

LEGAL PROTECTION FOR CHILDREN AS PERFORMANCE OF CRIMINAL ACTION

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Abstract

Persecution is a crime that is rife lately. Perpetrators in this crime are also rife in the scope of children. The children innocently take actions that should not be carried out by children their age. For the sake of vent their emotions to hit, kick, and even hurt certain people who are around them. This is what must be addressed and searched for the cause. Because this action can have fatal consequences later for people who are affected by the persecution. But not only the victims, the perpetrators also must be corrected so that later the perpetrators do not repeat the provisions again. Not just sanctions in improving the child's psychic but also in terms of legal protection received by the child as a perpetrator in the criminal act of abuse. Legal protection is something that must be obtained by someone, either as a perpetrator or as a victim in a crime. This is in accordance with Law No. 11 of 2012 concerning the Criminal Justice System for Children. In other words the child must be treated humanely, given special facilities and infrastructure and the imposition of sanctions for the child must be adjusted to the best interests of the child.

Keywords: Legal Protection, Children, Criminal Offenses

Preliminary

Every child needs to get the broadest possible protection and opportunity to grow and develop optimally both physically, mentally, and socially. For this reason, it is necessary to protect efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment. In terms of guaranteeing a child so that his life can run normally, the state has provided legal protection namely Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection.

Indonesia is a state of law that upholds the enforcement of Human Rights (HAM). Currently there are often violations of human rights, which

violations are not only committed by adults, but also by children, both alone and together in various forms. According to Lilik Mulyadi, in terms of the juridical aspect, the understanding of children in the eyes of positive law in Indonesia is interpreted as a person who is not yet an adult, a minor or a minor, or often also referred to as a child under the supervision of a guardian.

Children who violate the law are influenced by several other factors outside of the child. To protect children from the influence of the formal process of the criminal justice system, human or legal and humanitarian thought arises to make formal rules of action to remove a child who has violated the law or committed a crime from the criminal justice process by providing other alternatives which is considered better for children.

In everyday life, it is often found behavior deviations among children, and there are even children who commit acts that violate the law. Behavioral deviations committed by children are caused by several factors. Among other negative effects of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, and lifestyle changes have brought fundamental social changes in people's lives so that it will greatly affect children's values and behavior. According to G. Pieter Hoefnagels, community involvement in crime policy is very important, because crime policy is a rational effort from the community as a reaction to a crime.

A child with problems means being a national problem, therefore the interests of children become a choice that must be prioritized in dealing with children who are problematic or in conflict with the law, child delinquency is often also called "Juvenile Delinquency" which means socially handicapped children. Romli Atmasasmita said that Delinquency is an act or act committed by a child that is considered to be contrary to the provisions of the law in force in a State which the community itself interprets as a despicable act.

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate, optimally in accordance with human dignity and dignity, and get protection from violence and discrimination. Efforts to protect children need to be carried out as early as possible, namely from the fetus in the womb to children aged 18 (eighteen) years. This is aimed at the realization of qualified, noble, and prosperous Indonesian children, if there is a criminal offense whose offender is a child, then the child must be protected by his interests for the continued growth of the child and the child's soul.

Legal protection is protection of the interests or rights protected by the law itself to ensure legal certainty and justice, legal protection is intended to protect weak legal subjects whose rights have been violated. Article 28D paragraph (1) of the Basic Law.

The Republic of Indonesia of 1945 states: "Everyone has the right to recognition, guarantees, protection and legal certainty that is fair and the same recognition before the law", then in Law Number 4 of 1974 Article 2 paragraph (3) also stipulates that "Children has the right to care and protection, both during the womb and after birth ", as well as Law Number 39 of 1999 stipulates provisions regarding legal protection for children is a human right that has been recognized and must be protected by law, so the provisions regarding child protection have been governed by several laws and regulations and child protection is a human right that is universally recognized as a right inherent in children because of the nature and nature of human birth as a human being, in which the child's human rights must not be wiped out by anyone and under any circumstances. Protection of children must be strictly enforced by the State.

Results And Discussion

Legal protection is a legal effort to protect human rights and rights and obligations arising from the legal relationship between legal subjects in other words legal protection is a variety of legal efforts provided by law enforcement officials such as security from various disturbances or threats from any party. The opinions of several experts regarding legal protection are as follows:

1. According to Satjipto Rahardjo legal protection is an effort to protect one's interests by allocating a Human Rights power to him to act in the framework of his interests.
2. According to Hetty Hasanah, legal protection is any effort that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or those taking legal actions.
3. According to Philipus M. Hadjon, that legal protection facilities are of two kinds, namely:
 - a. Means of Preventive Legal Protection
In this preventive legal protection, legal subjects are given the opportunity to raise their objections or opinions before a government decision gets a definitive form. The aim is to prevent disputes. Preventive legal protection is very meaningful for government actions based on freedom of action because with the existence of preventive legal protection the government is driven to be careful in making decisions based on discretion. In Indonesia there are no specific arrangements regarding preventive protection.
 - b. Facilities for Repressive Legal Protection
Repressive legal protection aims to resolve disputes over legal protection by the General Courts and Administrative Courts in

Indonesia, including this category of legal protection. The principle of legal protection against government actions rests and comes from the concept of the recognition and protection of human rights because according to history from the west, the birth of the concepts of the recognition and protection of human rights is directed to the limitations and placement of community obligations and government. The second principle that underlies protection law against government action is the principle of the rule of law. Attributed to the purpose of the rule of law.

