

Legal Dynamics in the Juvenile Criminal Justice System in Indonesia

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Abstract. *The purpose of this study is to examine and analyze legal policies in the juvenile criminal justice system in Indonesia. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. The concrete form of the Government in providing protection to everyone, especially children as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely "Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law" and Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "Every child has the right to survival, growth, and development and has the right to protection from violence and discrimination". Criminalization of children at a very young age, because the legal position of children when dealing with the law is not yet optimal, and their legal position does not support, for example the age limit for criminal responsibility of children (the age of crime responsibility) So that the Constitutional Court (MK) held a judicial review hearing on Law Number 3 of 1997 concerning Juvenile Courts. Before the birth of Law Number 3 of 1997 concerning Juvenile Courts, the rules regarding the trial process for children were still regulated in several separate regulations from the Supreme Court. Some of these regulations require special trials for children that are closed to the public, this is stated in SEMA Number 3 of 1959.*

Keywords: *Children; Criminal Justice System; Legal Dynamics.*

1. Introduction

The Unitary State of the Republic of Indonesia is one of the big countries that highly prioritizes applicable legal provisions. Positive legal regulations that apply in Indonesia are clearly an important component in building a safe, peaceful and

secure life.¹ As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, it has been emphasized that Indonesia is a country of law, this phrase is stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. This emphasizes that the implementation of the government of the Republic of Indonesia must always be based on and in accordance with the will of the law. Paragraph 4 of the Preamble to the 1945 Constitution, which is the constitutional basis of this country, states that one of the goals of the state is to create general welfare and to educate the nation's life.² This has implications that general welfare becomes a constitutional ideal, accompanied by the growth of an intelligent Indonesian society that is capable of leading the Indonesian nation to become a sovereign and prosperous country.

The formation of a State or government (organizing apparatus), philosophically, among other things, is intended to prevent and avoid, at least reduce unrest that occurs in society. The regulations implemented by a state aim to maintain and guarantee natural human rights, namely the right to life, the right to freedom and the right to one's own property, the aim is to create world peace by creating laws for all mankind.

The social facts that have recently occurred in community life are problems related to children, where in social life which is greatly influenced by various factors, we are faced again with the problem of handling children who are suspected of committing crimes. Every year, children who become perpetrators of crimes always increase, in certain cases, children who become perpetrators become a special concern for law enforcement officers. Therefore, various prevention and handling efforts for children in conflict with the law need to be carried out immediately. One of the prevention and handling efforts for children in conflict with the law today is through the implementation of the juvenile criminal justice system.³

In addition to being a country based on law, Indonesia is also a country that upholds human rights, including children's human rights, which are marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations, both national and international.⁴The concrete form of the Government in providing protection to every person, especially children as regulated in Article 28D paragraph (1) of the 1945 NRI Constitution, namely

¹Sumaryono and Sri Kusriyah, (2020), The Criminal Enforcement of the Fraud Mode of Multiple Money (Casestudy Decision No.61 / Pid.B / 2019 / PN.Bloro). *Jurnal Daulat Hukum*: 3 (1) March

²Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, (2020), Judgment Considerations Policy in Decree of the Court Criminal StatementBased On Criminal Destination, *Jurnal Daulat Hukum*: 3 (1) March

³Didi Wahyudi Sunansyah, and Aryani Wirasari, (2020), Effectiveness Of Allotment Penalty Imposed By Judge In The Case Of Children For A Child Protection As Victims (Case Study at State Court of Sumber), *Jurnal Daulat Hukum*: 3 (1), March, p 88

⁴Ari Yudistira and Widayati, (2021), The Investigation Process of Prospective Children in Criminal Action, *Jurnal Daulat Hukum*: 4 (1), March, p 20

"Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law" and Article 28B paragraph (2) of the 1945 NRI Constitution, namely "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination".

Criminalization of children at a very young age, is caused by the legal position of children when dealing with the law not being optimal, and the legal position is not supportive, for example the age limit for criminal responsibility of children (*the age of criminal responsibility*) So that the Constitutional Court (MK) held a judicial review hearing on Law Number 3 of 1997 concerning Juvenile Courts.⁵

In dealing with and overcoming various crimes and child behavior in the context of efforts to foster and protect children which are important factors, then alternative punishment efforts that can be used in this condition are to apply punishment with the restorative principle. This principle positions the punishment process as "*The Last Resort*" not "*The First Resort*". This aims to allow children to improve themselves according to the will and interests of the child (The Best Interest of The Child) when they are faced with the law. Although criminalization is a powerful tool that the State has to combat crime, criminalization is not the only tool to improve the situation, there must be a combination of repressive and preventive efforts.

