

Legal Protection for Children Perpetrators of Immoral Crime (Case Study Number 21/PID.SUS.Anak/2019/PN.Trg)

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ABSTRACT

Every child needs to get guidance and guidance from an early age because childhood is a period of shaping the personality, character and character of a human being, so that later they have the ability and strength and can be strong in life. The emotional instability of children tends to cause attitudes and actions that are considered naughty or known as juvenile delinquency. The protection policy for children in the Juvenile Criminal Justice System mandates that the judicial process is kept as far as possible from cases of children in conflict with the law. The fundamental substance regulated in Law Number 11 of 2012 concerning the Juvenile Justice System is strict rules regarding restorative and diversionary justice which are intended to prevent children from the judicial process.

Key words : Legal Protection, Criminal Act, Restorative Justice

1. INTRODUCTION

Children are the nation's next generation, that is, the generation that is prepared to take control of the future of a nation. The position of the child as the nation's generation will carry on the ideals of the nation and will lead the Indonesian nation in the future so that it is necessary to get the widest possible opportunity to grow and develop naturally both spiritually, physically and socially and also need special protection so that later children can grow and develop for the better.

In Indonesian positive law, children are defined as people who are not yet mature (person under age) or are also called people who are under guardianship. The definition itself, if examined further in terms of age, according to the law chronology can differ depending on place, time and purpose. This will also affect the boundaries used to determine the child's age. We can see the difference in understanding of children in each of the existing laws and regulations. The definition of a child according to Law number 4 of 1979 concerning Child Welfare is someone who has not reached the age of 21 years and has never been married (Thalib et al., 2017)

Recently, children's delinquency tends to increase. The level of juvenile delinquency has led to a criminal act, namely violating the provisions of the criminal law so that the child must be accountable for his actions in court. Like the immoral case that occurred in the District Court Decision Number 21 / PID.SUS / 2019.PN.Trg, where a 17 year old child persuaded a 16 year old child to commit immorality. The protection policy for children in the Juvenile Criminal Justice



System mandates that the judicial process is kept as far as possible from cases of children in conflict with the law. Criminal decisions that place children as students have enormous consequences for the development of the child, both in the formation of character, personality,

Children should be handled differently from adults. For this reason, the handling model that applies through Law No. 3 of 1997 concerning juvenile court, the same as the handling of adults, with a retributive justice model, namely punishment as the main choice or retaliation for criminal acts committed. This model is not suitable, for at least three reasons: first, the reasons for the characteristics of the child. Second, the reason for the future of the child. Children who are convicted are labeled and stigmatized by the punishment so that it will be difficult for the child's psychological and social growth in the future. Third, restoring the relationship between children in conflict with the law, victims and society (Fauzi, 2018)

The special criminal justice system for children, of course, has a special purpose for the future interests of children and society, which contains the principles of restorative justice, the definition of restorative justice itself is not uniform, because there are many variations in the models and forms that develop in its application. Therefore, many terminologies are used to describe the concept of restorative justice, such as communitarian justice, positive justice, relational justice, reparative justice, and community justice. .¹

Law Number 11 of 2012 concerning the Juvenile Justice System, (Law number 11 of 2012) is intended to protect and nurture children who are in conflict with the law. This law intends for children to be able to face their long future and provide opportunities for children so that through fostering they gain their identity to become independent, responsible, and useful human beings for themselves, their families, communities, nation and state.

The basic substance stipulated in Law Number 11 of 2012 concerning the Juvenile Justice System is strict rules regarding restorative justice and diversion which are intended to prevent children from the judicial process, so as to avoid stigmatization of children who are involved in legal problems and it is hoped that children can return to within the community in a reasonable manner. Therefore, the participation of all parties is needed in order to make this happen. This process must have the objective of realizing restorative justice, both for the child and for the victim. Restorative justice referred to in this law is a diversion process. In diversion, all parties involved jointly solve problems and create an obligation to make things better by involving victims, children, and the community in finding the right solution to improve, reconciliation, which is not based on retaliation. Given the characteristics and characteristics of children and for the

¹ Eva Achjani Zulfa, Keadilan Restoratif, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta, 2009, hlm. 11.

protection of children, cases of children in conflict with the law, must be tried in the Juvenile Criminal Court which is part of the scope of general court.

