

Law Enforcement Against Minors Who Commit Crimes From the Perspective of the Criminal Justice System

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Abstract. *Children are the next generation of the nation in the future, because children have a very important role to lead and advance the nation. Children often have problems and face the law. This is interesting to study. This study aims to determine the legal handling of children who commit crimes. In this study, the approach method used is: an empirical sociological approach or an approach through direct surveys in the field and secondary data through library studies. The research specification used is Descriptive Analytical, which is an effort to analyze and explain legal problems related to objects with a comprehensive and systematic description of everything related to the handling of children in conflict with the law. Handling of children who commit crimes requires a different legal approach from the adult criminal justice system, namely prioritizing restorative justice in accordance with Law Number 11 of 2012. In its implementation, of course, there are significant obstacles that affect the smoothness of the handling process it self.*

Keywords: *Children; Criminal; Justice; Restorative.*

1. Introduction

In a state of law, law is the main pillar in moving the joints of social, national, and state life. One of the main characteristics of a state of law lies in its tendency to assess actions taken by society on the basis of legal regulations. This means that a state with the concept of a state of law always regulates every action and behavior of its people based on applicable laws.

This is done to create, maintain and defend peace in social life in accordance with what is mandated in Pancasila and the 1945 Constitution, namely that every citizen has the right to feel safe and free from all forms of crime.

Criminal law as a tool or means to solve problems in community life. The

existence of criminal law can provide justice and appropriate solutions for the community. Because criminal law is the whole of the regulations that determine what actions are prohibited and prohibited including criminal acts, and determine what punishment can be imposed on those who do it. Criminal law in Indonesia is derived from written law and unwritten law. This is because the Indonesian legal system is pluralistic. However, according to Bambang Poernomo, the main source of criminal law is in the Criminal Code and other criminal law regulations, as well as customary law or living folk law.

Children are the next generation of the nation in the future, because children have a very important role to lead and advance the nation. The important role carried out by children is what makes parents, society and even the government must guarantee the lives of children. In this case, the state has an obligation to guarantee the rights of every child to their survival, growth and development and the right to protection from violence and discrimination.

Children are an inseparable part of the survival of the nation and state. Therefore, the state has a constitutional obligation to provide protection for children as stated in Article 28B Paragraph (2) of the 1945 Constitution, which states that "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination."

But in reality, various cases of violence against children still often occur, both as victims and as perpetrators of criminal acts. This raises concerns as well as challenges for the state in realizing a comprehensive legal protection system for children.

Legally, child protection has been regulated in various laws and regulations, including: Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which emphasizes the importance of child protection in all aspects of life.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which emphasizes the restorative justice and diversion approaches in dealing with children in conflict with the law.

Despite having a strong legal basis, the implementation of child protection in the field still faces many obstacles, such as the lack of understanding of law enforcement officers, the lack of child-friendly facilities, and weak coordination between related institutions. Therefore, a more in-depth study is needed regarding the effectiveness of the implementation of the legal system in protecting children's rights in Indonesia.

The purpose of the juvenile justice system is not merely to impose criminal sanctions on children who commit crimes, but rather to focus more on the basic idea that the imposition of these sanctions is a means of supporting the

realization of the welfare of children who commit crimes. The formal criminal justice system that ultimately places children in the status of prisoners certainly has quite significant consequences in terms of the growth and development of a child. The punishment process given to children through the formal criminal justice system by putting children in prison does not make a child become a deterrent or become a child with a better personality, but prison actually makes children more professional in committing a crime.

Specifically in Indonesia, the regulation regarding the Juvenile Criminal Justice System is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). Although there are laws regulating children, children themselves still commit crimes because they are naughty children. Juvenile delinquency is often referred to as "juvenile delinquency" or what is commonly interpreted as "juvenile crime" and is formulated as a behavioral disorder, actions or actions of adolescents that are asocial, contrary to religion, and the provisions of the laws that apply in society.

