

Legal Protection of Child Offenders in the Juvenile Criminal Justice System Perspective in Indonesia



Indah Suciati¹, Dr. Joko Setiyono, S.H., M.Hum²

^{1,2}Master of Law, Faculty of Law, Diponegoro University, Indonesia

ABSTRACT: Children are regarded as assets of a nation and play a vital role as the successors of a country, being part of the younger generation. However, when a child comes into contact with the criminal justice system as an offender, the state is obligated to enforce special legal provisions for child offenders through law enforcement agencies in Indonesia. To ensure the rehabilitation and protection of these children, comprehensive support, both in terms of institutional and legal frameworks, is required. Therefore, a specialized juvenile court is necessary for children who have committed criminal acts. In Indonesia, several regulations already exist to protect, promote the well-being of, and uphold children's rights. In the effort to protect children, "Law Number 4 of 1979 on Child Welfare" should have served as a reference for policymaking in child protection. Indonesia enacted Law Number 3 of 1997 concerning Child Justice and Law Number 23 of 2002 concerning Child Protection. The issue that can be analyzed is how the protection of children who have committed criminal acts is carried out within the framework of the juvenile justice system. This research uses a normative legal approach.

KEYWORDS: Legal Protection, Child Offenders, Juvenile Justice System.

INTRODUCTION

Children are a trust from God Almighty, with inherent dignity and worth as complete human beings. Every child has rights that should be upheld, and every child born should receive their rights without asking for them. Children are part of the younger generation, the bearers of the aspirations and struggles of the nation, and a source of human creativity for national development. Therefore, the position of children holds immense value and is central to families and nations. Children represent the hope for the future of a country, and there are still many more similar expressions of values that can be drawn from our cultural heritage.

In Indonesia, regulations regarding child protection have been issued in accordance with the needs of Indonesian society. The international community's role in overseeing the fulfillment of children's rights, as outlined in the Convention on the Rights of the Child, has positively impacted the development of child protection in Indonesia. Law Number 35 of 2014 concerning Child Protection emphasizes that the responsibility for child protection lies with parents, families, the government, and the state. The primary burden of child protection falls on parents, but in the modern era, many parents are occupied with their work and begin to neglect their children (Muhammad, 2018, p. 142)

Various legal regulations, religious teachings, and culture have extensively discussed child protection. However, violations of child protection continued to increase over the years due to the less visionary nature of regulatory frameworks, making it appear as a relatively new issue (Aswari, 2018, p. 39). Child protection is crucial because children are the future of the nation and the state. Therefore, when they have matured physically, mentally, and socially, it is time for them to replace the previous generation.

The Indonesian nation, as part of the global community, is committed to ensuring the fulfillment of children's rights and child protection, which is an integral part of human rights as stated in the constitution. This commitment signifies that the future of Indonesian children should be prosperous, of high quality, and well-protected (Sudrajat, 2011, pp. 112-113). However, to this day, the issues surrounding children have not garnered sufficient attention from both society and the government. It is crucial to recognize and protect children's rights to enable them to grow and develop appropriately while avoiding various threats and disturbances that may arise from their environment or within the children themselves. Legal protection is indeed indispensable for anyone, at any time and anywhere, including children (Laurensius, 2015).

Criminal acts committed by children are quite prevalent, and these criminal acts indeed have negative impacts on both society and the future of the children themselves. In some cases, criminal acts committed by children are even equivalent to those committed by adults, such as theft, robbery, rape, assault, murder, drug use, drug trafficking, and others. Therefore, the government has made efforts to anticipate these issues, especially regarding criminal acts committed by children. The government, in its efforts to anticipate the occurrence of criminal acts committed by children through legal protection, has issued regulations, especially laws on child protection, both in formal and substantive terms. This initiative is a highly appropriate and adequate step, given the limitations

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in providing legal protection for children in general, aiming to prevent them from falling victim to exploitation, particularly economic exploitation resulting from other criminal acts, and to prevent children from becoming perpetrators of criminal acts.