Research methods

The type of research used in this thesis is normative research so that the method used is legal research methods that are carried out to find solutions to problems of existing legal problems and legal problems, so that the results of this legal research are to provide an overview of what should be applied to legal problems that exist. proposed and applicable in government legal practice. Peter Mahmud Marzuki stated that legal research is a process to find the rule of law, legal principles, and legal doctrine to answer legal problems faced (SONAKTA et al., 2020).

Discussion

1. Legal Protection Concept

Child protection is an effort made to create a condition where children can carry out their obligations and rights for the proper development and growth of children both mentally, socially and physically. Child protection is a manifestation of justice in the community, therefore child protection is sought in every sphere of social and state life. Child protection activities have legal consequences, both in relation to written and unwritten laws (Said, 2018)

The simplest form of child protection is to ensure that no child's rights are harmed. Child protection complements other rights that ensure children will receive everything they need to grow and develop.

According to Kak Seto from the National Commission for Child Protection, there are 4 basic rights of children, namely:

- 1) The right to a decent life
- 2) The right to grow and develop
- 3) Right to protection
- 4) Participation rights

Children need special legal protection that is different from adults. This is very necessary considering that children have physically and mentally immature and immature. Children really need to obtain protection guarantees from the state in the form of a statutory regulation.

In accordance with the 1945 Constitution which is the highest law in Indonesia, especially Article 28B paragraph (2) Every child has the right to live, grow and develop and is entitled to protection from violence and discrimination. Children as the successor of the nation's progress must be guarded and protected. Child protection can be divided into 2 parts, namely 7 (1) juridical child protection, which includes protection in the field of public law and in the field of civil law; (2) non-juridical child protection includes protection in the social, health and education fields.

A child needs protection in his life because basically a child cannot fend for himself. Children cannot protect themselves without the help of their parents, family and the community around them. Therefore, it can be said that child protection is of utmost importance. The implementation of child rights protection, which is categorized as juvenile delinquency, is evident in the Juvenile Delinquency Law System with the existence of a mediation process that is implemented through a diversion process, where the diversion process is carried out starting from the level of investigation at the police, the level of prosecution at the prosecutor's office, and at trial in court as specified in Article 7 (Zai & Siregar, 2011).

2. Rights of children in conflict with the law according to Law No.11 of 2012

Even though the child has committed a criminal act, the child must still receive protection. According to Anthony M. Platt, the principles of protecting children as suspects are: (a) children must be separated from adults to avoid the bad influence of adult criminals, (b) children must be avoided from unfavorable surroundings and given good protection, (c) the actions of the child must be endeavored to not get a criminal offense, even if sentenced, it must be subject to minimal punishment and even investigation should not be necessary because the child must be corrected, not punished, (d) the child should not be given a criminal sentence, because being a prisoner will in fact bring up negative stigma as an ex-convict, (e) punishment for children should only be carried out if it is a last resort (Ruddick, 2014).

In the process of investigating criminal cases, according to Law No.11 of 2012, children's rights must be considered, namely, among others:

- a. Examination of children's cases is carried out in a human and closed manner.
- b. Get legal assistance
- c. Forms of criminal sanctions that can be imposed are the imposition of crimes and actions. Imposition of a sentence can be in the form of a basic sentence consisting of imprisonment, imprisonment, fines or supervision. Meanwhile, additional penalties can be in the form of confiscation of certain goods, or payment of compensation. Actions that can be imposed against a child are returned to their parents, guardians, or foster parents, submitted to the State to participate in education, coaching and work training or submitted to the social community department which is engaged in education, coaching and work training.
- d. Examination of children must be carried out in a family manner, with assistance from parents or guardians and it can also be done by someone who has been trusted by the child. During the process, avoid publication.
- e. No detention or imprisonment was carried out, except as a last resort and carried out for a short time.

- f. Children who have been arrested and detained are entitled to receive assistance the law and it must be informed by the authorities from the time the child is arrested or detained to the parent, guardian or foster parent.
- g. Correctional students must be in a children's penitentiary. While in the correctional institution, children are entitled to receive education and training according to their talents and abilities.

In arresting children who are facing legal problems, the police must pay attention to children's rights by implementing protective measures such as treating children by prioritizing the presumption of innocence, treating children wisely, politely and wisely and not being equated with adult perpetrators. When an arrest is made, it is necessary to immediately inform the parent or guardian.

