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LEGAL PROTECTION OF CHILDREN AS PERPETRATORS OF CRIMINAL ACTS IN THE INDONESIAN JUVENILE JUSTICE SYSTEM

Muhammad Riduan[1], Syaiful Asmi Hasibuan[2]

[12]Universitas Pembangunan Panca Budi.

Email : mr4859885@gmail.com

ABSTRACT

Child protection is an important thing that must be done by the state and society. The forms of child protection are carried out from all aspects, starting from guidance to the family, social control of children's socialization and proper handling through regulations made by the State. Juvenile offenses are crimes committed by children. Juvenile crime can be associated with the term "Juvenile Deliquency", which in Indonesian is known by various terms, namely child delinquency, juvenile delinquency, youth delinquency, stray cadets, or child jalin quersi. Etymologically, it can be explained that "Juvenile" means "child" while "Deliquency" means "crime". Thus "Juvenile Deliquency" is "Child Crime", while when it comes to the subject or the perpetrator, then "Juvenile Deliquency" means child criminals or bad children. The research method used in this writing is the normative juridical method carried out through literature studies that examine secondary data in the form of laws and regulations related to the child punishment system, and child protection laws as well as research results, and other references. This research uses normative legal research because of the provisions regarding sanctions against children in conflict with the law. Child Crimes. Environmental factors contribute greatly to crimes committed by children. The environment of children as victims of criminal acts of decency can also be said that children's crimes are caused by the community environment.

Keywords: Legal Protection, Juvenile Delinquency, Juvenile Justice System.

1. INTRODUCTION.

Indonesia is a state of law based on Pancasila as its ideology and the 1945 Constitution of the Republic of Indonesia as its constitution. Law is an object of discussion for people who want to study it as a science, therefore we need to know the law in order to get a formulation or definition that can be used as a guide in the context of further discussion and study of the law. The criminal justice system is a system in a society to overcome the problem of crime. The countermeasure in question is an effort to control crime so that it is within the limits of tolerance by resolving most of the reports and complaints of people who are victims of crime by submitting the perpetrators of crime to a court session to be found guilty, and receive punishment and besides that the most important thing is to prevent the perpetrator from repeating the crime.

Indonesia has several components in the criminal justice system, namely the police, prosecutors, courts and correctional institutions which are expected to work integratively in accordance with their respective functions and duties in the criminal justice mechanism. The police, prosecutors, courts and correctional institutions have different duties, authorities and rights but have the same goal, namely to create a peaceful life in society and provide maximum benefits to society.

The occurrence of an unlawful act or criminal offense can be committed by anyone regardless of age, gender, and so on. One of them is immature people or children either as perpetrators, witnesses or victims of criminal acts. Every child has the right to be able to live, grow and develop, and participate reasonably in accordance with human dignity, as well as to receive protection from the law.

protection from violence or discrimination. The aspect of child protection in juvenile justice is viewed from a psychological perspective, aiming to prevent children from violence, neglect, abuse, pressure, indecent treatment, anxiety and so on. Children must receive guidance and guidance from an early age and need to get the widest possible opportunity to grow and develop both physically, mentally and psychologically. Children cannot protect themselves from various kinds of actions that cause mental, physical, social harm in various fields of life and livelihood, so children must be assisted by others in protecting themselves, given the situation and conditions. Especially in the implementation of juvenile criminal justice that is unfamiliar to them, children need to be protected from the misapplication of laws and regulations that are applied against them, which cause mental, physical and social harm. This kind of child protection is called legal / juridical protection.

Child protection is an important thing that must be done by the state and society. Forms of child protection are also carried out from all aspects, starting from guidance on the family, social control of children's relationships and proper handling through regulations made by the state.

The following are examples of juvenile crime cases that occurred in Medan City. Chronology of Police Officer's Son Abusing Student in Medan, Initially Asked about Relationship, then Ended in Beating. A video of mistreatment committed by the son of a police officer at the North Sumatra Police (Sumut) went viral on social media. The perpetrator with the initials AH mistreated a student named Ken Admiral. North Sumatra Police General Criminal Investigation Director, Kombes Pol Sumaryono explained the chronology of the persecution. Initially, the victim sent a message to the perpetrator asking about his relationship with a woman with the initials D.

Starting from the chat from the complainant (Ken Admiral) and the reported (AH). Where the complainant asked the reported party what the reported party's relationship was with the complainant's friend by the name of D. From the chat conversation there was something that was not pleasing so that the reported party beat and damaged the complainant's car," he said during a press conference at the North Sumatra Police Headquarters on Tuesday (4/25/2023).