In Indonesia, regulations related to child issues need to be continuously improved, particularly regarding legislation on juvenile justice. The criminal law in Indonesia that addresses children is not limited to substantive criminal law but also includes formal criminal law. The Criminal Procedure Code Number 8 of 1981 (*Kitab Undang-Undang Hukum Acara Pidana*) is still generally applicable in juvenile criminal cases' investigation and prosecution process as long as it is not regulated specifically by law. Regarding the Juvenile Justice System, this law stipulates that juvenile justice falls under the absolute competence of the General Court system. The explanation in the provisions of Law Number 11 of 2012 concerning the Juvenile Justice System addresses differences in the threat and treatment specified in the law to safeguard and protect child offenders. This is because it considers the child's long-term welfare, aiming to provide legal protection to allow the child to develop into a responsible individual in their future for their family, nation, and state. Criminal acts committed by children may not solely be the result of conscious actions but could also be affected by environmental factors or emotional factors.

Criminal acts committed by children are now becoming increasingly comparable to crimes committed by adults, even though, according to the provisions of the United Nations Convention on the Rights of the Child, the paramount consideration is that children must be protected from discrimination. Children are entitled to protection and care, including well-being, safety, and health. They must also be protected from the harms of illegal drugs and many other protections provided by the said convention concerning children's rights.

It means that if a child is found guilty and placed in a Juvenile Detention Center, they should receive proper care, protection, education, and other essential services that uphold justice. In the pursuit of universal recognition, the concept of children's rights is incorporated in the draft of ideas about the rights of children, where children must be protected from various forms of discrimination, regardless of race, nationality, belief, or law. Children must be cared for while respecting the integrity of the family, and they require resources and infrastructure to develop normally, be it in material or spiritual aspects. Children should be protected from abandonment, hunger, disabilities, illness, and they should enjoy good care and receive appropriate education, ensuring universal protection for children. Therefore, the author is interested in researching the legal protection of child offenders in the context of the effectiveness of the juvenile justice system.

PROBLEM FORMULATION

How is the legal protection for child offenders within the perspective of the juvenile justice system in Indonesia?

RESEARCH METHODOLOGY

Research is a process, namely a series of planned and systematic steps taken to obtain solutions to a problem or answers to specific statements. Research is essentially an effort to search for, not merely observing, an object that can be readily grasped. This is because research aims to reveal the truth systematically, methodologically, and consistently. Through the research process, an analysis and construction of the collected and processed data are conducted. To achieve optimal results, the methodology used in the research and the approach adopted is juridical-normative, consisting of:

1. Primary legal materials consist of legally binding documents. In this thesis, primary legal materials will be used, namely Law Number 11 of 2012 concerning the Juvenile Justice System, Law Number 11 of 2012 concerning Juvenile Criminal Justice, and Law Number 3 of 1997 concerning Juvenile Justice.
2. Secondary legal materials, which provide guidance or explanations for primary legal materials, and secondary legal materials in the form of Legal Dictionaries or the Indonesian Language Dictionary to explain the meaning or definition of terms that are difficult to interpret. In this research, the juridical-normative research method is used, with a descriptive nature and the use of secondary data sources. Data is collected through library research and summarized in qualitative analysis (Soerjono Soekanto, 2010).

DISCUSSION

The definition and characteristics of children are what differentiate them from adults, serving as a yardstick in determining the extent of protection provided by the state to children and affecting their legal status. If the implementation of child protection is ignored, it means indirectly hampers national development. If child protection is not implemented, it can lead to various social problems that can affect the optimal functioning of the legal process and disrupt social life, security, and national development. The key distinction between a child and an adult lies in the perspective of the State, which recognizes that children are individuals who cannot be held fully accountable for the consequences of criminal cases. While there may not be a significant difference in the criminal act itself when committed by a child compared to an adult, the difference lies in the age of the offender (Diah, Yustiawan, and Dewa, 2020).

In reality, not all children have the same opportunities to realize their hopes and aspirations. Many of them face a high risk of struggling to grow and develop healthily, especially in this rapidly progressing era of modernization. Expensive education and

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unrestricted access to electronic media without parental supervision due to their busy work schedules have serious implications for children (Erny, 2018).

In such abnormal situations, children often find themselves involved in legal cases due to their actions, which may involve criminal offenses. They are suspected and accused, and sometimes, a significant number of them are found guilty of violating criminal law and sentenced to imprisonment. Imprisonment often carries a lasting stigma and labeling for these children, making it difficult for them to achieve moral and mental rehabilitation because such labeling places the status of the child in the midst of society (Richard, 1993). An overview of the issues faced by children can be seen as a catalyst for reforming the juvenile justice system, with the aim of providing legal protection for children. The reform of juvenile justice aims to ensure that children in conflict with the law are not stigmatized as guilty children who should be punished in the same way as adults who commit criminal acts. The juvenile justice system is intended to educate children to become better individuals because, psychologically, it must be understood that children's emotional and mental state is still fragile or vulnerable to the influences of various environments around them.

