal Justice System) as a last resort, if the child is considered dangerous and it is feared that he will commit the act again. However, this detention process is different from the general adult detention process. The obstacles faced by law enforcement officers, especially investigators in protecting children as perpetrators of narcotics crimes at the investigation level are the psychological condition of the child is still unstable, the origin of the perpetrator and related to time, and the lack of cooperation and coordination. Children Facing the Law (ABH) must be more intensive, especially in terms of prevention, legal handling processes and after the legal process is completed (after care) to be better at fulfilling children's rights according to the child rights convention, it is necessary to involve more elements of the community and non-governmental organizations (NGOs), especially in prevention program on Children Facing the Law (ABH) and after care programs.

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