

SOCIOLOGICAL JURIDICAL REVIEW OF THE CHILD COMMITTING THEFT CRIME AT THE DEMAK STATE COURT

Achmad Sulchan and Bambang Agus Rianto

ach.sulchan@unissula.ac.id

Lecturers Of Faculty Of Law, UNISSULA, Semarang

ABSTRACT

Children are the generation of the nation and the successor of development. They are the generation prepared as the subject to administer sustainable development and the controller of a country in future. All children are the gift from the Almighty Allah who must be guided and protected. Their rights must not be deprived and reduced. This is in accordance with the general principles of child protection as stated in the Convention on the Rights of the Child ratified by the Government of Indonesia through Presidential Decree Number.36 Year 1990, Article 1 point 12 of the Bill Number.35 Year 2014 concerning Child Protection that a child is a part of human rights that must be guaranteed, protected and fulfilled by parents, family, community, government and the state.

In the enforcement of human rights and the rule of law, protection of public interests and protection of children, in accordance with article 1 to 12 of the Bill No.35 Year 2014 concerning Child Protection, children must get protection. Likewise, in handling cases of criminal acts of theft at the Court of Demak district, the child whose a criminal act has the right to be protected, from the moment he is arrested and / or detained, he has the right to get legal assistance at every level of criminal justice system examination. He is also entitled to deal directly with his legal counsel without being heard by the authorized official and as long as the child is detained, then the physical needs, spiritual and social needs must be fulfilled, in accordance with the Criminal Code and the Bill Number 11 Year 2012 concerning the Criminal Justice System of Children .

This study uses descriptive analytical research methods by the cause that researchers in analyzing the study want to give an overview or exposure to the objects that become the subject matter. The object referred to here is the role of parents in increasing legal awareness of children who commit theft and the efforts of parents to provide safety riding education for children in accordance with the applicable laws and regulations.

Keywords: child, crime, theft.

I. INTRODUCTION

In the history of human civilization, theft has existed for a long time, things like this can be seen everywhere, and tend to escape from legal bondage, which is even worse, many theft cases are not only carried out by adults, but also by children who are the successors of future generations. Children are parts of young generation as

one of human resources with which is the potential and the successor of ideals, this requires a strategic role and has special characteristics and traits. In addition, it also requires coaching and protection in order to ensure physical growth and development, mentality and socially balanced and measured.

In the Bill Number. 39 of 1999 concerning Human Rights categorized as children contained in article 1 paragraph 1 (5) which states "children as human beings under the age of 18 (eighteen) years old and unmarried, including children who are still in the womb if this is for his sake¹. According to this article, those categorized as children are from the womb until the age of eighteen, including children who are still in the womb².

There are still many specific rules regarding cases of legal violations by children in the Criminal Code (KUHP) and Criminal Procedure Code (KUHAP). Specially, regarding sanctions on children in the Juvenile Justice Act is determined based on differences in age of the child, that is for children who are 8 (eight) to 12 (twelve) years old who can only be subjected to actions, such as returned to their parents, placed in social organizations, or handed over to the State, while children who have reached the age of 12 (twelve) to 18 (eighteen) years have been convicted. In this case, because the child is 11 (eleven) years old then the sanction imposed may be returned to his parents, placed in a social organization, or handed over to the country³.

Childhood is a period of seed sowing, the establishment of stakes, making a foundation which can also be called the formation of character, personality and character of a human being, so that they will have the strength and ability to stay strong in their lives.⁴ Childhood influence is sometimes not felt or realized by the person concerned, because everything is stored in his subconscious mind, but it can arise in strange behaviors, beyond normal behavior, and which is not understood by the perpetrator himself .

Children still have unstable mental condition, cannot be independent, and cannot be given full responsibility yet. Such conditions lead children to easily be

¹Tribowo Hersandy Febriyanto Indonesia, *Undang-Undang Hak Asasi Manusia*, UU No. 39, Tahun 1999, ps. 1 ayat (5).

²Redaksi Sinar Grafika Indonesia, 2015, *Undang-Undang Perlindungan Anak, UU No 35, Tahun 2014*, ps. 1 ayat (1). Jakarta

³<http://www.hukumonline.com/klinik/detail/c1112/hukum-bagi-anak-bawah-umur> . Diakses tgl 10-01-2016, pukul 08:45 wib

⁴Maidin Gultom, 2008, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak di Indonesia*, Bandung, Refika aditama, hlm.1

affected and do actions that they themselves do not really understand. Moreover, if the influence of environment is not good, they will find it easy to be dragged in the flow, for example, the use of impolite words or bad behavior such as smoking, stealing and so on.