During the investigation process, investigators are not allowed to commit acts of violence and other inappropriate actions against children because it is feared that they can cause specific trauma to the child. Investigators also should not use words that give bad labels to children such as "thief", "liar", "thief" and so on. Investigators must also maintain their patience and emotions in conducting interviews with children.

3. Principles of Restorative Justice in the Juvenile Criminal Justice System

Restorative justice is a criminal concept that aims to find a way to uphold a more fair and balanced criminal system between the interests of the perpetrator and the victim. However, restorative justice does not only formulate the objectives of punishment, but also formulates mechanisms to achieve goals. To achieve the objectives of punishment as stipulated in Law Number 11 of 2012, which stipulates that the juvenile justice system must prioritize a restorative justice approach.

The mechanism for using the restorative justice approach in the juvenile justice system is not only aimed at judges, but also for all law enforcement systems in juvenile criminal justice, namely investigators, public prosecutors, and prisons. As explained in article 1 paragraph 6 (six) of Law Number 11 of 2012, this restorative justice is a form of case settlement by involving perpetrators, victims, families, and other parties to jointly seek a fair solution with more emphasis on restoration back to the original state and did not mean retaliation.

The principle of restorative to produce restorative justice, which is a process that involves all parties involved in a criminal act to solve problems together to make everything better by involving child offenders and victims and the community in finding solutions to fix, reconcile and reassure the heart. not based on retaliation. According to Bagir Manan, the concept of restorative justice contains ideas and principles, namely:

1. Building joint participation between perpetrators, victims and the community to solve a crime
2. Encourage the perpetrator to be responsible for the criminal act he committed against the victim and be responsible not to repeat it
3. Placing a criminal act is not a violation of the law but a violation between perpetrators and victims. So that later the perpetrator is directed to be responsible for the victim, not to the law.
4. Encourage not to settle criminal cases in a formal way but in a more informal and personal way.²

Based on the explanation from Bagir Manan, it can be concluded that with the concept of restorative justice to solve criminal acts, not all criminal cases must be resolved through a rigid judicial process. This restorative justice provides an opportunity for the perpetrator to make amends for a crime committed with the victim through deliberation based on good intentions to produce an agreement to restore the situation.

Restorative justice has the meaning of restoring justice. Restoration includes the relationship between the perpetrator and the victim. This restoration of relationship occurs on the basis of mutual consent between the perpetrator and the victim. Victims can explain the losses they have suffered and the perpetrators are also given the opportunity to be able to make up for it, either through compensation, social work, peace, or other agreements. The occurrence of restorative justice is very important because the conventional justice system does not provide opportunities for victims and perpetrators to participate in solving their problems.³

The existence of restorative justice allows real justice to be achieved by bringing together parties to bring up a fair agreement both for the perpetrator and for the victim without anyone feeling aggrieved. If no agreement is reached between the perpetrator and the victim, the settlement will be continued through the judiciary. The application of the restorative justice process through the judiciary does not necessarily eliminate the principles contained in the juvenile criminal justice system. The judicial process in juvenile criminal cases must be restorative and not retaliatory. Therefore, cases must really be handled by law enforcement officials who have attention and understand the problems of children by heeding the principles as regulated in the law.

4. Application of Diversion

Based on Article 1 paragraph 7 of Law Number 11 of 2012, diversion is a process of transferring the settlement of juvenile cases from the criminal justice process to non-criminal

² R. Wiyono, *Sistem Peradilan Anak Di Indonesia*, Sinar Grafika, Jakarta, 2016, hlm. 133-134

³ Yeni Widowaty dan Fadia Fitriyanti, *Membangun Model Perlindungan Hukum terhadap Masyarakat sebagai Korban Pencemaran dan/ atau Perusakan Lingkungan oleh Korporasi dengan Prinsip Restorative Justice*, *Jurnal Media Hukum*, I (Juni, 2014) , hlm.13.

justice processes. The application of diversion is something that must be considered, because it guarantees the rights of children and children from being stigmatized as a prisoner. In Article 6 of Law Number 11 of 2012 it is explained that the objectives of diversion are:

- 1) Achieving peace between children and victims;
- 2) Transferring the process of solving children's cases outside of the judicial process;
- 3) So that children avoid being deprived of freedom;
- 4) instilling a sense of responsibility in children.

In order to achieve the goal of diversion, in carrying out its duties, the components of the juvenile justice system, namely the Attorney General's Office, the National Police, and the court must have the same goal.

