

Criminal Liability of Children Who Cause A Fire



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ABSTRACT: Criminal liability is a necessary condition to impose a crime against a person who commits a crime, including a crime committed by a child which results in a fire. The problems that will be discussed in this study are related to how the criminal liability of children that causes fires and how the juvenile justice system is organized in Indonesia. The purpose of this study is to determine the criminal liability of children who cause fires and to determine the implementation of the juvenile justice system in Indonesia. The data collection technique in this research is using the library research method. While the analysis technique carried out on the legal materials that have been collected by the author will be done deductively. The results of this study indicate that if the child who commits the crime that resulted in the fire is 12 years old, then the child can be burdened with criminal liability. Furthermore, the implementation of the juvenile criminal justice system in Indonesia starts from the investigation stage to the guidance stage after serving a crime.

KEYWORDS: child criminal liability, child criminalization, criminal justice system.

I. INTRODUCTION

The occurrence of fire disasters cannot be predicted or forecasted in advance. Human ability cannot predict when it will happen, what will trigger it, the severity of its scope, and the consequential effects. Fires frequently result in a variety of unfavorable outcomes, including material losses, business disruptions, environmental damage, and a threat to human life safety.¹ Urban areas (particularly densely populated areas) are particularly vulnerable to fire disasters. According to the most recent data from the Department of Population and Civil Registration, DKI Jakarta's population in 2020 will be 10.56 million people.² This number includes as many as 4,380 foreigners. Meanwhile, according to Governor Decree No. 171 of 2007, the area of DKI Jakarta is 662.33 km². This implies that the population density of DKI Jakarta is currently 16,704 people per km².³ DKI Jakarta continues to carry out various development activities, both related to infrastructure, such as transportation, and facilities in the form of physical buildings, such as office buildings, trade, industry, tourism, and residential houses.

In order to fulfill the physical facilities of this building, there is a tendency to continue to increase the number of buildings, resulting in a decrease in vacant land in Jakarta. The large number of building physical facilities increases the probability of a fire hazard. Furthermore, DKI Jakarta is a city with a high intensity of fire threats due to its densely populated settlements. According to data from the DKI Jakarta Provincial Fire and Rescue Agency (DPKP), the number of fires in 2020 was 1,501, with the total cases spread across five cities and the Thousand Islands Regency. South Jakarta had 396 fire cases, East Jakarta had 349 fire cases, West Jakarta had 332 fire cases, North Jakarta-Thousand Islands had 264 fire cases, and Central Jakarta had 160 fire cases.

This fire happened once in a rubber warehouse on PIK Utara Street, Pgilan Village, Cakung, East Jakarta. According to Gatot Sulaeman, the Head of East Jakarta DPKP Sub-dept, the fire started as a result of children playing with firecrackers on garbage piles around the rubber warehouse. There were no casualties in this fire, but material losses were estimated at Rp. 30 million rupiah.⁴

¹ Ramli Soehatman, *Pedoman Praktis Manajemen Bencana (Disaster Management)*. Dian Rakyat, 2010.

² Dwi Hadya Jayani in the article *Penduduk DKI Jakarta 10,56 Juta Jiwa pada 2020*, Retrieved from <https://databoks.katadata.co.id/datapublish/2021/01/25/penduduk-dki-jakarta-1056-juta-jiwa-pada-2020> , accessed on March 25, 2021

³ Adhitya Akbar pada artikel *Berapa Kepadatan Penduduk Dki Jakarta Saat Ini*, Retrieved from <http://statistik.jakarta.go.id/>, accessed on March 25, 2021

⁴ Kasiops Sudin Gulkarmat said in the article *Akibat Ulah Anak-anak, Gudang Karet di Cakung Ludes Terbakar, Ya Ampun*, Retrieved from <https://www.jpnn.com/> accessed on March 25, 2021

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The factor of human error, particularly among children, that causes fires can occur anywhere and at any time because there is still a lack of attention from parents when their children play with things that can cause fires, as well as knowledge among children about what things can cause fires.

Therefore, parents, the community, and government institutions such as the DPKP, which specializes in dealing with firefighters, can provide understanding and knowledge about what causes fires and what should be done when a fire occurs to the community, particularly children who do not understand what should or cannot be used as playing tools. For law enforcement agencies to impose penalties or criminal acts on people who are negligent and cause fires, as well as significant losses on those who experience fire disasters and even lose their lives as a result of fires.