In Article 171 Paragraph 1 of the Criminal Procedure Code states that: "Those who are allowed to be examined to provide information without oaths are children under fifteen years old and have never married".⁵ Therefore, the absence of a forum specifically for matters relating to children has caused various circumstances and practices unnaturally. Whereas, in fact, children are not adults. Therefore, they don't deserve and not even if they are expected to be responsible just like an adult do. Children are social-beings needing care, affection and a place for their development. They also have feelings, thoughts, and their own will by which all psychological totality and different characteristics and structures in each phase of development in childhood. Development in a certain phase is the basis for the next phase.

The children mentality which is still in the stage of searching for identity is sometimes easily influenced by the situation and conditions of surrounding environments. Hence, if the environment in which the children live is bad, it can lead them to do actions which can violate law. Such things, of course, can hurt themselves and community. Not a few of these actions can eventually drag them to deal with law enforcement officials. Children are parts of the community, they have the same rights as others which must be protected and respected, when facing law cases.

Through the bill on child protection, it is expected that the aim of child protection can be realized, "The aim of child protection is to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection and from violence and discrimination, in order to realize qualified, noble and prosperous Indonesian children."⁶ Providing children's rights and obligations is of course included in children dealing with law. Moving on from this will, it is necessary to state children's rights and their obligations⁷.

In Indonesia, regulations have been made which basically highly uphold and pay attention to the rights of children, namely the ratification of the Convention on the

⁵Pasal 171 Ayat 1, *Kitab Undang-Undang Hukum Acara Pidana* (KUHAP).

⁶Isi Dari Pasal 3 UU No.35 Tahun 2014 Tentang *Perlindungan Anak*

⁷*Dalam UU Perlindungan Anak*, diatur bahwa "*Hak Dan Kewajiban Anak*" ditempatkan pada BAB III setelah BAB II tentang "*Asas Dan Tujuan*"

Rights of the Child (KHA) with the Presidential Decree Number. 36 of 1990. Other laws and regulations that have been made by the Government of Indonesia include the Bill Number. 11 of 2012 concerning Child Criminal Justice System, and the Bill Number. 23 of 2002 concerning Child Protection, substantially updated by the Bill Number. 35 of 2014 regulating child protection, children rights in the form of rights to life, rights on behalf of, rights to education, rights to basic health, rights to worship according to their religion, rights to express, think, play, create, rest, socialize and rights to social security .

Juvenile Delinquency (JD) is “a behaviour or act to violation of norms, both legal and social norms carried out by young children”. This definition tends to be child delinquency rather than child crime, because it seems too extreme if a child committing a crime is said to be a criminal. Child delinquency arises as a result of the natural process of every human being who must experience shock during his maturity. Defining JD as a child crime may lead to be interpreted to have a negative psychological impact on a child as the perpetrator.

The Bill Number 35 of 2014 as a national legal basis is to give legal protection to children dealing with law cases. For children committing criminal acts or acts declared prohibited for children need to carefully be handled through the children criminal justice system.

The world of law in recent years has reformed its perspectives in handling children who are perpetrators of delinquency and unlawful acts. Many countries have begun to abandon child justice mechanisms which tend to be repressive due to the system failure to improve children behavior and reduce the level of crime committed by children. Therefore, the Bill Number 11 of 2012 concerning the Children Criminal Justice System was renewed. Legal experts and policy makers begin to think of alternative solutions which are more appropriate in handling children by giving more attention to involving them directly (*reintegration and rehabilitation*) in solving problems, different from the way adults are handled.

Children who commit criminal acts cannot be compared to adults who commit a crime. Children are still unstable and not knowing the consequences of their actions, it could possibly be that a child commits an unlawful act because he/she is forced to steal because he/she is hungry or curious to try and so on. Therefore, there needs to be a treatment differentiation for children who facing law, or in other words, child must get legal protection. Children who face this law must get special protection. According

to Article 64 Paragraph (2) of the Bill Number. 35 of 2014 concerning Child Protection.

The juvenile justice system itself is already good, but the good and bad of a system refers to the willingness and ability of the implementers to prioritize interests and protection and provide the best to children who are in conflict with law (*the best interest of the Children*). The existing criminal act system in Indonesia only rests on the nature of punishment without paying attention to how to change the child to be better, and the juvenile justice system in Indonesia at this time must be changed by looking for alternative penalties other than criminal, where the imprisonment has not provided a guarantee for child's behavior change.