He said the persecution began on December 21, 2022 at around 10:00 pm, the perpetrator AH and the victim met at a gas station, on Jalan Ringroad Medan City. The

perpetrator stopped the victim's car. Then the perpetrator hit the victim three times on the temple. Not only that, AH also kicked the rearview mirror of the victim's car and then ran away. "Why (the beating) was carried out, because it was based on previous chats between the complainant and the perpetrator," said Sumaryono. Then on December 22, 2022 at around 02.30 WIB,The victim went to the perpetrator's house with a number of his friends to resolve the beating problem. But instead a fight broke out. When the fight occurred, the perpetrator's father, AKBP Achiruddin Hasibuan, was recorded just watching. AKBP Achiruddin Hasibuan even prevented someone from breaking up the fight. The persecution took place in front of the perpetrator's house on Jalan Karya Dalam, Medan Helvetia District.

Then there was a mutual report between the victim and the perpetrator. So that the case that was initially handled by Medan Police was pulled to the North Sumatra Police. A number of reporting and reported witnesses have also been examined by the police. "On February 27, 2023 the investigative process was raised by the Police Station. But on February 28 this case was withdrawn to the Polda, (because) there were complaints and this incident had two reports. Reporting each other," he said. Sumaryono said his party had conducted a special case title on April 25, 2023. "The result of the special case title on April 25, 2023 is that we have named AH as a suspect and we will make forced arrest and detention efforts," he said. He said the reason the police only named the suspect was because the victim was abroad. Read also: AKBP Achiruddin Hasibuan was removed from his position and detained "Why did we only raise this case today because of the complainant's brother? It is carrying out study assignments abroad. So that only a few days ago the reporter's brother came to Medan and we investigated the reporter, "he said. Meanwhile, the perpetrator's father, AKBP Achiruddin Hasibuan, was removed from his position as Head of Bin Opsnal at the North Sumatra Police Drug Detection Directorate for allowing his son to persecute the victim. Head of North Sumatra Police Propam, Kombes Pol Dudung Adijono said, his party had examined AKBP Achiruddin Hasibuan and was proven to have allowed the persecution crime to occur. "For that reason, for the examination, AH (Achiruddin Hasibuan) was evaluated and temporarily demobilized," he said. Regarding the allegation that Achiruddin Hasibuan ordered the use of long-barreled weapons, his party is still conducting a deepening. (Article from Kompas.com, Click to read: https://medan.kompas.com/read/2023/04/26/023356778/kronologi-anak-perwira-polisi-aniaya-mahasiswa-di-medan-awalnya-tanya-hubungan?page=all.

Literature review.

Definition of Juvenile Crime

Juvenile crime is a criminal offense committed by children. Juvenile crime can be related to the term "Juvenile Deliquency", which in Indonesian is known by various terms, namely child delinquency, juvenile delinquency, youth delinquency, stray cadets, or child jalin quersi. Etymologically, it can be explained that "Juvenile" means "child" while "Deliquency" means "crime". Thus "Juvenile Deliquency" is "Child Crime", while when it comes to the subject or the perpetrator, then "Juvenile Deliquency" means child criminals or bad children.

Juvenile Delinquency is any act or behavior of a child under the age of 18 years and unmarried which is a violation of the prevailing norms and can endanger the personal development of the child concerned (Paulus Hadisuprapto, 2010). In addition, Dr. Fuad Hasan in Sudarsono also formulated that "Juvenile Delinquency", is an anti-social act committed by teenagers which when committed by adults is qualified as a criminal offense (Sudarsono, 1991). Khumaidi Tohar also formulated that what is said as "Juvenile Delinquency" is evil / immoral behavior, or crime / delinquency of young people, is a symptom of social pain (pathology) in children and adolescents caused by a form of social neglect so that they develop a form of neglect of deviant behavior (Khumaidi Tohar, 2007).

Juvenile Delinquency is a term that in Indonesian gave birth to various terms with their own background of thought. One translation of Juvenile Delinquency is child delinquency behavior. According to Article 1 Letter 2 of Law Number 3 of 1997 concerning Juvenile Courts, there are two categories of child behavior that can put a child in conflict with the law, namely status offences and criminal offences. Status Offence is child delinquent behavior that if committed by adults is not considered a crime, such as disobeying, skipping school or running away from home; while Criminal Offence is child delinquent behavior that if committed by adults is considered a crime or violation of the law. However, it is too extreme if criminal offenses committed by children are called crimes, because children basically have unstable psyches, the process of psychological stability produces critical, aggressive attitudes and shows behavior that tends to act to disturb public order.

