

The Supreme of the Child Criminal Jurisdiction System in Protecting Children's Rights that Deals with the Law

Moh Junaidi^{*)}, Arpangi Arpangi ^{**) & R. Sugiharto^{***)}}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: inafisblora@gmail.com

^{**) & ^{***)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang}

Abstract.

The purpose of this paper is to examine and analyze the supremacy of the juvenile criminal justice system in protecting the rights of children in conflict with the law. In this paper, the author uses a normative juridical method. In the conclusion of the discussion that in conducting an investigation of a child as a criminal, an investigator must understand the Child Criminal Procedure Law as stipulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, the arrest of a child is carried out for the purpose of investigation for a maximum of 24 (twenty four) hours, a child who is arrested must be placed in a special service room for children, in the event that a special service room for children does not yet exist in the area concerned, children are deposited in LPAS. The examination process before the court also requires the defendant to be detained in order to expedite the examination process, the judge can make a detention for a maximum period of 10 (ten) days, the period at the request of the judge can be extended by making an application to the head of the district court for a maximum of 15 (fifteen) days, if the 15 (fifteen) days period has ended and the Judge has not rendered a decision, then the child must be expelled by law (Article 35 of the Juvenile Criminal Justice System Act).

Keywords: Children; Criminal; Justice; Juvenile; Supremacy.

1. Introduction

The Unitary State of the Republic of Indonesia is one of the big countries that prioritizes the applicable legal provisions. The positive rule of law that applies in Indonesia is clearly an important component in building a safe, peaceful and peaceful life.¹ As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, which has confirmed that Indonesia is a state of law, this phrase is contained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia with the will of the law.²

In addition to the rule of law, Indonesia is also a country that upholds human rights, including the rights of children, which is 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

¹Sumaryono and Sri Kusriyah, *The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora)* Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

²Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*, Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

and international.³ The concrete form of the Government in providing protection to everyone, especially to 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 fair legal certainty 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 survive, grow, and develop and has the right to protection from violence and discrimination".

To build a great nation, people who are smart and have good character are needed. In order to achieve this, of course, good education and character should be applied from an early age to the nation's children. Children are the generation for the continuity of the existence of a nation and state. Because the state through its complementary tools must do the best for children through strategic steps so that the continuity of the state and nation can be well guaranteed, in the future for the realization of the country's goals. National awareness or constitutional justification for protecting children is the main concern of the nation and state, which has explicitly emphasized the constitutional rights of children.

Criminalization of children at a very young age, due to the legal position of children dealing with the law is not yet optimal, and the legal position is not supportive, for example the age limit for child criminal responsibility (the age of crime responsibility).⁴

Every year children who become perpetrators of criminal acts always increase, in certain cases, children who become perpetrators are of special concern to law enforcement officers. Therefore, various efforts to prevent and deal with children in conflict with the law need to be carried out immediately. One of the efforts to prevent and overcome children who are in conflict with the law today is through the implementation of the juvenile criminal justice system.⁵

UNICEF estimates that more than 1 million children are behind bars worldwide.⁶ During later processes in the juvenile justice system, harmful effects can arise, such as the stigmatization of criminal penalties. Children as perpetrators of criminal acts will be labeled as criminal criminals with lifelong dimensions. Not only that, child offenders will have the potential to increase the number of criminal offenders in the future. Indonesia is one of the countries that have ratified the Convention on the Right of the Child, through Presidential Decree no. 36 of 1990 so that Indonesia has an obligation to fulfill children's rights for all children without exception, including the rights of children who need special protection (Child in

³Ari Yudistira and Widayati, *The Investigation Process of Prospective Children in Criminal Action*, Jurnal Daulat Hukum: Volume 4 Issue 1, March 2021, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13695/5374>

⁴Muhammad Joni, (2012), *Penjara (Bukan) Tempat Anak*, Jakarta, Peran Indonesia/Perhimpunan Advokasi Anak Indonesia, p. V

⁵Didi Wahyudi Sunansyah, and Aryani Wirasari, *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: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8483/3939>

⁶Mohammad Farid Fad, *Analisis Model Diversi Melalui Restorative Justice Pada Anak Pelaku Tindak Pidana Terorisme Dalam Perspektif Maqashid Syariah*, UIN Walisongo Semarang, Al-Daulah, Vol.9 No.1, April 2009, p. 53

need special protection) for children in situations in conflict with the law (ABH) as a response to the state and government in special efforts to protect children.⁷

Based on the background described above, this study aims to determine and analyze the supremacy of the juvenile criminal justice system in protecting the rights of children in conflict with the law.

2. Research Methods

To conduct a study in this paper, the author uses the normative juridical method, namely the type of approach using the provisions of the legislation in force in a country or the doctrinal legal approach method, namely legal theories and opinions of legal scientists, especially those relating to the issues discussed.⁸The approach to the problem will then be sharpened with a conceptual approach, namely an approach that is carried out using concepts that are understood from the thoughts of experts or experts in fields related to the problems discussed.