Juvenile delinquency can no longer be viewed as ordinary delinquency, children often commit acts that are classified as criminal acts, such as: stealing, carrying sharp weapons, getting involved in fights, being involved in drug use, and others. Juvenile delinquents are children who commit crimes or who commit acts that are declared prohibited for children, both according to laws and regulations and according to other legal regulations that exist and apply in the relevant society.

To avoid the negative effects of the juvenile criminal justice process that has occurred so far, a form of mechanism is needed to resolve children in trouble with the law that is oriented towards protecting children's rights. One form of such effort is by giving authority to law enforcement officers to take policy actions in handling or resolving problems of children in trouble with the law without taking formal means, including by stopping or not continuing or releasing them from the court process or returning or handing them over to the community and other forms of social service activities, this action is called Diversion.

The development of the birth of the Child Criminal Justice System Law provides the best solution for children in conflict with the law so that children are no longer equated with adults from the level of investigation, prosecution to examination in court. In addition, children can continue their future and can return to society. The Child Justice System Law provides the application of the diversion concept using a restorative justice approach.

There are still many facts in the field where from year to year the number of crimes involving children as perpetrators shows that the imposition of criminal sanctions for them has not achieved its goal, namely as an effort to resocialize them into the scope of society. If a legal process must be carried out against

children, it is certainly unfair if the child defendant is subjected to the same legal process as an adult defendant. Likewise, with the punishment that will later be imposed on the child, it is certainly very unfair if the punishment that must be served is the same as the punishment for an adult defendant. Moreover, considering that children are the successors of the ideals of the nation's struggle, so in handling criminal acts committed by children, the interests and future of the child must be truly considered.

The juvenile criminal justice process starts from investigation, prosecution, trial. Treatment during the juvenile criminal justice process must pay attention to the principles of child protection and continue to uphold the dignity of the child without ignoring the implementation of justice.

Law Number 35 of 2014 amending Law Number 23 of 2002 concerning child protection (hereinafter referred to as the Child Protection Law) regulates, first, the treatment of children in a humane manner in accordance with the dignity and rights of children. Second, the provision of special child support officers from an early age. Third, the provision of special facilities and infrastructure. Fourth, the imposition of appropriate sanctions for the best interests of the child. Fifth, continuous monitoring and recording of the development of children in conflict with the law. Provision of guarantees to maintain relationships with parents or family. Sixth, protection from the provision of identity through the mass media and to avoid labeling.

One of the principles used in child protection is that children are the main capital for the survival of humans, nations and families, therefore their rights must be protected. Children cannot protect their own rights, many parties influence their lives. The state and society have an interest in trying to protect children's rights.

The juvenile criminal justice process will have a negative impact in the form of stigma (as a naughty child) which can increase deviant behavior and can form a criminal character so that the child is difficult to be accepted and return to society. If they are already in society, then they will continue to be considered as criminals or naughty children, even in formal education environments they will be difficult to be accepted back to continue the education they should get for the sustainability of their future. If this is associated with one of the objectives of criminal law as ultimum remedium, then the imposition of imprisonment is not appropriate. Therefore, efforts need to be made so that children do not go to prison if they only commit minor crimes. For the sake of the sustainability of the child's future and to feel responsible for their actions.

2. Research methods

Research Methods, are basically a function of the problems and objectives of the research. Therefore, discussions in research methods cannot be separated and must always be closely related to the problems and objectives of the research.

What is used in this research consists of approach methods, research specifications, sources and types of data, data collection techniques and data analysis techniques.

3. Results and Discussion

3.1 Handling of Minors Who Commit Crimes from a Justice Perspective

In conducting research on the formulation of the problem related to the handling of minors who commit crimes from a justice perspective, the author uses the theory of law enforcement and the theory of justice. The author assumes that in handling children who commit crimes, it must be in accordance with law enforcement that has justice values.