This cannot be said to be a crime, but rather a delinquency caused by an unbalanced psychological condition and the perpetrator does not yet realize and understand the actions he has taken. There are several causal factors that most influence the emergence of crimes committed by children, namely:

1. Environmental factors
2. Economic/social factors
3. Psychological factors

Acts of delinquency committed by children are a manifestation of adolescent puberty without any intention of harming others as required in an act of crime listed in the Criminal Code (KUHP) where the perpetrator must realize the consequences of his actions and the perpetrator is able to take responsibility for his actions. Therefore, it is necessary to have self-awareness from the parents of the child concerned that the child also has the potential to become a perpetrator of prohibited acts according to the applicable law.

Forms of Child Criminal Offenses

According to Sudarsono, legal norms that are often violated by juveniles in general are articles on:

a. Violent crimes, such as: murder, maltreatment, rape, beatings, intimidation
b. Crimes against an object, such as: ordinary theft, theft with aggravation
c. Embezzlement
d. Fraud

e. Extortion
f. Homelessness
g. Narcotics

In the Criminal Code, it is stated that juvenile offenses are one of the offenses against Articles 489, 490, 492, 497, 503, 505, 514, 517, 518, 519, 526, 531, 532, 536, and 540, namely:

a. Public security offenses, such as: 1) Being drunk in public and obstructing traffic, disturbing order, or threatening the safety of others. 2) Causing a fire in public.
b. Committing an offense against order, including: 1) Making noise, crowds so as to disturb the community. 2) Flogging. 3) Collectors. 4) Forgery. 5) Destruction of information in public.
c. Committing a breach of decency, including: 1) Singing songs, making speeches, and distributing writings that violate decency in public. 2) Committing adultery 3) Speaking lies

Elements of Juvenile Crime.

The elements of criminal offense are divided into 2 (two) elements, namely formal elements and material elements.

a. Formal elements, including:
    1. Human action, i.e. action in a broad sense, meaning that no action is included in an action and is carried out by a human being.
    2. Violating criminal regulations, in the sense that something will be punished if there are previous criminal regulations that have regulated the act, so the judge cannot accuse a crime that has been committed with a criminal regulation, then there is no criminal offense.
    3. Threatened with punishment, this means that the Criminal Code regulates different punishments based on the criminal offense that has been committed.
    4. Committed by a guilty person, where the elements of guilt are that there must be a will, desire or willingness of the person who commits a criminal offense and the person does something intentionally, knowing and aware beforehand of the consequences of his actions. Error in a narrow sense can be interpreted as error caused by the maker not paying attention to the consequences that are not intended by the law.
    5. Liability which stipulates that a person who is not of sound mind cannot be held liable. The basis of a person's liability lies in the state of his or her soul.
b. Material element

The material element of a criminal offense is contrary to the law, which must be truly felt by the community so that the act is not worth doing. So even though the act fulfills the formulation of the law, if it is not against the law, then the act is not a criminal offense. The elements of a criminal offense in criminal law are divided into two types, namely objective elements and subjective elements. Objective elements are elements that exist outside the perpetrator of the crime, including:

1. Human action or behavior, where the human action or behavior is active (doing something), for example killing (Article 338 of the Criminal Code), persecuting (Article 351 of the Criminal Code).
2. The result which is an absolute requirement of the offense. This is found in material offenses or offenses that are formulated materially, for example murder (Article 338 of the Criminal Code), persecution (Article 351 of the Criminal Code), and others.
3. There is an unlawful element. Every act prohibited and threatened with punishment by criminal law legislation must be against the law, even though this element is not expressly stated in the formulation.

Other elements that determine the nature of the crime: There are a number of criminal offenses that require objective circumstances to establish the nature of the offense, such as incitement (Article 160 of the Criminal Code), breach of morality (Article 281 of the Criminal Code), begging (Article 504 of the Criminal Code), drunkenness (Article 561 of the Criminal Code). The crime must be committed in public. Elements that aggravate the criminal offense. This is found in offenses that are qualified by the consequences, namely because of the occurrence of certain consequences, the punishment is aggravated, for example depriving someone of their freedom (Article 333 of the Criminal Code) is punishable by a maximum imprisonment of 8 (eight) years, if the act results in serious injuries the punishment is further aggravated to a maximum imprisonment of 12 (twelve) years.

