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Abstract

This abstract conveys the importance of protecting children's rights as part of citizens. Every country in the world must provide adequate care and protection for children. This guidance and protection cover the child's overall physical, mental, and social growth and development. Even though there are cases of children involved in criminal acts, the development and protection of children remain the state's responsibility. In recent years, the media has often raised the issue of juvenile delinquency or crimes committed by children. This attracts public attention because children even become perpetrators of crimes. This research uses secondary data from library materials such as books, laws, literature, and journals. The educational punishment system is one form of the punishment system used today. This system pays more attention to children's rights and obligations and provides treatment to promote better integration of children into society. This treatment is carried out by placing children in care or coaching institutions that provide education job training and spiritual aspects to improve children's morals and spirituality so that mental improvement can be carried out more quickly. The rules for implementing juvenile crimes in Indonesia are regulated in the Criminal Procedure Code (KUHP) and Law Number 3 of 1997 concerning Juvenile Courts. In this way, it can be seen how the child punishment system currently applies in Indonesia.

Keywords: Law, Crime, Children, Criminal Code

1. Introduction

Children as national development assets should be considered and taken into account in terms of their quality and future. Without reliable quality and a clear lot for children, national development will be challenging to implement, and the nation's fate will be difficult to imagine. The children who are born are not expected to be thugs, thieves, pickpockets, or gergeng (tramps and beggars), but are expected to be children who are helpful for the family in the future, the family, and even the hopes of the homeland and the nation (Krisnawati, 2005).

In Indonesia, we often find the behavior of children categorized as delinquent children or children who violate the law but do not receive proper legal protection in the legal process. Their rights are ignored with inhumane treatment by certain parties, and violations of children's rights, whether apparent or not, have become a familiar and common sight.

Sentencing is an aspect of criminal law that is often discussed in society. Sometimes, the punishment is felt to be very light or heavy compared to the perpetrator's actions. In fact, in imposing a crime, many things are taken into consideration, both from a juridical and sociological aspect. Moreover, if the person committing the crime is someone who is still categorized as a child by law.

Children are part of citizens. They have the same rights as other citizens, which are protected and respected by every citizen. Every country worldwide must provide adequate attention and protection to children's rights. According to Child Protection Law Number 35 of 2014 (Amendment to Law Number 23 of 2002), children are an inseparable part of human survival and the sustainability of a nation and state. To be able to take responsibility for the sustainability of the nation and state, every child needs to have the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially. For this reason, it is necessary to make protective efforts to realize the welfare of children by providing guarantees

for fulfilling their rights without discriminatory treatment. Meanwhile, maintaining children's survival is the responsibility of parents, which should not be ignored. Article 45 Law no. 1 of 1974 concerning the Principles of Marriage,

Meanwhile, Article 9 of Law No. 4 of 1979 concerning Child Welfare states that parents are the first people responsible for realizing children's welfare, both spiritual, physical and social. Children must be protected so that they do not become victims of actions from any party directly or indirectly so that children do not become victims or suffer mental and physical harm. However, nowadays, problems often occur in families, such as child care. Many parents neglect their children's socialization with the environment because they are busy. As a result, children behave defiantly or have traits that like breaking the rules. Children become freer in absorbing other parties' behavior, so it becomes a habit in the child's daily life. Children cannot differentiate between right and wrong in social life. This is the beginning of a child's deviant behavior.

Every child needs guidance and protection to ensure complete, harmonious, harmonious, and balanced physical, mental, and social growth and development. The development and safety of children do not exclude child criminals, often referred to as "bad children" or children who commit criminal acts. In recent developments, it has often been in the spotlight in the mass media, which contains stories about juvenile delinquency or crimes committed by children. Hidayat (2010) says, that children and even young children become perpetrators of crimes that attract the public's attention.

Child delinquency is a very complex because children cannot be separated from their social environment, family environment, or community. This is because children still have a long future, so they can still be good in their development. So children must be provided with sufficient guidance, education, and coaching to improve again after completing the coaching period (Atmasasmita, 2010).

According to the Juvenile Justice Act, what is meant by child naughty in Article 1 point 2 has two meanings: (1) children who commit criminal acts; (2) children who commit acts that are prohibited for children. Children who commit this crime are also subject to criminal sanctions. Talking about the punishment of children often gives rise to lively and lengthy debates because this problem has vast consequences both regarding the perpetrator and society. This punishment has negative implications for those who are punished. So, in imposing criminal penalties on children, judges must use rational considerations so that they can be held accountable.

There are a variety of criminal acts or crimes committed by children, for example, theft, decency, crimes of violence in public, negligence that results in someone's death, and abuse. These types of crimes can only be committed by people who are adults who can take responsibility for the actions they commit. Looking at the child's behavior, it is clear that the child's efforts have led to delinquency and crime.