Handling of children who commit crimes must be done carefully and prioritize the principle of restorative justice. This approach is different from the adult criminal justice system, because children are still in the process of growth and development, and have great potential to change and return to their social environment.

The principle of justice in the context of children does not only cover the aspect of punishment, but also protection and guidance. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) emphasizes that the legal process for children must prioritize diversion, namely the transfer of the settlement of children's cases from the criminal justice process to outside the judicial process.

According to Article 1 number 6 of the SPPA Law, restorative justice is the resolution of criminal cases involving the perpetrator, victim, the perpetrator/victim's family, and other parties to jointly seek a just resolution with an emphasis on restoring the original state, and not revenge.

This approach is in line with Article 28B paragraph (2) of the 1945 Constitution which states that "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination." Law enforcement against children must reflect protection of these rights.

The criminal justice process, which consists of a series of stages ranging from investigation, inquiry, arrest, detention, prosecution, trial, to sentencing, is a very complex activity and can be said to be difficult to understand and sometimes frightening for the general public. Such perceptions cannot be avoided as a result of the many reports in the mass media that describe how people as justice seekers are often faced with unpleasant conditions, either due to their ignorance of the law or unsympathetic treatment from law enforcement officers. Regarding the juvenile criminal justice system in Indonesia, it has been regulated in Law No. 11 of 2012.

The juvenile criminal justice system is the process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving a sentence. Children in conflict with the law are children in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts.

In Law No. 11 of 2012, it is stated regarding the principles of juvenile justice which include the best interests of the child, respect for the child's opinion, the child's survival and growth, the child's guidance and development, deprivation of liberty and criminal punishment as a last resort, and avoidance of retaliation.

The Juvenile Justice System is different from the general criminal justice system (Criminal Justice System) because the general criminal justice system is an effort to combat crime through penal or criminal law facilities driven by the police, prosecutors, courts and culminating in the imposition of criminal sanctions for the perpetrators. This is what Romli Atmasasmita expressed in his opinion regarding the Criminal Justice System. Alf Rose argues that the Criminal Justice System contains a Concept of Punishment which is based on two things, namely:

- a. Criminal penalties aimed at causing suffering to a person
- b. Criminal punishment is a statement of condemnation of the perpetrator's actions.

So, based on the above opinion, Prof. Sudarto defines that criminal law as a means implemented in a justice system is a form of retribution for the perpetrator's mistake.

Based on this perspective, the imposition of criminal sanctions for children in conflict with the law is deemed incapable of providing justice for children as mandated by the agreed legal policy on children. Therefore, establishing a criminal justice system specifically for children is an effort to achieve legal justice. Regarding the juvenile criminal justice system in Indonesia, it has been regulated in Law No. 11 of 2012.

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Law No. 11 of 2012, Article 3, also regulates the rights of every child in the criminal justice process, including:

a. Treated humanely by taking into account needs according to their age, b. Separated from adults, Engaged in recreational activities, c. Free from torture, punishment or other cruel, inhumane, or degrading treatment, d. Not sentenced to death or life imprisonment, and e. Not arrested, detained, or imprisoned, except as a last resort and for the shortest possible time.

In addition, Law Number 35 of 2014 concerning Child Protection also mandates that every child in conflict with the law be treated humanely in accordance with their dignity and worth, and taking into account the best interests of the child.

Law No. 35 of 2014 defines a child as a person under the age of 18 (eighteen) years including unborn children. This definition broadens the scope of protection from fetuses to young adults.