Legal protection related to children's rights is most important in accordance with Government Regulation of the Republic of Indonesia Number 65 Year 2015 Concerning Guidelines for the Implementation of Diversity and Handling of Children who are Not Aged 12 (Twelve) Years, Chapter II namely concerning Guidelines for Implementing Diversity Processes where in Article 2 states Diversi aims:

- a. achieving peace between victims and children;
- b. settle cases outside the judicial process;
- c. prevent children from deprivation of independence;
- d. encourage the community to participate and;
- e. instill a sense of responsibility to the child.

From the contents of the regulation quotation above, we can see that diversion can be used as a first step in dealing with the problem of children who commit crimes without going through justice because it takes into account the child's psychology. This diversion was taken not only to impose sanctions on the child but rather to provide lessons and improvements for the child. This diversion can only be carried out if in accordance with Article 3 paragraph (2) which states that the diversion as referred to in paragraph (1) is carried out in the case of a criminal offense committed:

- a. threatened with imprisonment of under 7 (seven) years and;
- b. is not a repeat of a criminal offense.

Besides diversion, it does not rule out the possibility that the judiciary is also an attempt to overcome the problem of violence perpetrated by children. But still in the explanation above that children must be diversified in accordance with applicable regulations.

In the case of torture, the article imposed can be taken from the Criminal Code if the violence is committed against an adult, whereas if the violence is committed against children, the article charged is taken from the relevant law, the Child Protection Act. In the Criminal Code the article charged is Article 351 of the Criminal Code, and Article 80 Paragraph (1) applies to the Child Protection Act.

Protection for children can be taken from several provisions of the law, including:

1. Law Number 39 of 1999 concerning Human Rights

Law Number 39 of 1999 concerning Human Rights regulates the protection of children. In the provisions of Articles 52 to 27 Article 66 of the Law on Human Rights regulates the provisions of the rights possessed by children, as follows:

- a. Protection by parents, family, community, and country from the womb, has the right to live, maintain life, and improve their standard of living.
- b. Get legal protection from all forms of physical or mental violence, neglect, mistreatment, and sexual harassment while in the care of a parent or guardian, or any other party responsible for the care of the child.
- c. Not subjected to torture, torture, or inhuman punishment.
- d. Not sentenced to death or life imprisonment for child offenders.
- e. Freedom of law is not deprived of the law.
- f. Children deprived of their liberty are entitled to humane treatment and are concerned with personal development needs according to their age and must be separated from adults, except for their interests.
- g. Children deprived of their liberty are entitled to receive legal assistance or other assistance effectively at each stage of applicable legal remedies.
- h. Children deprived of their liberty have the right to attend and obtain justice before an objective and impartial juvenile court in hearings that are closed to the public.

2. Law Number 23 Year 2002 jo. Law Number 35 of 2014 concerning Child Protection.

The unitary state of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children's rights which are human rights. Children are the mandate and gift of God Almighty, which is inherent in his dignity and dignity as a whole human being. Children are the budding, potential, and the younger generation to succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. In order for each child to be able to assume these responsibilities, he needs to get the widest opportunity to grow and develop optimally, both physically, mentally and socially, and have a noble character, protective efforts need to be made and to realize the welfare of children by providing guarantees for fulfillment of their rights and the existence of non-discrimination treatment, in order to realize the

protection and welfare of children, it is necessary to have institutional support and legislation that can guarantee their implementation.

3. Legal Protection of Children in the Child Criminal Justice System in Indonesia.

The practice of juvenile justice in Indonesia is based on Law Number 11 of 2012 concerning the Juvenile Justice System (SPPA Law). The juvenile criminal justice system is the whole process of resolving cases of children dealing with the law, from the investigation stage to the guidance stage after undergoing a crime (Article 1 number 1 of the SPPA Law). The SPPA Law aims to create a judiciary that truly guarantees the best protection of the interests of children in conflict with the law. This is in accordance with one of the principles of the implementation of the juvenile justice system in Article 2 of the SPPA Law, namely protection. The SPPA Law provides the definition of a minor as a child who is 12 years old but not yet 18 years old and distinguishes children who are dealing with the law into 3 (three), namely:

- a. Children who are the perpetrators of a criminal offense (Article 1 number 3 of the SPPA Law);
- b. Children who are victims of criminal acts (Article 1 number 4 of the SPPA Law); and
- c. Children who witness criminal acts (Article 1 number 5 of the SPPA Law).