This detrimental tendency results from children's involvement in the juvenile criminal justice process, and is caused by the effects of criminal punishment in the form of stigma. In Law no. 11 of 2012 concerning the Juvenile Criminal Justice System states that the preparation of Law no. 11 of 2012 is a replacement for Law no. 3 of 1997 concerning Children's Courts, which is carried out to realize justice that truly guarantees the protection of the best interests of children who conflict with the law as the nation's successors. UU no. 11 of 2012 uses the name juvenile criminal justice system and is not interpreted as a judicial body as regulated by Article 24 paragraph (2) of the 1945 Constitution. Law no. 11 of 2012 is not a law concerning juvenile justice because in consideration of the formation of Law (Rosidah, 2019).

Children who commit crimes should be processed and given sanctions by applicable regulations and criminal threats for children who commit acts that are against the law.

This research aims to analyze the convictions and criminal acts involving minors deeply. This research seeks to understand the legal framework that regulates child punishment, including the policies and regulations that apply in that context. Through this research, it is hoped that a more comprehensive understanding of minors' punishment and criminal acts can be obtained, as well as contributing to the development of better and more responsive policies towards protecting children's rights in the legal realm.

2. Methods

This research uses normative research methods, namely legal research which places the law as a system of norms (Marzuki, 2005). In the sense that research is carried out by analyzing the substance of Legislative Regulations on the subject matter. By studying views and doctrines in legal science, researchers find ideas related to legal definitions, legal concepts, and legal principles relevant to the legal issue. Understanding these views and doctrines is a basis for researchers and builds a legal argument for solving the problem at hand (Marzuki, 2005).

The legal materials used for normative research purposes in this research are:

a) Primary Legal Materials

Legal materials that are binding or that make people obey the law, such as statutory regulations, include the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law No. 1 of 1974 concerning Jo's Marriage. UU no. 16 of 2019 concerning Marriage, Law no. 4 of 1979 concerning Child Welfare, and Law Number 35 of 2014 is an amendment to Law Number 23 of 2002 concerning Child Protection, and the Criminal Code.

b) Secondary materials

Legal materials that are not binding but explain primary legal materials, which are the result of processing the opinions or thoughts of experts or specialists who study a particular field in particular, which will provide clues as to where the researcher will go. What is meant by secondary legal materials in this case are doctrines obtained from books, journals, and the internet, which are related to writing a thesis proposal.

c) Tertiary legal materials

Legal materials that provide explanations and instructions for primary materials and secondary legal materials. Tertiary legal materials are obtained from legal dictionaries, Indonesian dictionaries, etc.

3. Results and Discussion

Conviction and Crime of Minors

The philosophy of punishment in the Criminal Code is based on the rationale of retaliation for the actions committed by the perpetrator. Punishment is considered a reasonable and rational

thing for every person as a result of committing a crime. This seems different from the philosophical view contained in the Concept of the Criminal Code, which is not solely aimed at prosecuting perpetrators of violations, but is also oriented towards thinking as far as punishment can provide protection, both perpetrators and victims. Therefore, the punishment imposed can create protection and prosperity for society. The concept of such punishment is based on a philosophy of punishment which is based on a restorative philosophy.

Since the Law on Children's Courts was established in Indonesia, namely Law Number 3 of 1997, it has set strict limits on the age limit for criminal punishment of children in Indonesia. In Article 4 it is stated that (Mulyadi, 2005):

- (1) The age limit for delinquent children who can be submitted to a juvenile court is at least 8 years but have not reached 18 years and have never been married.
- (2) In the event that a child commits a criminal offense at the age limit as intended in paragraph (1) and can be submitted to a court hearing, after the child concerned has exceeded that age limit but has not yet reached the age of 21 years, he or she will still be submitted to the juvenile court.

Punishment carried out by an orderly society against perpetrators of crimes can take the form of paralyzing the perpetrators from breaking the law, with the aim of preventing the perpetrators from repeating themselves in the future. Punishment of children is regulated in the Juvenile Criminal Justice System Law Articles 73 to Article 81 (Gullom, 2009). Children who have not reached the age of 12 (twelve) years can only be subject to action. Meanwhile, children who are 12 (twelve) years old but have not yet reached 18 (eighteen) years old can be subject to criminal penalties.

Provisions regarding the purpose of punishment are regulated in Article 54 of the 2014 Criminal Code concept which, among other things, states (Arief, 2010):

- a) Prevent the commission of criminal acts by enforcing legal norms for the protection of society;
- b) Socializing convicts by providing guidance so that they become good and useful people; Such changes or adjustments must not be heavier than the original decision and must be with the consent of the convict.
- c) Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in society; And
- d) Frees the convict from feeling guilty.