Additional elements that determine the criminal offense. For example, by voluntarily joining a foreign army, even though that country is going to war with Indonesia, the perpetrator can only be punished if there is an outbreak of war (Article 123 of the Criminal Code). Criminal offenses also recognize the existence of subjective elements, these elements include:

a. Willfulness (dolus), which is found in the offense of decency (Article 281 of the Criminal Code), deprivation of liberty (Article 333 of the Criminal Code), murder (Article 338).
b. Negligence (culpa), which is found in deprivation of liberty (Article 334 of the KUHP), and causing death (Article 359 of the KUHP), among others.
c. Intention (voornemen), which is found in attempt or poging (Article 53 KUHP).
d. Intent (oogmerk), which is found in theft (Article 362 KUHP), extortion (Article 368 KUHP), fraud (Article 378 KUHP), and others.
e. With premeditation (met voorbedachte rade), which can be found in abandoning one's own child (Article 308 KUHP), killing one's own child (Article 341 KUHP), killing one's own child with premeditation (Article 342 KUHP).

2. RESEARCH METHOD.

The research method used in this writing is the normative juridical method conducted through literature study that examines secondary data in the form of laws and regulations related to the child punishment system, and child protection laws as well as research results, and other references. This research uses normative legal research because the provisions regarding sanctions against Children in Conflict with the Law as an

alternative means of punishment for loss of independence have not been explicitly regulated regarding its implementation in the Law on the Juvenile Criminal Justice System and the existence of vague norms and horizontal norm conflicts in its regulation.

Secondary data is data obtained from library materials. Secondary data in this study is obtained from primary legal materials and tertiary legal materials. What is meant by the three legal materials in this study include books (including dictionaries) and various other sources such as: basic regulations and laws relating to children's rights to play and public green open spaces, articles, scientific magazines, newspapers, and unpublished data/sources, materials from the internet, and other materials related to the title of this research.

3. RESEARCH RESULTS AND DISCUSSION

Children in committing criminal offenses or crimes in social life are influenced by the following factors:

Very weak parental supervision

Weak supervision from parents causes the occurrence of crimes of decency, which in this case is the crime of sexual abuse of minors, a crime that has very minimal evidence Victims of crimes of decency do not know that they have just experienced sexual violence or other immoral acts because of their innocence to understand the event or have experienced excessive fear so they do not report what happened to them to adults or their families. This causes the police to have difficulty in finding evidence.

Head of Criminal Investigation Unit of Medan Police said: ".... Parents should provide supervision to their children, this does not mean restricting children from interacting with the environment, associating with peers, but monitoring when children leave the house at specified hours to avoid unwanted things such as acts of decency".

Children, by their nature, do not have enough reasoning power to distinguish between good and bad things. Criminal offenses committed by children are generally a process of imitating or being influenced by the persuasion of adults or certain influences.

Furthermore, the mentality of children who are still in the stage of self-discovery is sometimes easily influenced by the situation and conditions of the environment around them. So that if the environment where the child is located is bad, it can be influenced to actions that can violate the law. Of course, this can of course harm themselves and society. Not a few of these actions end up dragging them to deal with law enforcement officials.

Next is the criminal offense committed by the child. The sexual behavior of minors is very unstable, due to their lack of knowledge about sex itself and only think of trying it. Starting from curiosity and wanting to try sex, minors want to practice what they see on porn sites on the internet or in other media and usually for fear of being found out by parents, minors who have been influenced by this premature sexual behavior then try to do it to their close friends or even their younger sibling friends who are younger than themselves.

Furthermore, the victim's parents who do not accept it then report the perpetrator to the police. The punishment that can be imposed on the perpetrator is quite severe. The crime of decency is regulated in the Criminal Code, specifically in: Article 281 which regulates

acts that destroy decency in public; Article 282 formulates pornography; Article 284 formulates the offense of adultery; Article 285 formulates the offense of rape; Articles 286-288 formulate the offense of rape.

The criminal justice system ultimately places children in the status of prisoners, which certainly has considerable consequences in terms of child development. Crimes of decency committed by children are included in crimes of decency that are very worrying and have a psychological effect on victims and also on perpetrators who are still minors so that the handling of this crime must be handled seriously.

Next, the researcher gives the view that one of the factors for the occurrence of criminal acts of decency is the lack of parental supervision of children, resulting in children as victims lacking understanding of the world of sex children who are still unstable and innocent, so there is no decency and as the parents of victims who do not accept then report the perpetrators to the police.