II. STATEMENTS OF THE PROBLEM

To juridically sociologically review child committing theft crime, a case study at the Demak State Court, the problems to be discussed are as follows:

1. What are the factors causing a child to commit a theft crime?
2. What are the rights of children committing theft crime at the Demak State Court?
3. What are the obstacles and solutions in the execution of crimes on children committing theft crimes at the Demak State Court?

III. DISCUSSION

1. Factors Causing Child Perpetrators of Theft Crime

Factors causing a theft crime committed by children include economic encouragement which leads to child committing theft crime due to the child's will, environmental factors which affect children, social factors which cover social inequality so that children in middle to low classes are more vulnerable to committing theft, and parent factors who give less attention and control to their children.

For these reasons, the factors causing juvenile delinquency can generally be grouped into the following factors:

1). Internal Factors of Juvenile Delinquency:

a. Personality Factor

Child's personality greatly influences a child behavior everyday, whose emotions are not peaceful and tend to be more irritable, anxious, jealous, and fear compared to those who find peace. Anger is an expression which is more often expressed in

childhood because they know that anger is an effective way to get attention or fulfill their desires. A child's jealousy is a reaction to fear of losing love, children who feel fear and worry are usually influenced by something meaningful in their lives.

The children emotional state which is not good and not peaceful can encourage fear in children and can also endanger their emotional development, because emotion plays such an important role in determining personality and social solutions which children will build later. Everything that interferes good emotional development will hinder the adjustment made by the child.

b. Physical Condition Factors

Child's physical condition also affects the form of their behavior, if the child is tired, lacks of resting time, hunger, and unhealthy, they react with greater fear than children who are in normal condition. Children with bad physical condition will be more likely afraid of various situations in normal circumstances in which less causing fear.

2). External Factors of Juvenile Delinquency:

a. Principle Factor

In this principle factor, child delinquency is closely related to parents, because parents are child mentors and educators in the family or immediate environment of the child, so parents have a great influence to shape the child's personality. As explained in the *Islamic household trinkets* books, stating that: "The principle of parents in educating their children is very decisive, all currents of thoughts arising today offer a variety of alternative attitudes and actions. Value parameters also vary, good and bad as if they were just terms to distinguish two conditions."⁸

A good principle in educating children will guide and direct children to a good life and avoid deviant actions in the development of their lives. Conversely, if the principle of educating children is bad, it will plunge the child into deviant acts which are prohibited by religion and norms which exist in society.

b. Exemplary factor

In educating children to be good ones, it does not only require a principle factor, but also a figure who is able to exemplify the principles. If there is a good

⁸Cahyadi Takariawan, 2005, *Pernik-Pernik Tangga Islami : Tatanan dan Peranannya Dalam Kehidupan Masyarakat*, Era Intermedia, Surakarta, hlm.270.

principle, it is necessary to set an example and a good example. Children are usually easy to follow what they see rather than what they hear. Bad examples are usually easier for children to follow than good ones, so if children see examples of bad deeds more often, they can cause child delinquency.

c. Environmental factors

Environment is also one of the factors which can cause delinquency in children. Environmental factors consist of family, school and social environment. An environment which is not conducive and does not support child development can cause delinquency in children.

d. Economic Factor

Economic crisis conditions will have a negative impact on the number of unemployed and rising poverty rates, therefore if it is added to the decline of religious moral values, it will also be able to bring delinquency to children.

2. The Rights of the Child Perpetrators of Theft Crime at the Demak State Court.

According to the Bill Number 35 of 2014 concerning Child Protection, article 1 to 12: "Child rights are a part of human rights which must be guaranteed, protected, and fulfilled by parents, family, community, state, government and local government" In addition to children having the right to be protected, children also have the same rights as adults. The rights according to the Criminal Code (the Penal Code) are:

1. Every naughty child, from the moment being arrested or detained, is entitled to legal assistance at the time and at each level of examination.
2. Every naughty child boy who is arrested or detained has the rights to deal directly with his legal counsel without being heard by an authorized official.
3. During the child's imprisonment, his physical, spiritual and social needs must be well fulfilled.
4. The child suspect has the right to get an examination by an investigation and then is submitted to the court.
5. The child suspect has the right to immediately be put into the court trial.
6. To prepare the defense of a suspect, child has the right to clearly be notified in the language he understands.