If one of the law enforcement officers in carrying out a diversion task has goals that are not the same as other law enforcement officials, the juvenile criminal justice system will not succeed as intended by Law Number 11 of 2012.⁴Not all cases of children require diversion efforts. Based on Article 7 paragraph (1) Law Number 11 of 2012 stipulates that cases of children must be sought to be diversified when investigations, examinations, and prosecutions are carried out in District Courts are cases of children whose criminal acts:

- 1) By imprisonment of less than 7 (seven) years.
- 2) Not a repetition of a criminal act. Repetition of a criminal offense as referred to in this provision is a criminal act committed by a child, whether it is a crime of the same type or not, including a crime that is resolved through diversion.

According to R. Wiyono, the definition of "it is not obligatory to seek the diversion, it is not imperative or facultative".⁵Which means that the case of a child whose criminal act is punishable by imprisonment of more than 7 (seven) years or is a repetition of a criminal act, may seek diversion. Based on Article 8 paragraph (1) of Law Number 11 of 2012, the diversion process is carried out through deliberation involving children and their parents or guardians, victims and / or their parents or guardians, social advisers, and professional social workers based on a restorative justice approach.

In addition to deliberations that must prioritize restorative justice, the diversion process must also pay attention to the interests of the victims, avoidance of negative stigma, child responsibility, avoidance of retaliation, community harmony, propriety, decency and public order. In the process of implementing diversion, investigators, public prosecutors and judges also need to consider the categories of criminal acts, age of children, results of social research, as well as support from the family and community environment. After the diversion effort is successful, then

⁴ R. Wiyono, *Sistem Peradilan Anak Di Indonesia*, Sinar Grafika, Jakarta, 2016, hlm. 48-49

⁵ R. Wiyono, *Sistem Peradilan Anak Di Indonesia*, Sinar Grafika, Jakarta, 2016, hlm. 51



the results of the diversion agreement are written in the form of an agreement which is then signed by the parties, then the signed agreement will be submitted to the court within a maximum period of 3 (three) days after the agreement is reached to obtain a ruling.

Not all handling diversion will result between the parties. The failure to reach an agreement between the parties will certainly have an impact on the continuation of the criminal justice process. In accordance with what has been regulated in Article 13 of Law Number 11 of 2012, namely juvenile criminal justice is continued if:

1. The diversion process did not produce agreement.
2. The diversion agreement was not implemented.

As a result, if the diversion process cannot produce the desired agreement, the investigation, prosecution and examination process will continue to obtain a verdict from the judge. If later it is proven legally and convincingly to have committed a criminal act that has been suspected of a child, then it can be threatened with sanctions in accordance with the act that was committed.

5. District Court Decision Number 21 / PID.SUS.Anak / 2019 / PN.Trg

Courts in law and democratic societies are the last place to seek truth and justice. In carrying out the autonomous function of judges to judge cases, there are several principles that need to be considered.⁶

In a criminal case, whether or not there is a truth is determined through a decision which is after going through a judicial process. This means that expressly finding the truth, justice and legal certainty will be seen in what has been done by the judge in legal considerations and proceedings at the trial, from examination to court decisions and even to their execution. The most important part of a judge's decision is the existence of legal certainty, both regarding the clarity of the status of the defendant and the existence of sanctions in the form of both criminal and material compensation.

In this case, the panel of judges gave a verdict to the suspect, namely imposing a sentence on a child with imprisonment for 1 (one) year and 10 (ten) months at Lempaga Special Development for Children (LPKA) Samarinda and job training at the Samarinda Vocational Training Center (BLK) for 6 (six) months.

6. Analysis of the Application of Restorative Justice in Decisions

In this case, the defendant was decided by the judge using article 81 of Law Number 35 of 2014 which reads:

⁶ Andi Hamzah, KUHP dan KUHP, Rineka Cipta, Jakarta, 1996, hlm. 853

"Every person who deliberately deceives, lies in a series of lies, or induces a child to have intercourse with him, will be sentenced to a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah) ”.

Indeed, in the articles used in the judge's decision, there were no mistakes. However, if seen from the results of the deliberations that have been conducted between the perpetrator and the victim and the victim's parents, it has been agreed that the perpetrator is willing to take responsibility by marrying the victim. In accordance with Law Number 11 of 2012 which emphasizes law enforcers to prioritize restorative justice approaches, the judges should strive to hold a deliberation process based on restorative justice.