Economic Factors Causing Crime

Economic factors have a considerable effect on crime. This factor can cause criminal acts or crimes, but it needs to be realized, it is the poverty factor that is the initial capital for the demands of life. The reason is that living in limitations and shortages will make it difficult for a person to fulfill their needs.

fulfill their needs. Both in terms of clothing (clothing), food (food), shelter (housing), as well as education.

Next, Head of Criminal Investigation Unit of Medan Police ".... immoral crimes, such as sexual abuse, are closely related to economic factors and low education. almost the average crime of sexual abuse that occurs in the Medan Police jurisdiction is a resident who is far from urban areas.

Furthermore, usually what happens is because of the lack of education between the victim and the perpetrator. Because they live far from urban areas, it is difficult to receive education. Even some of these perpetrators are of low economic status. Usually this is also the cause of immoral acts.

The conditions that cause a person to fall into sex work are influenced by their lack of self-control. A person's self-control can be seen from the behavior shown daily. Individual behavior in socializing is influenced by self-control factors. The self-control factor in individuals is needed because urges and desires are increasingly volatile, especially sexual urges and aggressiveness. If a person cannot control himself well, then the individual will be dominated by negative urges and desires or actions. Basically, with the low economic conditions of the community, there is a tendency to affect the behavior patterns of the community. This is very influential on the development of children's behavior.

Next, the high economy of the community has a tendency to affect the behavior patterns of the community. This is also very influential on the development of children's behavior patterns to behave deviantly from the norms of decency. Economic factors that include the lower middle class economy (poor people) can also often do outside the psychology which usually has an impact on children, from the lack of economic needs of their daily parents, so that children receive less attention from their parents both education

and association of the school environment, and the upper middle class economy can also have an impact on children, with sufficient facilities in terms of material so that children will freely use their facilities to the point that parents do not pay attention to education, association and due to their busyness.

Meanwhile, in addition to being unable to achieve welfare, people in poor conditions find it difficult to get access to education. Whereas education is one of a person's social capital in achieving welfare, with education the requirements for employment can be fulfilled. Thus, someone who has an income the needs of his/her life from an economic point of view. A low level of education makes it difficult for a person to get a formal job, or to get a formal/informal job with a very small income, so that their basic needs cannot be met. This situation is often the driving force behind the involvement of child victims in criminal acts of decency.

Environmental Factors Affecting Crimes Against Children

Environmental factors contribute greatly to crimes committed by children. The environment of children as victims of criminal acts of decency can also be said that children's crimes are caused by the community environment. This is because from a relatively violent environment, the impact on the community environment is none other than the development of children's behavior because the nature of children's influence is very large on negative and positive things. Factors of the community environment, can also greatly influence, the occurrence of immoral acts on children as victims caused from the household environment, the lack of education of their parents can also be, the educational environment, the lack of education and knowledge from teachers towards morality and religion, the social environment both outside the family link and the environment outside the school. The factor of the community environment caused by a society that is relatively violent does not rule out a large possibility of a juvenile society.

Furthermore, relatively large crimes can also be committed by children, which is due to the surrounding community environment. Likewise, family factors have a very strong impact on crimes committed by children due to the lack of a good relationship between parents and children, which can lead to deviant child behavior and deviations that are nothing but crimes. From environmental factors, a factor that can cause crime is seen from the current environmental conditions that there is a tendency towards the influence of changes in community conditions influenced by environmental conditions. People are more likely to violate the law in meeting the needs of life than that can lead to patterns of criminal behavior that often occur in the community.

4. CONCLUSIONS AND SUGGESTIONS

Based on the research results discussed in the previous chapter, the following conclusions are drawn:

1. Legal arrangements, children as victims of criminal acts of decency have been regulated in Law No. 35 of 2014 concerning Child Protection and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System as a whole have been formed starting from the level of investigation, coaching, rehabilitation as long as the court continues but only temporarily without any regulation of laws and government regulations in rehabilitating children as victims of criminal acts of decency after the trial.
2. The crime of decency is one of the factors that cause children to become victims is the lack of parental supervision of children. From an economic perspective, in addition to being unable to achieve welfare, people in poor conditions find it difficult to get access to education. The low level of education makes it difficult for a person to get a formal job, or get a formal/informal job with a very small income, so that their basic needs cannot be met. This situation is often the driving force behind the involvement of child victims in criminal acts of decency. In terms of the environment, the community is more likely to violate the law in meeting the needs of life than that.

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Law No. 11/2012 on the Juvenile Criminal Justice System

Law No. 39 of 1999 on Human Rights