

Criminal Law Policy in Collecting Child Delay According to Law No. 3 Year 1997

Joharsyah

University of Al-Washliyah Medan

ABSTRACT

Juvenile delinquency can no longer be viewed as an ordinary delinquency, many children commit acts that are classified as criminal acts, such as: stealing, carrying sharp weapons, getting into fights, being involved in drug use, and others. So it requires serious attention from the government, parents and the community. Crime cases involving children as perpetrators of crimes bring their own phenomena. Given that children are individuals who are still emotionally unstable and have not become legal subjects, the handling of crime cases with child perpetrators needs special attention. So that the selection of the title of this thesis is Criminal Law Policy in Overcoming Juvenile Delinquency according to Law no. 3 of 1997.

Keywords: Child Delinquency, Law No. 3 of 1997.

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INTRODUCTION

Children as part of the younger generation are the successors to the ideals of the nation's struggle and human resources in national development. In the context of realizing quality Indonesian human resources who are able to lead and maintain the unity and integrity of the nation within the unitary state of the Republic of Indonesia based on Pancasila and the 1945 Constitution, continuous guidance is needed for survival, growth and physical, mental development. and social and protection from all possibilities that will endanger them and the nation in the future. In various aspects of these development and protection efforts, they are faced with problems and challenges in society and sometimes behavioral deviations are found among children, even more so that there are children who commit unlawful acts without knowing their social and

economic status. In addition, there are also those who for one reason or another do not have the opportunity to receive attention, both physically, mentally and socially. Because of the inadequate self-condition, then either intentionally or unintentionally, children often take actions or actions that are detrimental to themselves and or the community.

Children are not free from the possibility of committing criminal acts as well as adults, whether the crime is committed alone or together with other people. Children in the process of development get barriers to meeting needs and attention that cause mental disturbances. Finally, it can cause the child to become a *delinquency perpetrator* .

According to Romli Atmasasmita, *delinquency* is an act or deed committed by a child which is considered contrary to the provisions of the law. legal provisions that apply in a country and which the community itself perceives and interprets as a disgraceful act .

Problems in child delinquency, criminological theories that aim to find causal factors (etiological factors) can generally be grouped into two approaches, namely: (1) psychological approach, (2) sociological approach. The psychological approach is basically trying to find answers to the questions: How does a person's personality interact with environmental conditions so as to produce delinquent behavior. The sociological approach is basically trying to find answers to the question: When we compare one social system with another , how can we explain the differences that exist regarding delinquent behavior in these social systems ?

Many experts reveal that the causes of child delinquency are due to the expectation gap or there is no match between ideals and means that can support the achievement of these goals. Theoretically, efforts to overcome crime problems, including juvenile delinquency as a social phenomenon, are actually focused on revealing correlation factors to the symptoms of children's acquaintances as criminogenic factors .

Juvenile delinquency can no longer be viewed as an ordinary delinquency, many children commit acts that are classified as criminal acts, such as: stealing, carrying sharp weapons, getting into fights, being involved in drug use, and others. So it requires serious attention from the government, parents and the community. Crime cases involving children as perpetrators of crimes bring their own phenomena. Considering that children are individuals who are still emotionally unstable and have not become legal subjects, the handling of crime cases with child perpetrators needs special attention. Facing this phenomenon, at that time the treatment of criminals was equal to both children and adults, so that efforts were made in various countries towards the protection of children, including in this effort, namely the establishment of the first Juvenile Court System in Minors, the United States in 1889, where the law is based on the *parens patrie* principle, which means "the authorities must act when children need help", while children and youth who commit crimes should not be punished but must be protected and given assistance .

Deviations in behavior or unlawful acts committed by children are caused by various factors, including the negative impact of rapid development development, the flow of globalization in the field of communication and information, advances in science and technology as well as changes in lifestyle and way of life as parents, have brought changes fundamental social life in society which greatly influences the values

and behavior of children. In addition, children who lack or do not receive love, care and guidance and guidance in the development of self-adjusting behavior, as well as supervision from parents, guardians or foster parents will be easily dragged into the flow of society and their environment which is less healthy and detrimental to their personal development.