3. Result and Discussion

3.1. Supremacy of the Juvenile Criminal Justice System in Protecting the Rights of Children in Conflict with the Law

Article 1 point 1 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System states that what is meant by 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 stage of mentoring after serving a crime. Setyo Wahyudi stated that what is meant by a juvenile criminal justice system is a child criminal justice law enforcement system consisting of a child investigation subsystem, a juvenile prosecution subsystem, a juvenile judge examination subsystem, and a juvenile criminal law sanction implementation subsystem based on child material criminal law and criminal law for children and the law on the implementation of criminal law sanctions for children.

In this case, the purpose of the juvenile criminal justice system is to emphasize the interests of the protection and welfare of children. Regarding what is meant by the juvenile criminal justice system, Act No. 11 of 2012 concerning the Juvenile Criminal Justice System does not provide further explanation. It's just that from the provisions of Article 1 point 1 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, it can be seen what the legislators want.

The will of the legislators is that the entire process of resolving cases of children in conflict with the law from the investigation stage to the stage of mentoring after serving a crime must be carried out as a system by following the provisions contained in Act No. 11 of 2012. Satjipto Rahardjo stated that the system is a complex unit consisting of parts that are related to each other. Such an understanding only emphasizes the characteristics of the connectedness of the

⁷Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, (2010), *Kebijakan Penanganan Anak Bermasalah dengan Hukum dengan Pendekatan Restorative Justice*, Medan: Pusjianbang Kementerian Hukum dan HAM RI, p. 3

⁸Soemitro, *Legal and Jurimetric Research Methodology*, Jakarta, Ghalia Indonesia, 1998, p. 24

parts, but ignores another characteristic, namely that the parts are actively working together to achieve the main goal of the unity.⁹

Meanwhile, according to Doddy Sumbodo Singgih, suggests that in terms of etymologically, the term system comes from the Greek, namely *systema*, meaning a set of parts or components that are interconnected with each other regularly and constitute a whole.¹⁰

Talking about children's problems cannot be separated from talking about children's rights and obligations. Children will always be discussed because they are the future generation of the nation. With this condition, the welfare of children will always be actual and felt important. This condition raises the need to protect children. The purpose 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 from violence and discrimination, for the sake of realizing quality, noble and prosperous Indonesian children. To be able to achieve this goal of child protection, as stated by Shanty Dellyana that it is necessary to strive for a condition where every child can carry out his rights and obligations,¹¹

The principles of juvenile criminal justice according to Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, namely: Protection; Justice; Non-discrimination; the best interests of the child; Respect for children; Survival and development of children; Guidance and guidance of children; Proportional; Deprivation of liberty and punishment as a last resort; Avoidance of retaliation.

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. A child in conflict with the law is a child who has reached the age of 12 (twelve) years but has not yet reached the age of 18 (eighteen) years. Those who are suspected, suspected, indicted or sentenced for committing a crime.

Regarding efforts to provide protection for children in conflict with the law, the juvenile criminal justice system must be interpreted broadly, it is not only interpreted as merely handling children in conflict with the law. However, the juvenile criminal justice system must also be interpreted to include the root causes of why children commit criminal acts and their prevention efforts. Furthermore, the scope of the juvenile criminal justice system includes a wide variety and complexity of issues ranging from children making first contact with the police, the judicial process, conditions of detention, and social reintegration, including the perpetrators in the process. Thus, the term juvenile criminal justice system refers to legislation, norms and standards, procedures, mechanisms and provisions,

In addition, various national legal instruments that became the basis for the preparation of the 1945 Constitution, Act No. 39 of 1999 on Human Rights and Act No. 23 of 2002 concerning Child Protection. In Act No. 23 of 2002 concerning Child Protection. UU no. 11 of 2012 concerning the Juvenile Criminal Justice System:

- Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb;

⁹Satjipto Rahardjo, (2011), *Penegakan Hukum Suatu Tinjauan Sosiologis*, cetakan ke II, Genta Publishing, Yogyakarta, April, p.48

¹⁰J. Narwoko, (2013), *Sosiologi Teks Pengantar dan Terapan*, Jakarta: Kencana Prenada Media Group, p. 123

¹¹Shanty Dellyana, (1988), *Wanita dan Anak di Mata Hukum*, Yogyakarta: Liberty, p. 18-19

- 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 receive protection from violence and discrimination.