Based on the background above, the researcher determines a theme and forms a title to be continued in conducting a scientific study in the form of systematic and fundamental research with the aim of the research to study and analyze legal policies in the juvenile criminal justice system in Indonesia.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Children in conflict with the law

The age limit of a child is very important in child criminal cases, because it is used to find out whether someone suspected of committing a crime is categorized as a child or not. Knowing the age limit of children, there is also diversity in various countries that regulate the age of children who can be punished. Several countries also provide a definition of a person being said to be a child or an adult

⁵Muhammad Joni, (2012), Prison (Not) a Place for Children, Jakarta, Role of Indonesia/Indonesian Child Advocacy Association, p V

based on their age and activities or thinking ability. The definition of a child is also contained in Article 1 *convention on the rights of the child*, a child is defined as any person under the age of 18 years, unless, under the law applicable to children, adulthood has been attained earlier.

Meanwhile, discussing the age limit for a person to be considered a child, the limitation of the definition of a child according to Bisma Siregar, in his book states that in a society that already has written laws, an age limit is applied, namely 16 years or 18 years or a certain age according to calculations at that age the child is no longer included or classified as a child but is already an adult.⁶

The discussion of children in conflict with the law refers to children in conflict with the law and children who are victims of criminal acts. Children in conflict with the law are children who have reached the age of 12 (twelve) years but have not reached the age of 18 (eighteen) years. Those who are suspected, accused, charged or sentenced for committing a crime. According to Apong Herlina, children in conflict with the law can also be said to be children who are forced to conflict with the criminal court system because:

1. Being suspected, charged, or found guilty of violating the law; or
2. Has become a victim due to a legal violation committed by a person/group of people/institution/State against him/her; or
3. Have seen, heard, felt or known of an event that violates the law.⁷

Therefore, according to Apong Herlina, if viewed from the scope, children in conflict with the law can be divided into:

- a. Perpetrators or suspects of criminal acts;
- b. Victims of crime;
- c. Witness to a crime.⁸

Children as perpetrators or children in conflict with the law are children who are suspected, accused, or found guilty of violating the law and require protection. The word conflict itself means indicating an event that is not in harmony or contradicts an event, so it can be said to be a problem. Therefore, the definition of a child in conflict with the law is a child who has a problem because of an act that is contrary to the law. Juvenile delinquency is often referred to as juvenile delinquency, which is defined as a child who is socially disabled.

3.2. Legal Policy in the Juvenile Criminal Justice System in Indonesia

The juvenile criminal justice system is used by law enforcement to decide on criminal sanctions against children who commit crimes or children who are in

⁶Mr. Bisma Siregar, (1986), *Legal Justice in Various Aspects of National Law*, Jakarta: Rajawali, p 105

⁷Apong Herlina et al., (2004), *Protection of Children in Conflict with the Law*, Jakarta: PT. Raja Grafindo Persada, p 17

⁸Ibid, p 43

conflict with the law. The best interests of the child must be the main priority in sentencing children. However, according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Juvenile Criminal Justice is part of the judicial power in the general court environment. This is done with the aim of being a special court, the Juvenile Criminal Justice is under the scope of the General Court.

Legally, as stated in the Explanation of Article 1 number 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the definition of the Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving their sentence, as.

By considering the legal definition above, it can be said that the "Children's Criminal Justice System" is a criminal justice system that specifically handles cases of "Children in Conflict with the Law (ABH)", which consist of: (1) children in conflict with the law, (3) children who are victims of criminal acts, and (2) children who are witnesses to criminal acts. Therefore, many parties are involved in it, considering the need for caution in handling children, so that trauma does not arise for children in the future. This can be seen from the various institutions involved. Starting from the Police, Prosecutor's Office, and Courts, as well as the Correctional Center (Bapas), Special Child Development Institution (LPKA), Temporary Child Placement Institution (LPAS), and Social Welfare Institution (LPKS), all of which are institutions or agencies that handle ABH starting from children coming into contact with the justice system in the investigation process.

These institutions determine whether the child will be released or processed in a juvenile court, so that the stage when the child will be placed in the choices, and carried out in the corridor for Restorative Justice.⁹It should be noted that the Judiciary is the main support and important foundation in a state of law. A legal instrument is considered beneficial and useful when it creates a judiciary that is able to stand firm and is free from any influence, which can contribute to the formation of various legal rules contained in legislation, both in substance and strength. In addition, the judicial institution is also a place where every individual seeks justice and resolves various legal problems related to their rights and obligations according to the law.¹⁰It is hoped that with this Juvenile Criminal Justice System, all aspects of life can be realized to provide and uphold children's rights.