Literature Review

Child delinquency or often referred to as "*juvenile delinquency*" which is defined as a child who is socially disabled. Romli Atmasasmita said that delinquency is an act or deed committed by a child which is considered contrary to the legal provisions in force in a country which the community itself perceives and interprets as a disgraceful act .

In the Big Indonesian Dictionary, delinquency is defined as behavior that lightly violates the norms and laws that apply in a society. Juvenile delinquency is a translation of "*juvenile delinquency*" and is formulated as a behavior disorder, delinquency or behavior of adolescents that is asocial, contrary to religion and legal provisions that apply in society. Adolescents are those between the ages of twelve and under eighteen years of age and not yet married.

William G. Kvaraceus said "*Most statutes out that delinquent behavior contitues a violation of the law or municial ordinance by a young person under a certain age*".

In article 1 number 2 uu. No. 11 of 2012 states that children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. According to the article above, the elements of Children in Conflict with the Law can be drawn as follows:

- (a) children in conflict with the law;
- (b) children who are victims of criminal acts.
- (c) a child who is a witness to a crime.

Acts that are prohibited for children are both according to statutory regulations and according to other legal regulations that live and apply in the community concerned. These regulations are either written or unwritten, such as customary law or the rules of decency and appropriateness in society. According to the article above, what can be resolved through legal channels are only children in conflict with the law in the sense of letter (a) only, namely children who commit criminal acts. However, the Criminal Code does not recognize the term Children in conflict with the law from the meaning of letter (b), this is because the Criminal Code regulates criminal acts .

METODE

The method used in this research is normative juridical . The nature of this research is descriptive analysis which aims to describe, inventory and analyze theories and regulations related to the problems in this research.

The data used in this study are primary and secondary data sources. Therefore, the secondary data used in this study consisted of:

- a. Primary data is data obtained directly from respondents. This data obtained directly from the research site, which sourced from the Women and Children

Service Unit of the Medan Sunggal Police . The primary data sought is a form of mentoring and coaching that given to the Medan Sunggal Police Service Unit for Women and Children a child who commits a crime or violates the law regarding causes of child delinquency, legal provisions, legal policies and constraints experienced in handling child delinquency. Other primary data obtained from families of children in trouble with the law and NGOs.

- b. Secondary Data , namely data or inputs about the problem object studied through research sourced from literature, regulations legislation , and others related to the problem to be discussed. Secondary data is taken from books and works write from legal experts related to the problem of this research .

The data obtained through the research are then sorted to obtain a law containing legal actions, then linked to the problems being faced and systematized, so as to produce clarifications that are in line with the problems in this research.

RESULTS AND DISCUSSION

Efforts Made in Providing Protection of Children's Rights as Criminals in the Juvenile Criminal Justice System

Handling criminal cases against children is certainly different from handling cases against adults, the handling of children is special because it is also regulated in separate regulations. Understanding of the process of handling children's cases, of course, there may still be some people who do not understand or understand, so that sometimes it gives rise to various assessments, even more fatal if there is a misjudgment that the handling of children, especially children in legal conflicts get special treatment and there are also those who think that children cannot be punished even though it is not that far, it's just that the handling process is specifically regulated.

It should be understood that in relation to the handling of children in conflict with the law, of course, it is based on several provisions of special legislation, which include the following:

- Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, previously Law of the Republic of Indonesia Number 3 of 1997 concerning the Juvenile Court;
- Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection;
- Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law;
- Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years Old;
- Regulation of the Supreme Court Number 4 of 2014 concerning the Implementation of Diversion in the Juvenile Criminal Justice System;

- Attorney General Regulation No. 06/A/JA/04/2015 concerning Guidelines for Implementing Diversion.

1. Juvenile Criminal Justice System

The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law from the investigation stage to the guidance stage after undergoing a criminal process based on protection, justice, non-discrimination, the best interests of the child, respect for the child, the survival and development of the child, proportional, deprivation of liberty and punishment as a last resort and avoidance of retaliation (*vide* Article 1 point 1 and Article 2 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System).

In the juvenile criminal justice system, children are children who are in conflict with the law, children who are victims and children who are witnesses in criminal acts. **Children in conflict with the law** are children who are 12 years old but not yet 18 years old who are suspected of committing a crime; **Children who become victims** are children who are not yet 18 (eighteen years old) who have suffered physical, mental and or economic losses due to criminal acts; **A child who is a witness** is a child who is not yet 18 (eighteen years old) who can provide information for the benefit of the legal process starting at the level of investigation, prosecution and trial regarding a criminal case that has been heard, seen and or experienced.