It must be recognized from in-depth research and study after the enactment of Act No. 3 of 1997 concerning Juvenile Court until it is valid for ± 24 years that prison is not a good place for children especially with the age of criminal responsibility which is too low so that with various efforts that have been made, both through policy advocacy and defense of children in conflict by several NGOs / NGOs and KPAI conducted a material test of

The Constitutional Court to the struggle to Parliament that resulted in the birth of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System. In this law, it is obligatory to prioritize Restorative Justice and Diversion approaches.¹²

Restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. (Article 1 point 6 of Act No. 11 of 2012). Meanwhile, diversion is the transfer of the settlement of children's cases from the criminal justice process to processes outside of criminal justice. (Article 1 point 7 of Act No. 11 of 2012). The expected goals of this Diversion are:

- The achievement of peace between children as perpetrators and victims;
- Resolving child cases outside the judicial process;
- Protecting children from deprivation of liberty;
- Encouraging communities to participate;
- Instill a sense of responsibility in children.

In this new juvenile criminal justice system, each level is given 7 (seven) days each required to seek diversion given to Investigators, Prosecutors and Judges. While the time for discussion in the Diversion process is given 30 (thirty) days at each level.

A courtroom with uniformed officers and a detention house will probably be a nightmare for every child throughout his life. Such a small and early child must carry a burden that should not be borne by a child of his age. Many parties consider that the legal process does not consider educative, constructive aspects and tends to be destructive because it has a negative effect on children. In handling children in conflict with the law, there are 7 (seven) Pillars of Juvenile Justice, namely: Police, Advocates, Prosecutors, Judges, Prison Officers, Prison Officers and Community Members. We know that the Police (Investigators) as the gateway to handling cases of children (victims, perpetrators or witnesses) often actually carry out "violence and abuse" when arresting and examining in the process of making Investigation Reports (BAP),

To put a child into the definition of legal subjects such as adults and legal entities, internal and external factors are very influential in classifying the status of children, external elements are:

- Internal elements in children:
 - Legal subjects;

¹²Rendy H. Pratama, Sri Sulastri, & Rudi Saprudin Darwis, *Perlindungan Terhadap Anak yang Berhadapan Dengan Hukum*, PROSIDING KS: RISET & PKM, Volume 2 No. 1, 2018, p.10

- Equal rights and obligations of children.
- External elements in children
 - Equality in law;
 - Privilege rights granted by the State or government arising from the 1945 Constitution and legislation.

In conducting an investigation of a child as a criminal, an investigator must understand the Child Criminal Procedure Law as stipulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, because here the task of an investigator will be faced with matters relating to the enforcement of children's rights. Regarding the investigation of child criminal cases, it has been regulated explicitly in Article 26 to Article 29 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.

Attempts to arrest a child by an investigator must apply the principle of presumption of innocence in order to respect and uphold the dignity of the child and must also be understood as a person who has not been able to understand the legal problems that have occurred to him. An investigator who makes an arrest effort in addition to applying the principle of presumption of innocence must also pay attention to the rights of the child as a suspect, such as the right to obtain legal assistance at every level of examination according to the procedures determined by law (Article 54 of the Criminal Procedure Code).¹³

The examination process before the court also requires the defendant to be detained in order to expedite the examination process, the judge can make a detention for a maximum period of 10 (ten) days, the period at the request of the judge can be extended by making an application to the head of the district court for a maximum of 15 (five) days. fifteen) days, if the 15 (fifteen) days period has ended and the Judge has not rendered a decision, then the child must be expelled by law (Article 35 of the Juvenile Criminal Justice System Act), then during the examination process there is a submission of evidence, then the confiscation of evidence in a child's case must be determined no later than 2 (two) days by the Chairperson of the Court (Article 36 of the Juvenile Criminal Justice System Act).¹⁴

The Public Prosecutor is obliged to seek Diversion no later than 7 (seven) days after receiving the case file from the investigator, which is carried out no later than 30 (thirty) days, and if the Diversion process succeeds in reaching an agreement, the Public Prosecutor submits the Minutes of Diversion along with the Diversion Agreement to the Chairperson of the Court. For the State to make a determination, if the Diversion process fails, the Public Prosecutor is obliged to submit an official report on Diversion and delegate the case to the court by attaching a report on the results of the research to the public.¹⁵

4. Conclusion

In conducting an investigation of a child as a criminal, an investigator must understand the Child Criminal Procedure Law as stipulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, the arrest of a child is carried out

¹³Romli Atmasasmita, (1997), *Peradilan Anak di Indonesia*, Bandung: Mandar Maju, p. 166.

¹⁴Luhut Pangaribuan, (2013), *Hukum Acara Pidana*, Jakarta: Papas Sinar Sinanti, p. 33.

¹⁵Gatot Supramono, (2000), *Hukum Acara Pengadilan Anak*, Jakarta: Djambatan, p. 10-11.

for the purpose of investigation for a maximum of 24 (twenty four) hours, a child who is arrested must be placed in a special service room for children, in the event that a special service room for children does not yet exist in the area concerned, children are placed in LPAS. Detention is forced to be carried out for the purpose of examination at the cassation level, the Judge of Cassation may make a detention for a maximum of 15 (fifteen) days and may be extended 20 (days) at the request of the Judge of Cassation by the Chief Justice of the Supreme Court. In this case, the period of time has expired and the cassation judge has not rendered a decision.

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