Before the enactment of Law Number 3 of 1997 concerning Juvenile Courts, the rules regarding the trial process for children were still regulated in several separate regulations from the Supreme Court. Several of these regulations

⁹Nafi Mubarak, (2022), Juvenile Criminal Justice System, Insight Mediatama, First Edition, p 10

¹⁰Candra Hayatul Iman, (2018), Criminal Law Policy for Child Protection in the Reform of the Juvenile Criminal Justice System in Indonesia, Journal of Law and Justice, 2 (3), p 378

required special trials for children that were closed to the public, as stated in SEMA Number 3 of 1959.

The requirement that judges in child trials must be judges who have competence and concern for children, this is regulated based on Supreme Court Instruction Number MA/Pem./048/1971 which aims to provide a guarantee of examination aimed at the welfare of children. The Criminal Procedure Code also briefly discusses the handling of criminal acts committed by children, where it is substantially regulated that trials for children are conducted in a closed manner for the general public. In addition, the requirement that examinations in trials may only be carried out by a single judge.

What is interesting when discussing the juvenile justice system in Indonesia is how initially the interests of the children themselves were not given much attention and seemed to be "second" and the birth of the convention on the rights of the child became a new hope for the criminal justice system, especially for juvenile justice in Indonesia. However, in reality the convention that should have been the hope did not immediately improve the juvenile criminal justice system, it took a long process until finally there were laws and regulations that optimally regulated the interests of children, namely Law Number 11 of 2012.

Based on the explanation in the Circular of the Attorney General No. P. 1/20 issued on March 30, 1951, children in conflict with the law are those who according to criminal law commit acts that can result in criminal sanctions who are not yet 16 (sixteen) years old. According to the circular, efforts to bring children who have committed crimes to court are only a last resort (*ultimate remission*). Where it must first prioritize other settlement efforts for children that can be considered other than the court. Institutions that are considered appropriate to resolve the problems of children in conflict with the law are Pra Yuwana and the social officer's office. Pra Yuwana, which was originally called Pro Juventute, this institution was founded in 1957 by the Department of Justice.

Martina stated that at that time in Indonesia there was an increase in juvenile delinquency, this period is estimated to have occurred around 1956-1957 which although increased at that time was still not a major problem. Then the government realized the importance of special attention given to children, and only in 1958 did the idea emerge that led to a juvenile justice institution, and this was implemented by implementing a juvenile court procedure that was made different from the trial process generally applied in adult courts. This application is based on the idea that children who commit crimes or in this case are referred to as delinquency, must be treated differently from perpetrators of crimes in general who are adults. The distinction between trials for children and trials in general is the result of discussions between institutions involved in handling the problems of children who commit crimes, namely the Police, Prosecutor's Office, Justice, and *pre-youth*.

Before the unification of laws that specifically regulate criminal acts committed by children and how the law enforcement process is carried out, theoretically and practically related to these rules are still spread across several regulations such as SEMA, Decree of the Minister of Justice and other regulations. Provisions regarding the juvenile court process have actually been regulated since Indonesia's independence, this is contained in Articles 45, 46, and 47 of the Criminal Code. The Criminal Code is a concordance of WvSNI (*Wetboek van Strafrecht for Nederlandsch Indie*) which was first enforced with the Royal Decree (King's Decree) on 15 October 1915 and came into effect on 1 January 1918.¹¹

Then with the issuance of Law Number 73 of 1958 concerning Declaring the Applicability of Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code.

The Criminal Code that is included in the category of children who can undergo juvenile court is a person who has not reached the age of 16 (sixteen years) where the imposition of a criminal sentence on this child is in the form of returning to his parents or guardians without being accompanied by criminal sanctions as regulated in the Criminal Code, and if the child does not have parents or guardians then he will become a child owned by the state. If the perpetrator of the crime is a child under the age of 18, the maximum principal criminal penalty is reduced by one third, and if the threat is the death penalty or life imprisonment, the maximum prison sentence becomes 15 years, and no additional penalties are permitted.¹²

Then, regarding the implementation of the rules of juvenile criminal justice, it is further regulated in SEMA Number 3 of 1959 which explains that examinations for children must be carried out closed to the public for the benefit of the child himself. And related to children who commit crimes must be carried out through a judicial process that prioritizes the interests and welfare of children and society. And to be able to make such a trial, it is necessary to have a judge who has attention, knowledge and dedication to children who commit delinquency.

In fact, Law Number 3 of 1997 concerning Juvenile Courts has attempted to change the paradigm of child punishment in Indonesia, which is no longer aimed at retaliation (retributive) but more directed at the process of child development with the aim of creating a better future for the child. However, this paradigm is considered insufficient because of the increasingly developing conditions in Indonesia and new ideas that have emerged regarding the need to change the type of punishment to an educational type of punishment, and to at least include children who commit crimes in the judicial process. When the law on juvenile

¹¹Ahmad Bahiej, (2006). History and Problems of Material Criminal Law in Indonesia, *Sosio-Regalia*, 5(2) February, p 13.