Punishment is not intended to cause suffering and humiliate human dignity

Another aspect of "criminal individualization" is that judges need the freedom to choose and determine what sanctions (criminals/actions) are appropriate for the individual/perpetrator of the criminal act concerned. So there is a need for "flexibility or elasticity of punishment", even though it remains within the limits of freedom according to the law (Arief, 2010).

The juvenile criminal justice system, according to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, the entire process of resolving cases involving children in conflict with the law, starting from the investigation stage to the guidance stage after serving the crime. The criminal justice system for children differs from the justice system for adults in various ways. Juvenile justice, during examination activities and in the case termination process prioritizes the interests of children, which is the most essential thing in juvenile criminal justice (Gullom, 2009).

The sentencing system is a statutory regulation relating to criminal sanctions and punishment. The criminal system can be interpreted as the entire system of material criminal law norms for the imposition and execution of crimes. The terms of punishment are determined by: Punishment is essentially an imposition of suffering or sorrow or other unpleasant consequences; The punishment is given intentionally by a person or body with power/authority;

This penalty is imposed on someone who has committed a criminal offense according to law. So, if it is seen that the criminal act committed by the defendant has fulfilled the elements of the article charged by the public prosecutor, and there are no justifications or things that eliminate the crime. Regarding legal sanctions, Law no. 3 of 1997 has regulated them as stipulated in Chapter III Article 22, and these sanctions consist of two (2) types, namely: (1) criminal; and (2) action.

A comparison of the regulations regarding criminal law provisions for children can be seen as regulated in the Children's Court Law no. 3 of 1997, which does not follow the criminal provisions in Article 10 of the Criminal Code and creates its sanctions. The main crime, according to Law no. 3 of 1997 (Article 23 paragraph 2) includes:

a) Imprisonment (maximum 10 years)

Article 26 states that the prison sentence that can be imposed on delinquent children is a maximum of half the maximum prison sentence for adults. If the child commits a crime that is punishable by the death penalty or life imprisonment, then the prison sentence that can be imposed is a maximum of ten (10) years. If he has not yet reached the age of twelve (12) years then the child can only be given the following action: hand over to the state to participate in education, coaching and job training. General and special conditions are determined if a conditional sentence is imposed. The general condition is that delinquent children will not commit any further crimes while serving a conditional sentence. Meanwhile, special conditions include, for example, being unable to drive a motorized vehicle or being required to participate in activities programmed by the Correctional Center (BAPAS). So the general condition is not to repeat criminal acts, while the specific condition is to do or not do certain things specified in the decision by seeking the child's freedom. The sentence period for special conditions must be shorter than the general conditions and a maximum of three (3) years.

b) Criminal Cage: V

Article 27 states that the prison sentence that can be imposed on naughty children who commit acts that are declared prohibited for children, both according to statutory regulations and according to legal regulations in force in society, is a maximum of half the maximum penalty of a fine for adults.

c) Criminal Fines

Article 28 states that the fine imposed on delinquent children is no more than half the maximum on adults. If the fine cannot be paid, it will be replaced by mandatory work training. This mandatory work training is carried out for a maximum of ninety (90) days and the length of work training is no more than four (4) hours a day and is not carried out at night.

d) Criminal Supervision

Article 30 states that the supervision sentence imposed on delinquent children is a minimum of three (3) months and a maximum of two (2) years. This crime is a crime specifically imposed on children, namely the supervision carried out by the Prosecutor on the child's behavior in daily life at the child's home, and the provision of guidance carried out by community counselors. Supervision punishment does not take the form of imprisonment or confinement which is carried out in the convict's home for a period of time determined by a court decision. The second legal sanction is action. As intended in Article 24 paragraph (2), actions can be accompanied by warnings and additional conditions determined by the judge. Additional requirements include the obligation to report periodically to the Community Advisor. To determine whether a child is subject to a crime (Article 23), one must pay attention to the severity of the crime or delinquency committed. Apart from that, it is also mandatory to pay attention to the condition of the child, the household conditions of the parents/guardians/foster parents, the relationship between family members, the condition of the residents and pay attention to the report of the Community Counselor.

Two things that should be considered in the matter of arresting delinquent children are when and when such arrest is possible according to the law, namely: (a) in case of being caught red-handed; (b) in case you don't get caught red-handed. Article 18 paragraph (2) of the Criminal Procedure Code regulates being caught red-handed, the arrest is carried out without a warrant. However, please note that you must immediately hand over the caught perpetrator and any evidence to the authorized official (investigator). Investigating officials must immediately check whether the actions carried out meet the requirements for issuing a temporary arrest order. If these conditions cannot be met, investigators cannot detain them, and the suspect must be immediately released.

Article 17 of the Criminal Procedure Code determines that an order to arrest a person is strongly suspected of committing a criminal act based on sufficient preliminary evidence. The meaning of sufficient preliminary evidence here is preliminary evidence that is used to suspect

a criminal act. So, arrests cannot be made arbitrarily, and they can only be directed at those who are truly proven to have committed a criminal act.