In this case, there is an attempt to try their own children through the criminal justice system, which is a process of resolving cases of children in conflict with the law, beginning with the investigation stage and ending with the guidance stage after serving a crime. The juvenile criminal justice system must prioritize the best interests of the child, which means that all decisions in the judiciary must always consider the child's survival and development now and in the future, and the most basic human rights for children are protected by the state, government, society, family, and parents.⁵

Children in conflict with the law are defined as children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts, according to Law Number 11 of 2012. A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old and is suspected of committing a crime.⁶ The term diversion is recognized by Law Number 11 of 2012 concerning Juvenile Criminal Justice System, which aims to achieve peace between victims and children, resolve child cases outside of the judicial process, prevent children from losing their independence, and then encourage the entire community to participate and instill a sense of responsibility in children.

Theoretically, according to Roscoe Pound, responsibility is an obligation to redeem revenge from someone against whom a loss (injury) has been committed, either by the first-mentioned person himself or by something under his control.⁷

Criminal liability is a precondition for imposing a sentence on someone who has committed a crime. Criminal liability is determined not only by considering the interests of the community, but also by considering the interests of the maker. The process is dependent on the fulfillment of the conditions and conditions that can be blamed on the perpetrator of the crime, so that it is legal if sentenced to a crime.⁸ As a result, the main objective of this research is to determine how children's criminal liability for fires is determined, as well as the implementation of the juvenile criminal justice system in Indonesia.

II. RESEARCH METHOD

The data collection technique used in this study is library research, which entails looking through a variety of secondary data sources such as books, journals, legislation, and other legal writings that are relevant to the research topic. The author's legal materials will be analyzed deductively, that is, by drawing conclusions from a general problem to the specific problems encountered. This is taken in order to address the legal issues raised in this study.

III DISCUSSION

1. Conception of Children in Legal Perspective

Changes and developments in people's lives have occurred since Indonesia underwent a period of transition from an authoritarian government system to a democratic government system through a system known as reform. One of these shifts is the issue of child criminality.⁹

In the Indonesian legal system, a child is defined as a person who is not yet an adult (*minderjarig*) or who is under the age of 18. There are numerous differences in determining the adult age limit, which can be traced back to stages of child development that demonstrate a child's ability or inability to act. As a result, the terms "children" and "minors" are interpreted differently, and the size or age limit is also different.¹⁰

The age limit of a child or person who is not yet an adult in several provisions of the law is different because it is motivated by the aims and objectives of each law; in law No. 1 of 1974 concerning marriage that the limit of children under parental guardianship reaches the age of eighteen 18 years, in the general election law it is said that children are not yet 17 years old,

⁵ Sri Sutatiek, *Putusan Pengadilan Anak sebagai Manifestasi Perlindungan dan Kesejahteraan Anak di Indonesia*, Dissertation, Faculty of Law University of Brawijaya, 2007, page. 15.

⁶ Law No 11 of 2012

⁷ Roscoe Pound, *Pengantar Filsafat Hukum*, Terjemahan Mohamad Radjab, Bharata Karya, Jakarta, 1982, page. 80.

⁸ Mahfud Mulyadi dan Feri Antoni Surbakti, *Politik Hukum Pidana Terhadap Kejahatan Korporasi*, Sofmedia, Jakarta, 2010, page. 35.

⁹ Lushiana Primasari, "Keadilan Restoratif dan Pemenuhan Hakasasi Bagi Anak yang Berhadapan dengan Hukum", *Jurnal Yustisia*, Volume 1, No. 2, 2012, page. 4

¹⁰ Ade Maman Suherman, dan J. Satrio, *Penjelasan Hukum tentang Batasan Umur (Kecakapan dan Kewenangan bertindak berdasar Batasan Umur)*, (Jakarta: Gramedia, 2010), page: 36

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according to the Criminal Code in article 45 in terms of criminal prosecution of people who have not adult for committing an act before the age of 16 years, the judge can determine; ordered that the guilty be returned to their parents, guardians or care taker, without any punishment; In contrast to the Criminal Code, a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 years old but not yet 18 years old who is suspected of committing a crime, as stated in article 1 point 3 of the Juvenile Criminal Justice System Law Number 11 of 2012, a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 years old but not yet 18 years old who is suspected of committing Children in conflict with the law, also known as naughty children, violate the norms or regulations set upon in the Criminal Code and other laws that live and apply in the community.