¹²R. Soenarto Soerodibroto, (2015), *Criminal Code and Criminal Procedure Code*. Jakarta: Raja Grafindo Persada, p 37

courts was deemed unable to meet the legal needs in Indonesia and was deemed unable to provide optimal legal protection for children in conflict with the law, the idea arose to renew the law, which became the forerunner to the birth of Law Number 11 of 2012 concerning the Juvenile Justice System.

Law Number 11 of 2012 concerning the Juvenile Justice System is an update of Law Number 3 of 1970 concerning Juvenile Courts, this change is a new chapter for the special criminal justice system for children in Indonesia. Where there is a paradigm shift from initially still prioritizing appropriate punishment for children who commit crimes and which is absolute, to using a more humane restorative justice approach.

This law is considered to provide more protection and attention to the interests of children which cannot be obtained optimally from previous regulations. Therefore, it can be concluded that legal history has a fairly close relationship with the discussion of legal politics. One form of renewal of the juvenile court law is the establishment of a juvenile criminal justice system.

Although the considerations in the law strongly support child protection, it has not substantially touched on it. There is only a substantial specialization for children, for example, in trials, law enforcement officers and single judges are not allowed to wear formal attire like trials in general, but in reality there are still many children who are faced with the trial process and then sentenced to prison. The paradigm of arrest, detention, and the imposition of criminal sanctions for children in conflict with the law raises a negative potential, namely taking away what is the right of every person, namely the child's freedom. In the law, only discretionary authority is allowed to investigators to stop or continue the case.

This is certainly different from the provisions in Law Number 11 of 2012 which allows each agency to implement restorative justice through the diversion process. This diversion process is not only at the investigation level, but at the last level in the criminal justice system, namely correctional institutions, the diversion process can still be carried out. Even according to the law, law enforcers who do not prioritize the implementation of restorative justice through the diversion process will be given strict sanctions such as imprisonment and fines. According to Yutirsa, the birth of Law Number 11 of 2012 is an effort to overcome the weaknesses of Law Number 3 of 1997 where the fundamental change is the use of a restorative justice approach through the diversion system.¹³

When referring to the objectives of the juvenile justice system according to *The Beijing Rules* as stated in Rule 5.1.¹⁴ as follows: "The juvenile justice system shall prioritize the wellbeing of the juvenile and shall ensure that any reaction to

¹³Yutirsa, (2013), Analysis of the Concept of Restorative Justice Through the Diversion System in the Juvenile Criminal Justice System in Indonesia, 2 (2), p 232-233.

¹⁴United Nations Standard Minimum Rules for the Administration of Juvenile Justice, (1985), The Beijing Rules, Adopted by General Assembly Resolution 40/33 of 29 November.

juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offense".

That the juvenile justice system will prioritize the welfare of the child and will ensure that any response to a child who breaks the law will always be commensurate with the circumstances of both the offender and the offender. It is clear that the juvenile justice system aims to advance the welfare of the child, which means that as much as possible in the judicial process it avoids the imposition of criminal sanctions that are only intended to punish. Another aim of this system is also to pay attention to the principle of proportionality of each sanction given, which means that there are limitations in imposing punishments which are generally stated in the limits of punishment that are the same as the severity of the crime committed, but also pay attention to other considerations such as his/her condition.

4. Conclusion

Supreme Court Judge through Supreme Court Decision Number. 431 K/PID/ 2021 which strengthens the decision of the district courtfactual evidencein the case of Nurdin Nurdin Ahmad was found guilty of violating Article 362 Paragraph (2) regarding the use of fake documents in the election of Lhok Kulam Village, Jeunieb District, Bireuen Regency. The panel of judges was of the view that although Nurdin Ahmad had attended the Ashhabul Yamin Islamic Boarding School in Bakongan, South Aceh, he did not complete his education. In addition, the Islamic boarding school was a Salafi Islamic boarding school that only taught religious knowledge, while the defendant himself admitted that he had never studied general subjects or taken a final exam (graduated from school). The case of the use of fake documents in the case of Nurdin Ahmad who ran for Lhok Kulam Village, Jeunieb District, Bireuen Regency should have been avoided if the village head election committee had been observant of each administrative file submitted by each village head candidate. Nurdin Ahmad should not have been punished because apart from him not having the intention (mens rea) to commit a crime, he has also been declared to have met the requirements by the organizing committee to become a candidate for village head, especially since this case was only reported after Nurdin Ahmad was elected and inaugurated as the elected village head

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