UU no. 35 of 2014 regulates guaranteed children's rights. This law guarantees children's rights, including:

1. The right to live, grow and develop optimally
2. The right to education and health
3. The right to protection from violence, discrimination and exploitation
4. The right to legal protection and participation in socio-cultural life

Law No. 35 of 2014 also regulates Special Protection for Children. This law regulates special protection for children who are in vulnerable conditions, such as:

1. Children who are victims of physical, psychological and sexual violence
2. Children with disabilities
3. Children in conflict with the law (ABH)
4. Children victims of disasters and social conflicts

Implementation of Law Enforcement and Sanctions Law No. 35 of 2014 increases criminal sanctions against perpetrators of violence and exploitation of children, including the threat of chemical castration, announcement of the perpetrator's identity, and installation of electronic detection devices.

3.2 Obstacles in Law Enforcement Against Minors Who Commit Crimes from the Perspective of Justice and Their Solutions

In law enforcement against children who commit crimes, of course, through

restorative justice as an action to uphold justice by repairing the damage caused by a crime. Restorative justice is based on the type of punishment in the form of community service, compensation, and other forms other than imprisonment by allowing the convict to remain active in society). Article 1 number 6 of the UUSPPA determines restorative justice as a resolution of child criminal cases by emphasizing the perpetrator's recognition by imposing an obligation to be responsible in order to restore the disturbed situation.

This restorative justice is carried out by involving the perpetrator, victim, the perpetrator/victim's family and also other related parties with the aim of jointly seeking a solution in accordance with the wishes of the parties, with an emphasis on restoring the original state and not retaliation. Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.

As mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, in essence this diversion also aims to protect children from the negative impacts of criminalization. Diversion also aims to ensure that children grow and develop both physically and mentally. The Juvenile Criminal Justice System Law prioritizes the resolution of children in conflict with the law by handling the resolution through restorative justice, namely the resolution of cases involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair resolution by emphasizing the restoration of the original state.

A restorative approach must be carried out in resolving child cases as mandated in Article 5 paragraph (1) of the UUSPPA which states "The juvenile criminal justice system must prioritize a restorative justice approach". This shows that in order to guarantee protection of children's interests so that children are protected from all negative effects of criminalization that prioritizes distributive justice. Restorative justice as a form of case resolution is then realized in diversion.

The obligation of diversion by law enforcement has been regulated in Article 7 paragraph (1) of the UUSPPA which states "At the level of investigation, prosecution and examination of child cases in the District Court, diversion must be attempted." So, if law enforcement officers do not implement it, the law enforcement officers can be held accountable. For law enforcers who have been mandated by law to implement diversion. However, they deliberately do not implement it, they will be given criminal sanctions as regulated in Article 96 of Law Number 11 of 2012 concerning the Child Criminal Justice System with a maximum imprisonment of 2 (two) years or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains

that in essence this diversion has the aim of preventing children from the negative impacts of criminalization. So that law enforcers are required to carry out diversion in cases of children in conflict with the law in accordance with the provisions of applicable laws and regulations without disregarding the interests of the community, especially the victims and the families of the victims. According to Soerjono Soekanto, what is meant by law enforcement is the activity of harmonizing the relationship between values outlined in solid and embodied rules and attitudes as a series of final stage value descriptions, to create, maintain and defend peace and social interaction.

According to Soerjono Soekanto, the main problem of law enforcement actually lies in the factors that influence it. The influencing factors include:

1. The legal factors themselves, which in this article will be limited to laws only
2. Law enforcement factors, namely the parties who form and implement the law
3. Factors of facilities or infrastructure that support law enforcement
4. Social factors, namely the environment in which the law applies or is implemented.
5. Cultural factors, namely as a result of work, creativity and feeling which are based on human will in social life.

Based on the research results that the author collected regarding the factors that influence law enforcement as stated by Soerjono Soekanto, the obstacles in implementing diversion were obtained from the following results and analysis:

1. Law Enforcement Factors

In essence, PERMA No. 4 of 2014 must be implemented by judges in handling diversion cases, but in reality, PERMA has not been fully implemented optimally by child judges in enforcing the law on diversion efforts in child cases.