Paul Moedikno defines a naughty children (Juvenile Delequency) as follows:

1. All actions of adults constitute a crime; all actions of children constitute delequency. As a result, all criminally prohibited actions, such as stealing, molesting, killing, and etc, are prohibited.
2. Any act of deviating from the norms of specific groups that causes trouble in society, such as wearing impolite trousers, as seen in fashion, and etc.
3. All actions indicating the need for social protection, such as homeless people, beggars, and others.

According to Santrock, juvenile delinquency is a gathering of socially unacceptable juvenile behaviors that lead to criminal acts. Juvenile delinquency, according to Kartini Kartono, is a social pathological symptom in adolescents caused by a form of social neglect.¹¹ As a result, they exhibit deviant behavior. Given the high instability that exists in children, many factors that cause deviations committed by children can be easily influenced. Romli Atmasasmita's opinion is divided into two (two) groups of motivation, i.e:¹²

- a. The following factors are included in the intrinsic motivation of children's delinquency:
 1. Intelligence factor
 2. Age factor
 3. Gender factor
 4. The factor of the child's position in the family
- b. The following are examples of extrinsic motivation
 1. Household factors
 2. Education and school-related factors
 3. Social determinants of childhood
 4. The role of the media

Among the various factors that contribute to a wide range of child delinquency, the following are qualified:

1. Juvenile delinquency as status offenses, it means that all deviant child behavior that is not considered a crime if committed by adults, such as skipping school, fighting parents, fleeing from home, etc.
2. Juvenile delinquency which means that all child behavior considered to violate the rule of law and, if committed by adults, it is also considered as a crime, but the child is not fully responsible for his actions.

More specifically, the qualifications for juvenile delinquency are as follows:¹³

1. Speeding on the streets, obstructing traffic safety and endangering their own and others' lives;
2. Careless, delinquent, or sloppy behavior that disturbs the peace of the surrounding environment This behavior is the result of excessive energy, uncontrollable primitive impulses, and a desire to terrorize the environment.
3. Fights between gangs, groups, schools, and tribes (brawls), which sometimes result in fatalities;
4. Skipping school and wandering the road or hiding in remote locations while experimenting with various vices and immoral acts;
5. Child, adolescent and adolescent crimes include threatening, intimidating, extorting, stealing, pickpocketing, snatching, grabbing, attacking, robbing, disturbing, looting, committing murder by slaughtering the victim, strangling, poisoning, acts of violence and other violations ;
6. Drunken partying, free sex, or orgi (drunk that causes chaos) that disturbs the surroundings;
7. Rape, sexual aggression, and murder motivated by social reasons or by compensatory reactions to feelings of inferiority, demanding self-recognition, depression, feelings of loneliness, emotion, revenge, and disappointment in being rejected by a woman and others;
8. Drug addiction (mute drugs, drugs, opium, marijuana) which is closely related to crime;
9. Acts of social immorality committed openly and without guilt in a disrespectful way. There is sex and promiscuity as a result of hypersexuality, a desire for rights, and other criminal attempts at compensation.

¹¹ Kartini Kartono, *Psikologi Remaja*, (Bandung: Rosda Karya, 1988), page.93

¹² Romli Atmasasmita, *Problem Kenakalan Anak-anak Remaja*, (Bandung: Armico, 1993), page.4

¹³ Sulis Setyowati, *Tindak Pidana Anak*, Retrieved from <https://slissety.wordpress.com/tindak-pidana-anak/>, accessed on March 25, 2021.

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10. Homosexuality, child and oral eroticism, and other sexuality disorders in adolescents accompanied by sadistic acts;
11. Gambling and other forms of games with bets that give rise to criminal access;
12. Commercialization of sex, abortion by delinquent girls, and infanticide by unmarried mothers;
13. Violent and extreme actions by teenagers, including kidnapping and murder;
14. Antisocial behavior caused by psychiatric disorders in children and adolescents who are psychopathic, neurotic, or have other mental disorders;
15. Crimes caused by sleeping sickness (encephalitis lethargica) and meningitis and post-encephalitic outbursts, as well as head injuries with brain damage, can sometimes result in mental damage, rendering the person unable to control themselves;
16. Deviant behavior is caused by damage to the character of the child who demands compensation as a result of the presence of inferior organs.

2. Criminal Liability of Children Who Cause A Fire

Juvenile criminal justice is a court that handles criminal cases involving children in order to combat juvenile delinquency while also providing protection for children who are in conflict with the law and perpetrators of child delinquency. There is a concept of criminal liability in juvenile criminal justice that cannot be separated from criminal acts. This is due to the fact that a crime can have meaning if there is criminal liability.