7. In the examination at the investigation and court level, the child suspect deserves the right to receive an interpreter at any time, if he does not understand Indonesian language.
8. The child suspect with dumb or deaf condition has the right to get a help from a translator who is good at socializing.
9. The child suspect or defendant charged with detention has the right to contact legal counsel in accordance with the provisions of the Criminal Procedure Code.
10. The child suspect or defendant who is subject to detention has the right to be informed of their detention by an authorized official, at all levels of examination in the judicial process, to his family or another person at the same house as the suspect or defendant.
11. The child suspect or defendant has the right to contact and receive visits from parties who have a family relationship with the suspect or defendant child.
12. The child suspect or defendant has the right to directly or by intermediary of his legal counsel to contact and receive visits of relatives in matters that have nothing to do with the case of the suspect or defendant for the benefit of the family.
13. The child suspect or defendant has the right to contact and receive clergy visit (religious guidance).
14. The child suspect or defendant child has the right to be prosecuted in a court hearing which is open to public.
15. The child suspect or defendant has the right to seek and submit witnesses to provide information.
16. The child suspect or defendant is not burdened with the obligation to prove.
17. The child suspect or defendant has the right to claim compensation and rehabilitation as stipulated in article 95 of the Criminal Procedure Code.⁹

3. Obstacles of the Child Perpetrators of Theft Crime at the Demak State Court

Child crime justice has a model of guidance, so that the intervention of the juvenile justice and precisely establishes the policy parameters located in the Panel of Judges who examine, hear and decide the case. In carrying out prosecutions for child crimes, in imposing a verdict or criminal sanction, the judge must prioritize the prevailing juvenile justice system, namely the Bill Number.11 of 2012. Where the judge must prioritize the restoration of relations and redemption of wrong-doing

⁹<http://jilbabkujiwaku.blogspot.co.id/2011/02/proses-pemidanaan-terhadap-anak-di.html>, Diakses tgl, 20-2-2016, pukul 20:35 wib

committed by the perpetrator, so that it must first be processed through the juvenile criminal justice process outside the criminal court.

This creates an obstacle if the victim and his family do not accept the process, given the loss that the victim and the family have not met. Then the Panel of Judges at the Demak District Court issues a policy to examine criminal cases in accordance with criminal procedural law and applicable laws. The judges of the Demak state court as law enforcement officers have the tasks of examining, resolving, and deciding on every case that brought to them, which is giving a fair decision that can be accounted for to the God Almighty and society.

The *Restorative Justice* concept is expected to touch several aspects of children who are dealing with law, namely prevention, handling, rehabilitation and reintegration. However, it turns out that not all parties can implement these four aspects with the consideration that, the more involved in direct handling toward children facing law can provide technical impact and obstacles.

As stated before, this juvenile delinquency is the responsibility of various parties, both from family, school, community and country. These parties must give more attention and handling specifically by carrying out coaching, education, and developing the child behavior. In law enforcement, including the handling of children facing with law, they must pay attention to the principles of legal certainty, benefit and justice.

In imposing a verdict or criminal sanction for a child committing a crime, the prevailing juvenile justice system must be prioritized, in addition to not being punitive. According to article 1 point 11 of the Criminal Procedure Code, what is meant by a court verdict is:

"A statement of the judge pronounced in an open court session, which can be in the form of penalty or free from all lawsuits in the matter, and in the manner regulated in this law"

Regarding what verdicts made by the Demak District Court, from the results of the consensus in the panel of judges' deliberations based on the assessment, they obtain them from the indictment and claim, as well as the defense of the Defendant's Legal Counsel, in relation to the age of the defendant who is still 11 (eleven) years old, the child is proven convicted, but not sentenced to criminal sanctions, returned to his parents and may not commit the theft in the future.

IV. CLOSING

From the findings of the discussion regarding the sociological juridical review of the child committing theft crime at the Demak State Court, the following conclusions can be drawn:

1. Factors causing children to commit a theft crime are internal and external factors, where the theft crime is carried out because of child's own desire or because of the environment which influences, and social inequality. Besides, family factors can also influence it because they do not give enough attention and control to their children.
2. The children rights must be guaranteed, protected and fulfilled by parents, family, community, state, government and regional government, in accordance with the Bill No. 33 of 2014 concerning Child Protection and regulations applied to children.
3. The obstacles of the Panel of Judges at the Demak State Court, are when they cannot seek a diversionary settlement and/or apply the concept of *Restorative Justice* beyond the juvenile justice process, then the implementation of the criminal justice process is in accordance with applicable law. By considering the purpose of the sentence itself and deciding the criminal case of the child as fairly as possible and the verdict which can be accounted for to the God Almighty and community, that is, the child is returned to his parents because he is still 11 (eleven) years old.

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