The legal knowledge and understanding of law enforcers regarding article 7 of the UUSPPA differs between law enforcers. This different understanding is a factor that becomes an obstacle in law enforcement, especially the law enforcer factor. Unequal law enforcement due to different understandings will harm the interests of children, namely that all decisions taken by law enforcers must always consider the survival and development of children.

The number of Bapas officers is inversely proportional to the number of ABH, the large number of ABH is not followed by an adequate number of Bapas in various regions in Indonesia.

2. Community Factors

Society can influence law enforcement, this is because law enforcement comes from the desires of society which aims to seek peace in the midst of society. There is still a paradigm in society that requires every criminal act that arises to be subject to criminal punishment.

In addition, there is a negative response from the community to efforts to resolve the issue through peace and family channels carried out by law enforcement officers. The mindset that exists in society until now is that if someone commits a crime, be it an adult or a child, they must be subject to sanctions, if necessary severe sanctions in order to create a deterrent effect for the perpetrators of the crime.

The community considers that prison is the right place for children who commit crimes. In this case, the victim believes that imprisonment is a fair punishment for children who have committed crimes. Most people in general still predominantly resolve children's cases with the old system, namely that guilty children must be imprisoned, not with diversion as referred to in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition, there is a factor from the perpetrator's family who does not understand the importance of diversion for children in conflict with the law.

In this case, the District Court's juvenile judge should first prioritize alternative resolution efforts in juvenile cases that are not serious crimes by referring to Article 3 of PERMA Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System that "juvenile judges are required to seek diversion in cases where a juvenile is charged with a criminal offense punishable by imprisonment of less than 7 (seven) years and is charged with a criminal offense punishable by imprisonment of 7 (seven) years or more". This is one of the efforts to overcome obstacles to diversion.

4. Conclusion

Handling children who commit crimes requires a different legal approach from the adult criminal justice system. In this study, the author uses the theory of law enforcement and the theory of justice as an analytical framework. Based on this analysis, it can be concluded that law enforcement against children must reflect the values of substantive justice that prioritize the principles of protection and development, not retaliation. The juvenile criminal justice system regulated in Law Number 11 of 2012 and Law Number 35 of 2014 emphasizes that a restorative justice approach is a must in the process of resolving juvenile cases. The concept of diversion as an alternative to resolving cases outside the court aims to prevent children from being trapped in a criminal system that has the potential to damage their future. Handling of child criminal cases must be done

carefully, humanely, and in accordance with the needs of the child's development. Children's rights, such as the right not to be tortured, separated from adult prisoners, and to receive treatment that takes into account the child's age and best interests, must be the guideline in the entire judicial process. A repressive approach is not in line with the mandate of the constitution or the spirit of child protection law. The fact that the general criminal justice system is still oriented towards the concept of retaliation demands broader legal reform, both in terms of policy, legal education, and the institutional culture of law enforcement officers. Therefore, the juvenile criminal justice system must be positioned as a rehabilitative and educational means that opens up space for the recovery and social reintegration of children into society. Although the regulation has been comprehensively regulated, in practice the implementation of diversion still faces various obstacles. Based on the law enforcement theory of Soerjono Soekanto, these obstacles arise from various factors, including: Law enforcement factors, such as the lack of uniform understanding of diversion rules and the minimal number of Bapas officers to accompany Children in Conflict with the Law (ABH). Community factors, including the continued strong retributive view that perpetrators of crimes, including children, must be imprisoned for deterrent effect. Lack of community understanding, including families of victims and perpetrators, regarding the purpose of diversion is a major challenge in its implementation. Therefore, there needs to be synergy between law enforcement, society, and families in building a new paradigm that criminalization is not the only way to achieve justice. Diversion and restorative justice are approaches that are not only humane, but also more effective in ensuring the future of children and social order in a sustainable manner.

5. References

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Criminal Code (KUHP)

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Law Number 8 of 1981 concerning the Criminal Procedure Code

The 1945 Constitution of the Republic of Indonesia