Criminal liability, in fact, is the continuation of objective reproaches that exist in criminal acts as well as subjectively to someone who meets the requirements to be subject to a criminal sentence as a result of his actions.¹⁴ The principle of error serves as the foundation for convicting children as criminal perpetrators. This implies that the perpetrator or maker of a criminal act can be convicted only if he made a mistake in committing the crime. When someone is accused of making a mistake, they face criminal liability. When a person makes a mistake while committing a crime, he may face social repercussions as a result of his actions.¹⁵

The intention of criminal liability is to determine whether or not a suspect or defendant can be held accountable for a crime that has occurred. To put it another way, whether the defendant will be found guilty or not. If he is actually convicted, it must be demonstrated that the act is against the law and the defendant is capable of being held accountable.

Articles 45, 46, and 47 of the Criminal Code contain provisions relating to the criminal liability of children. According to Article 45 of the Criminal Code, in the case of a criminal prosecution of an immature person for committing an act before the age of sixteen, the judge may: order the guilty person to be returned to his parents, guardian, or guardian without any punishment; order the guilty person to be returned to his parents, guardian, or guardian without any punishment; or order the guilty person to be returned to his parents, guardian, or care taker without any punishment, or order that the guilty be handed over to the government without any punishment, if the act constitutes a crime or one of the offenses under articles 489, 490, 492, 496, 497, 503 - 505, 514, 517 - 519, 526, 531, 532, 536, and 540 and it has not been more than two years since being found guilty of committing the crime or one of the offenses mentioned above, and the verdict has become final; or impose a sentence on the guilty.

Furthermore, Article 46 of the Criminal Code (KUHP) states that:

1. If the judge orders that the guilty person be handed over to the government, then he/she is placed in a state education house so that he or she may receive education from the government or in other ways in the future, or be handed over to a certain person who resides in Indonesia or to a legal entity, foundation or charitable institutions domiciled in Indonesia to provide their education, or at a later date, at the expense of the government, in other ways; in both cases, at most until the guilty person reaches the age of eighteen.
2. The rules for carrying out paragraph 1 of this article shall be defined by law.

The provisions concerning children's criminal liability are further regulated by a more specific law, namely Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old but not yet 18 (eighteen) years old and are suspected of committing a crime, according to Article 1 paragraph (3) of Law No. 11 of 2012.

Therefore, criminal liability can be imposed on children if the child's age has reached 12 years. A child will be held criminally responsible with a criminal threat given a maximum of 1/2 (half) of the adult criminal period if the child at the time of committing a crime has reached the age of 12 but has not yet reached the age of 18. Imprisonment can be imposed for a maximum of 10 (ten) years if the crime committed by the child is punishable by death or life imprisonment.¹⁶

¹⁴ Jefferson B. Pangemanan, "Pertanggungjawaban Pidana Anak Dalam Sistem Peradilan Pidana Indonesia", *Lex et Societatis*, Vol. III, No. 1, 2015, page. 105

¹⁵ *Ibid.*

¹⁶ Mahayati, Ni Made Ayu Dewi., dan Putu Tuni Cakabawa Landra. "Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Pelecehan Seksual." *Jurnal Preferensi Hukum*, Vol. 8, No. 02, 2019, page. 12

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According to the provisions of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, a child who commits a crime, including a crime that results in a fire, must be judged based on the child's personality, regardless of whether the child is 12 years old or not. If a child under the age of 12 commits a crime that causes a fire, the child may be charged with criminal liability.

This is in accordance with Article 21 paragraph (1) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which states that in the event that a child under 12 (twelve) years of age commits or is suspected of committing a criminal act, Investigators, Community Counselors, and Professional Social Workers shall make decisions to:

a. hand it back to the parent/guardian; or

b. participate in education, coaching and mentoring programs in government agencies or LPKS in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

As a result, the age limit of 12 (twelve) years for submitting a child to a juvenile court is based on sociological, psychological, and pedagogical considerations that a child who has not reached the age of 12 (twelve) years is considered unable to account for his actions.¹⁷

3. Implementation of the Juvenile Criminal Justice System

In a broad sense, the pattern of punishment includes not only sanctions and the severity or severity of the sanctions, but it is also a system that is integrated with the formulation of sanctions in criminal law. The administration of the juvenile criminal justice system is fundamentally different from the administration of criminal justice in general. This is due to the fact that different procedural laws apply. The Criminal Code Procedure (KUHAP) serves as the foundation for procedural law in general criminal justice. Meanwhile, it refers to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System when implementing the juvenile criminal justice system.¹⁸

The Juvenile Criminal Justice System Law No. 11 of 2012 regulated the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice known as diversion. Settlement of children's cases outside of criminal justice must be pursued through diversion at the investigation, prosecution, and examination of children's cases levels. Diversion can be carried out if the crime committed is punishable by imprisonment for less than seven (7) years and is not a repetition of the crime.