The purpose of juvenile justice is to produce restorative justice, which is a process in which the parties who are directly involved in a criminal act collectively to find a way out or solve the problem and deal with it if the consequences of this crime arise in the future. Juvenile justice has an obligation to find the best solution by involving perpetrators, victims, parents and the community without any discrimination from any actions that can later hinder the development of the child.

The juvenile justice system has different principles from the conventional justice system, namely:

1. Make the perpetrator responsible in order to be able to repair the losses arising from his mistakes.
2. Give the perpetrator the opportunity to overcome his guilt through proving his capacity and quality.
3. Also involve victims, parents, schools and peers to find the best solution.
4. Encourage deliberation to solve problems.

In accordance with the objectives of restorative justice, namely to prevent the imposition of criminal sanctions and avoid retaliation, the judge really needs to pay attention to the results of the agreement between the perpetrator and the victim. So that children can immediately take responsibility for what they have done to the victim. Especially when viewed from the chronology of the case, the perpetrator forced copulation with the victim once. Then for the next immoral incident carried out consciously and without coercion from both parties like the perpetrator or the victim. Based on the results of the deliberation, an agreement was reached in which the perpetrator was willing to marry the victim. Therefore, the criminal decision handed down by the judge is not in accordance with the principle of restorative justice which avoids criminal sanctions for the perpetrator.

Conclusion



The conclusions of this thesis are based on the results of research conducted by the author and supported by data, information and facts regarding the results of the judge's decision number 21 / PID.SUS.Anak / 2019.PN.Trng are as follows:

1. The judges' legal considerations in making the decision number 21 / PID.SUS.Anak / 2019.PN.Trng were based on several elements to determine the final decision to be taken. According to article 81 paragraph (2) of Law Number 35 Year 2014, the judge considered the case to have several elements, namely the element of each person, the element of intentionally, the element of deception, a series of lies or persuading the child, and the element of having intercourse with him or other people. , where everything has been described in detail. However, the judge's consideration had an error caused by the judge in considering the case without paying attention to the results of the deliberations that had been carried out by the perpetrator and the victim.
2. The emphasis on restorative justice in Law Number 11 of 2012 is related to this discussion, namely children as perpetrators of criminal acts of sexual intercourse, in terms of settlement carried out with a restorative justice approach. The restorative justice approach in Law Number 11 of 2012, in which the position of the victim and the perpetrator who are still in the category of children, must be treated without discrimination and actions that can hinder the development of children. The use of the concept of restorative justice is directed at reducing the number of children who are arrested, detained, sentenced to imprisonment, as well as eliminating the stigma / labeling of children and returning children to normal human beings so that they are expected to be useful both for the family and for the future of the country and the nation.

References

- Fauzi, S. N. and L. P. (2018). Tindak Pidana Penipuan Dalam Transaksi Di Situ Jual Beli Online (e-Commerce). *Recidive*, 7(3), 251.
- Kitab Undang-Undang Hukum Acara Pidana (KUHAP)
- Kitab Undang-Undang Hukum Pidana (KUHP)
- Ruddick, S. M. (2014). *Young and homeless in Hollywood: Mapping the social imaginary*. Routledge.
- Said, M. F. (2018). Perlindungan Hukum Terhadap Anak Dalam Perspektif Hak Asasi Manusia. *JCH (Jurnal Cendekia Hukum)*, 4(1), 141–152.
- SONAKTA, F. M., Putri, V. R., & Ngadino, A. (2020). *IMPLIKASI PUTUSAN BADAN PENGAWAS PEMILU YANG FINAL DAN MENGIKAT TERKAIT PELANGGARAN ADMINISTRATIF PEMILU*. Sriwijaya University.

Putusan Pengadilan Nomor 21/PID.SUS.Anak/2019/PN.Trng;

Thalib, H., Rahman, S., & Semendawai, A. H. (2017). The Role Of Justice Collaborator In Uncovering Criminal Cases In Indonesia. *Diponegoro Law Review*, 2(1), 27–39.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;

Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak;

Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak;

Undang-Undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak;

Undang-undang Nomor 4 Tahun 1979 Tentang Kesejahteraan Anak;

Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman

Zai, A., & Siregar, T. (2011). Perlindungan Hukum terhadap Anak yang Berhadapan dengan Hukum dalam Sistem Peradilan Anak (Studi pada Wilayah Hukum Polres Nias). *Jurnal Mercatoria*, 4(2), 99–116.