Legal protection for children can be defined as measures to safeguard the various fundamental rights and freedoms of children, as well as the various interests related to the well-being of children (Barda, 1998). Legal protection for children has a broad spectrum. In various international documents and meetings, it is evident that the need for legal protection for children can encompass various aspects, including:

- a. Protection of fundamental rights and freedoms of children.
- b. Ensuring children's protection within the legal process.
- c. Safeguarding their well-being (within the family, education, and social environment).
- d. Protecting children from issues of detention and deprivation of liberty.
- e. Protection from all forms of exploitation (slavery, child trafficking, prostitution, pornography, drug trafficking/abuse, and using children in criminal activities, among others).
- f. Protection for street children.
- g. Protection of children affected by armed conflicts.
- h. Protection of children from acts of violence

The factors contributing to criminal behavior in children can be defined as deviant behaviors exhibited by children with varying family backgrounds. Some children engage in criminal activities due to their disrupted family life, such as those from broken homes. Others may resort to criminal behavior because of poverty or because their parents cannot adequately provide for them. These factors can lead children to commit criminal acts, or it could be due to environmental influences, whether it is the community they live in or the educational environment at school. From this understanding, we can conclude the crucial role of parents in shaping a child's behavior and education. Parents are the ones who can understand and comprehend their children, especially when it comes to education. 1) Internal factors are those that originate from within the child themselves, including upbringing, the quality of parental care, and the child's mental well-being. It also encompasses factors related to peer groups and social interactions. 2) External factors include family, school environment, peer groups, and other external influences. The legal protection for children in need is stated in Article 34 of the 1945 Constitution, which emphasizes that "Poor and underprivileged children are cared for by the State." This demonstrates the government's serious attention to the rights and protection of children, especially child offenders (Nur, 2007).

The handling of criminal cases involving children is regulated separately in the legal framework. Several provisions govern the treatment of children in the criminal justice system, including Law Number 11 of 2012 on the Juvenile Justice System, Law Number 3 of 1997 on Child Justice, Law Number 35 of 2014 on the Amendment of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection, Government Regulation Number 65 of 2015 on Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12, Supreme Court Regulation Number 4 of 2014 on the Implementation of Diversion in the Juvenile Justice System, and Attorney General Regulation Number 06/A/J.A/04/2015 on Guidelines for the Implementation of Diversion (Fiska, 2018).

All of these regulations oversee the entire process of resolving cases involving children who are in conflict with the law, from the investigation stage to the guidance stage. In the juvenile justice system, this refers to children who are suspected of committing criminal acts and are over 12 years old but under 18 years old. For children who commit offenses before reaching 18 years old but have not yet reached 21 years old, they will still be tried in accordance with Article 20 of Law Number 11 of 2012 on the Juvenile Justice System. Juvenile criminal proceedings are governed by Law Number 3 of 1997 concerning Juvenile Courts, which deviates from the Criminal Code (KUHP). Considering that children have specific characteristics and cannot be treated the same as adults, it is necessary to handle their cases with special attention to their best interests, ensuring that they are not physically or mentally harmed in the process.

Legal provisions regarding criminal offenses involving children under the age of 18 can be a subject of debate. This is because, on the one hand, they should receive punishment as perpetrators, but on the other hand, due to their age, they have the right to be protected in their development process. Concerning the minimum age at which children can be sentenced to criminal punishment, according to the Law on the Juvenile Justice System, the minimum age for children to be subject to criminal penalties is after the age of 12

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and below the age of 18. However, this does not mean there are no consequences for them because a judge has the right to determine measures or penalties for children who have not reached the age of majority, considering the type of offense and the child's circumstances. Regarding the treatment of child offenders under the Juvenile Justice System Law, if the child is over 12 but has not reached 14 years old, they will face sanctions in the form of measures. If the child is over 14 but has not reached 18 years old, they will face juvenile criminal sanctions in accordance with the law. However, under Islamic law, a child can face criminal punishment if they are over 15 years old.