The settlement of child criminal cases through diversion is done with full family values. As a result, diversion will keep children away from the negative effects that can disrupt the child's development and future. Children's rights should be prioritized in diversion. The Convention on the Rights of the Child establishes four (4) categories of children's human rights (basic rights), namely the right to survival, the right to development, the right to protection, and the right to participate in community life (participation).¹⁹

Apart from Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is also regulated in PERMA No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Perma No. 4 of 2014 also fills several gaps in the SPPA Law, such as the definition of diversion deliberation. Deliberation on diversion in Perma is defined as deliberation between victims' and perpetrators' families, Community Counselors, Professional Social Workers, and the parties involved using a restorative approach (restorative justice). In order to keep children out of the sentencing process, the concept of diversion and restorative justice involves third parties in resolving cases between the two parties and other parties involved.²⁰

The children justice system also recognizes Restorative justice, which is an approach that focuses on creating balance and justice for both children who are perpetrators of crimes and their own victims, specifically victims of rape. The criminal justice procedural mechanism, which initially focused solely on punishment, will be transformed into dialogue and mediation in order to create a fair and balanced agreement in the settlement of criminal cases for both victims and perpetrators.

The substance regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, among other factors, regarding the placement of children who go through the judicial process can be placed in the Special Guidance Institution of Children (LPKA). The Act's most basic substance is a strict regulation regarding Restorative Justice and Diversion, which is intended to avoid and keep children away from the judicial process in order to avoid stigmatization of children who are in conflict with the law, with the hope that children can naturally return to the social environment. As a result, the participation of all parties is required to

¹⁷ Elucidation of Article 21 paragraph (1) of Law no. 11 of 2012 concerning the Juvenile criminal justice system

¹⁸ Ana Rahmatyar, "Pertanggungjawaban Pidana Anak Sebagai Pelaku Kejahatan Kesusilaan Terhadap Anak", *Supremasi Hukum : Jurnal Penelitian Hukum*, Vol. 29, No.2, Agustus 2020, page. 94

¹⁹ Mahendra Ghoni, Ridwanul, dan Pujiyono. "Perlindungan Hukum Terhadap Anak yang Berhadapan dengan Hukum Melalui Implementasi Diversi di Indonesia." *Jurnal Pembangunan Hukum Indonesia Program Studi Magister Ilmu Hukum*, Vol. 2, No.3, 2020 : 331-342

²⁰ Marlina Marlina Maya Novira. "Kebijakan Penanggulangan Kejahatan Terhadap Anak Pelaku Tindak Pidana dari Perspektif Undang-Undang Republik Indonesia Nomor 11 tahun 2012 tentang Sistem Peradilan Pidana Anak." *Jurnal Mahupiki*, Vol.1, No. 1, 2013, page. 9

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make this happen. Restorative Justice must be the primary objective of the process for both children and victims. Restorative Justice is a diversionary process in which all parties involved in a specific crime work together to overcome problems and create an obligation to make things better by involving victims, children, and the community in finding solutions to repair, reconcile, and pacify the heart that are not based on revenge.²¹

The Juvenile Criminal Justice System Act governs the entire process of resolving cases of children in conflict with the law, from the investigation stage to the mentoring stage after serving a sentence.

CONCLUSIONS

Based on the preceding explanation, it is clear that a child who commits a crime, including one that results in a fire, must be determined based on the child's own personality, regardless of whether the child is 12 years old or not. If a child under the age of 12 commits a crime that causes a fire, the child may be charged with criminal liability. Furthermore, the Juvenile Criminal Justice System is implemented in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which governs the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a crime.

To maximize the role of the Juvenile Criminal Justice System, the government should continue to update existing regulations in order to ensure that children's futures are bright. Moreover, every parent is advised to keep their child from committing a crime that may cause harm to others.

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