There are differences in the criminal justice process against adults and children who commit criminal acts, namely, the law alleviates criminal acts committed by children, because there are children's rights that must be protected. One of the differences in the judicial process is that one of the provisions in Article 3 of the SPPA Law which 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;
- c. Obtain legal assistance and other assistance effectively;
- d. Conducting recreational activities;
- e. Be free from torture, punishment or other cruel, inhumane treatment, and degrading its status and dignity;
- f. Not sentenced to death sentence or life imprisonment;
- g. Not be arrested, detained or imprisoned, except as a last resort and in the shortest amount of time;
- h. Obtain justice before the juvenile court which is objective, impartial, and in a hearing that is closed to the public;
- i. Unpublished identity;

- j. Obtaining the assistance of parents / guardians and people trusted by children;
- k. Getting social advocacy;
- l. Getting a private life;
- m. Obtain accessibility, especially for children with disabilities;
- n. Obtain education;
- o. Obtaining health services; and
- p. Obtain other rights in accordance with statutory provisions.

According to Article 4 of the SPPA Law, children who are undergoing a criminal period are entitled to:

- a. Remission or reduction of criminal period;
- b. Assimilation;
- c. Leave to visit family;
- d. Parole;
- e. Free leave;
- f. Conditional leave;
- g. Other rights in accordance with statutory regulations.

Furthermore, the principle of protection in the SPPA Law is seen in terms of imposing sanctions. Children as perpetrators of crime can be subject to 2 (two) types of sanctions, namely sanctions for acts (perpetrators of criminal acts under the age of 14 years) and criminal sanctions (Article 69 of the SPPA Law).

Legal protection for children in the criminal justice system in Indonesia can be seen from the entire legal process, starting from the stages of investigation, arrest and detention, prosecution, trial and coaching. The whole process must be carried out based on the provisions of the SPPA Law and must prioritize the needs, development and growth of children, both mentally, physically, and socially the child and the interests of the community.

References

- Ariani, N. M. I., Yuliantini, N. P. R., & Mangku, D. G. S. (2020). Implementasi Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak Terhadap Curanmor yang dilakukan Oleh Anak di Kabupaten Buleleng (Studi Kasus Perkara Nomor: B/346/2016/Reskrim). *Jurnal Komunitas Yustisia*, 2(2), 71-80.
- Dwiyanti, K. B. R., Yuliantini, N. P. R., SH, M., Mangku, D. G. S., & SH, L. M. (2019). Sanksi Pidana Penyalahgunaan Narkotika Dalam Undang-Undang No. 35 Tahun 2009 Tentang Narkotika (Studi Putusan

- Penyalahgunaan Narkotika Golongan I Oleh Anggota Tni Atas Nama Pratu Ari Risky Utama). *Jurnal Komunitas Yustisia*, 2(1).
- Hetty Hasanah, "Perlindungan Konsumen dalam Perjanjian Pembiayaan Konsumen atas Kendaraan Bermotor dengan Fidusia", artikel diakses pada 27 November 2017 dari <http://jurnal.unikom.ac.id/vol3/perlindungan.html>
- Lilik Mulyadi, 2005, *Pengadilan Anak di Indonesia Teori, Praktek Permasalahannya*, Mandar Maju, Bandung, h. 3.
- Marlina, 2009, *Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice*, Bandung: Refika Aditama, hal. 15.
- Philippus M. Hadjon, *Perlindungan Hhukum bagi Rakyat Indonesia*, Surabaya: PT. Bina Ilmu, 1987, hlm.2.
- Putra, A. S., Yuliantini, N. P. R., SH, M., Mangku, D. G. S., & SH, L. M. (2019). Sistem Pembinaan Terhadap Narapidana Narkotika Di Lembaga Pemasarakatan Kelas IIB Singaraja. *Jurnal Komunitas Yustisia*, 2(1).
- Romli Atmasasmita, *Problema Kenakalan Anak-Anak dan Remaja*, Bandung: Amrico, 1984,hlm.23.
- Sant, G. A. N., Yuliantini, N. P. R., & Mangku, D. G. S. (2020). Perlindungan Hukum Terhadap Korban Tindak Pidana Penyalahgunaan Narkotika di Kabupaten Buleleng. *Jurnal Komunitas Yustisia*, 2(3), 71-80.
- Saputra, I. G. A., Yuliantini, N. P. R., SH, M., Mangku, D. G. S., & SH, L. M. (2019). Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pelecehan Seksual Di Kabupaten Buleleng. *Jurnal Komunitas Yustisia*, 2(1).
- Satjipto Rahardjo, *Sisi-sisi Lain dari Hukum di Indonesia*, Jakarta: Kompas, 2003, hlm.121.
- Triyanto, *Negara Hukum dan HAM*, Yogyakarta:Penerbit Ombak, 2013, hlm.168-171.
- Triyanto, *Op.Cit*, hlm.160.
- Yuliantini, N. P. R. (2019). Kenakalan Anak dalam Fenomena Balapan Liardi Kota Singaraja Dalam Kajian Kriminologi. *Jurnal Advokasi*, 9(1), 31-43.