In the event that a criminal act is committed by a child before the age of 18 and submitted to a court hearing after the child exceeds the age limit of 18 years but has not yet reached the age of 21, the child is still submitted to the juvenile court (Article 20 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Judicial System). Child Crime).

Furthermore, in the event that a child under 12 years of age commits or is suspected of committing a criminal act, the investigator, community advisor, makes a decision to hand it over to the parent/guardian or to include him/her in educational programs, coaching at a government agency or social welfare organization in charge of the social welfare sector. (Article 21 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in *conjunction* with Article 67 of Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning the Implementation of Diversion and Handling of Children Under the Age of 12 (Twelve) Years).

2. The regulation of legal protection for children as perpetrators of criminal acts in criminal justice is contained in Law Number 3 of 1997

The principle of the best interest of the child (*the best interest of the child*) which is stated in the CRC is then described in several principles that protect children as perpetrators of criminal acts and Law Number 3 of 1997 embodies it in norms. The regulation of legal protection for children as perpetrators of criminal acts in criminal justice is contained in Law Number 3 of 1997 as follows:

1. Article 1 paragraph (1), Article 4 and Article 5 paragraph (1) of Law Number 3 of 1997 stipulates the existence of age restrictions on children as perpetrators of criminal acts
2. Article 1 paragraph (2), Article 2, 3 and Article 40 of Law Number 3 of 1997 determine that juvenile court is the absolute competence of the general court.

2. Article 1 paragraph (5, 6, 7) of Law Number 3 of 1997 determines that children's cases are handled by special officials
3. Article 42 paragraph (1), Article 57 paragraph (1) of Law Number 3 of 1997 determines that the Juvenile Court examines children in a family atmosphere.
4. Article 7 paragraphs (1 and 2) of Law Number 3 of 1997 stipulates that the Juvenile Court requires the existence of "Splittings cases"
5. Article 11 paragraph (1), Article 14 paragraph (1) and Article 18 paragraph (1) of Law No. 3 of 1997 determines the trial with a single judge and child judges shall be determined by the Chief Justice of the Supreme Court of the Republic of Indonesia.
6. Article 8 paragraph (1) of Law Number 3 of 1997 stipulates that the examination of a child's case in a juvenile court shall be carried out in a closed session
7. Article 22, Article 23 paragraphs (1, 2, 3) and Article 24 paragraph (1) letters a, b, and c of Law Number 3 of 1997 determine that the punishment for children is lighter than that of adults.
8. Article 57 paragraph (1) of Law Number 3 of 1997 determines that the presence of parents, guardians or foster parents is required and the recognition of community mentors.
9. Article 57 paragraphs (1 and 2), Article 58 paragraphs (1 and 2) of Law Number 3 of 1997 stipulates the presence of legal advisors
10. Articles 44 to 50 of Law No. 3 of 1997 stipulate that the detention of children is shorter than that of adults.

CONCLUSION

1. Law Number 3 of 1997 concerning the Juvenile Criminal Justice System (UU SPPA) provides legal protection for children in conflict with the law (consisting of children in conflict with the law, children who are victims of criminal acts and children who are witnesses of criminal acts) in Indonesia . The law provides protection to children in the stages of arrest and detention, investigation, prosecution, trial and coaching .
2. The factors that cause children to commit criminal acts of delinquency consist of internal factors and external factors. Forms of legal protection for children as perpetrators of criminal acts of delinquency consist of legal protection in the process of investigation, arrest and detention, protection through the application of diversion and protection through efforts to overcome criminal acts of delinquency committed by children.
3. Law enforcement against juvenile delinquency can refer to a legal norm approach that is punishing so as to provide a deterrent effect. There are several actions that can be taken to overcome juvenile delinquency, many of which can be applied as examples of preventive actions or what are known as preventive measures that aim to anticipate juvenile delinquency that will

occur. Meanwhile, repressive to curative measures are taken if the youth have taken actions that are detrimental to the community at large .

Thank-you note

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