Protection for child offenders must be taken seriously. Regarding the concept of restorative justice as a means of providing protection for children in conflict with the law, there are certain obstacles and solutions to its implementation. This legal protection includes several concepts: 1) The concept of Restorative Justice is a process where all parties with a stake in a specific offense come together to collaboratively resolve the consequences of that violation for the benefit of the future. Restorative justice provides protection for juvenile offenders because, through the implementation of juvenile diversion, they can be diverted away from the formal court process, which may jeopardize their rights and cause trauma to the juveniles. Diversion involves shifting the resolution of juvenile cases from formal legal proceedings to an informal process, emphasizing restorative justice principles, and facilitating consensus and dialogue among the involved parties. This approach aims to protect the best interests of the juveniles and avoid the potential harm associated with the formal legal process. 2) The Diversion Concept is a process of diverting the resolution of cases involving children suspected of committing certain criminal acts from formal legal proceedings to peaceful settlements between the suspect/accused/offender and the victim, facilitated by family and/or the community, Juvenile Guidance, the Police, the Prosecutor, or the Judge. Diversion aims to achieve a peaceful resolution between the offender and the victim with the assistance of various stakeholders such as family, community, Juvenile Guidance, Police, Prosecutors, or Judges (Emi, 2019).

If a child is found guilty and sentenced to imprisonment, they must be placed in a Special Child Rehabilitation Center (*Lembaga Pembinaan Khusus Anak or LPKA*) for rehabilitation until they reach the age of 18. If the child has not completed their sentence in *LPKA* and has reached the age of 18, they are transferred to a youth correctional facility. In cases where the child reaches the age of 21 but has not completed their sentence, they are transferred to an adult correctional facility, taking into consideration the continuity of their rehabilitation.

The punishment imposed on children must not violate their dignity and honor. Rehabilitation, in the form of imprisonment, may be applied in cases where a child commits a serious crime or a crime accompanied by violence. However, the duration of imprisonment for children should not exceed half of the maximum prison sentence prescribed for adults. In cases where a child is sentenced to life imprisonment, the maximum duration of imprisonment should be 10 years. If a child is sentenced to imprisonment, they have the right to appeal, seek cassation, request clemency, and request a review of their case.

The legal protection for children is not fully maximized in practice because the involved parties in resolving children's cases, such as social workers and social welfare services, especially in certain regions, are still lacking. Furthermore, Temporary Child Placement Facilities (*LPAS*), Social Welfare Service Institution (*LPKS*), and Special Child Rehabilitation Center (*LPKA*) are not uniformly provided by the government throughout Indonesia.

The enforcement and fulfillment of children's rights, according to the author, must be carried out to the fullest extent and fairly, without discrimination. This serves as a form of protection in handling cases involving children, both outside or before trial, during the trial, and throughout their rehabilitation in *LPKA*. This ensures that the objectives of the Juvenile Criminal Justice System Law are genuinely realized in terms of enforcement and legal protection for children involved in criminal activities (Andik, 2020).

CONCLUSION

Deviant behavior among children in society is influenced by various factors. It is evident that juvenile delinquency arises due to conflicts based on deviant behavior influenced by internal factors such as family environment intelligence, as well as external factors like social environment, education, and mass media. Understanding these factors and motivations behind juvenile delinquency is crucial for implementing effective measures to address and prevent criminal activities committed by children. Therefore, addressing juvenile delinquency should involve instilling moral values through age-appropriate religious education to shape children's personalities and behaviors. Additionally, emphasizing values such as ethics and courtesy, along with family support, is essential in safeguarding children from deviant behaviors that may impact their future lives positively.

The future of a nation depends on the future of its children as the next generation. Therefore, when children commit crimes, legal protection for children must be provided maximally, fairly, and without discrimination for the best interests of the child. Child protection is a means of creating conditions that safeguard children to exercise their rights and fulfill their duties, which manifests justice in society. Legal protection for children is provided in three stages: before or outside the trial process, which is done in the form of diversion with a restorative justice approach, a characteristic of Indonesian culture. Meanwhile, legal protection during the trial process and while serving a sentence is carried out through enforcing and fulfilling children's rights guaranteed in the Juvenile Criminal Justice System Law. The enforcement or fulfillment of these rights must be done maximally and fairly, without discrimination, as a form of legal protection for children, ensuring that the objectives of the Juvenile Criminal Justice System Law

are truly realized in the dimension of law enforcement and protection for child offenders.

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