What needs to be noted here is that based on Article 45 of Law Number 3 of 1997, there are two reasons for detaining criminal perpetrators who are still minors, namely: (a) for the benefit of children; (b) for the benefit of society

These two things must be stated explicitly in the detention order. By stating explicitly in Article 45 that one of the reasons for carrying out detention is also taking into account the interests and rights of the child, it can be concluded that the child's interests remain the primary consideration in carrying out detention. Detention is the last resort judges take in resolving cases of delinquent children.

Convention on the Rights of the Child (Convention on the Rights of the Child), Resolution no. 109 of 1990 states that no child can be deprived of their freedom unlawfully or arbitrarily, subjected to torture or other cruel, inhuman or degrading treatment/punishment, the death penalty or life imprisonment. The arrest, detention, or imprisonment of a child must be per the law and only as a last resort and for the shortest possible period.

The Juvenile Court Law also regulates Juvenile Correctional Institutions, which are contained in Chapter VI Articles 60 – 63, but per the provisions of Article 64, they are still further regulated by Government Regulation. The Corrections Law guarantees spiritual and physical recovery for children involved in the juvenile justice system. This guarantee takes the form of an assimilation process, namely developing prisoners by assimilating them into community life.

The criteria for correctional students according to Article 1 paragraph (8) are divided into 3 (three):

- 1) Criminal children are children who, based on a court decision, are serving a sentence in juvenile correctional facilities up to the age of 18 (eighteen) years;
- 2) State Children are children who, based on a court decision, are handed over to the State to be educated and placed in children's prisons until they are 18 (eighteen) years old;
- 3) Civilian children are children who, at the request of their parents or guardians, obtain a court order to be educated in children's prisons until they are 18 (eighteen) years old.

Based on Article 24 paragraph (1), legal sanctions in the form of actions that can be imposed on naughty children are:

- 1) Return it to parents, guardians or foster parents.

Naughty children are subject to legal sanctions in the form of being returned to their parents/guardians/foster parents, if according to the judge's assessment, the child can still be fostered in the environment of their parents/guardians/foster parents. However, the child remains under the supervision and guidance of the Community Advisor, among other things, to take part in scouting activities and so on.

- 2) Submit it to the state to participate in education, coaching and job training.

In this case, if according to the judge's assessment, the child's education and development can no longer be carried out within the family environment, then the child is handed over to the state and is called a state child. For this reason the child is placed in an institution Children's Correctional Institutions and are required to participate in education, coaching and job training. The aim is to provide skills for children, by providing skills regarding: carpentry, agriculture, workshops, cosmetology and so on. After serving the sentence, the child is expected to be able to live independently.

- 3) Submit it to the Department of Social Affairs, or a Social Organization that operates in education, development and job training.

The aim of handing over children to the Department of Social Affairs or Community Organizations, that operate in education, development and job training, is to be educated and

developed. Regarding paragraph (2) of Article 24, which determines that actions imposed on naughty children can be accompanied by a warning and additional conditions determined by the judge, in the explanation of Article 24 it is stated that what is meant by 'reprimand' is a warning from the judge directly to the child. Who has been sentenced to a crime or indirectly through their parents, guardians or foster parents so that the child does not repeat the act which resulted in him being punished? Meanwhile, what is meant by 'additional requirements' is, for example, the obligation to report periodically to the Community Counselor.

In Law Number 23 of 2002 Article 64, paragraph (2) states that special protection for children in conflict with the law is implemented through:

- 1) Treating children humanely by the dignity and rights of children;
- 2) Providing special assistance officers from an early age;
- 3) Provision of special advice and infrastructure;
- 4) Imposing appropriate sanctions in the best interests of the child;
- 5) Continuous monitoring and recording of the development of children in conflict with the law;
- 6) Providing guarantees to maintain relationships with parents or family.
- 7) Protection from identity reporting through mass media and to avoid labeling.

Therefore, the educational punishment system is used as a form of the current punishment system. By paying more attention to children's rights and obligations, and providing them with treatment that can advance or develop children's integration so that their role in society can be better. This treatment is given by placing them in care or coaching and guidance institutions that not only provide education and job training, but spiritual institutions that can provide moral and spiritual improvement, so that mental improvement can be carried out more easily.

The provisions for the implementation of child punishment in Indonesia can be seen in the Criminal Procedure Code (KUHP) and Law Number 3 of 1997 concerning Juvenile Courts, so that it can be clearly seen what forms of child punishment in Indonesia currently apply.

4. Conclusion

Based on the existing discussion, several conclusions can be drawn as follows:

- a) The emergence of child delinquency is caused by family, social, mass media and economic factors. A bad or ugly social environment (peer group) tends to encourage the formation of bad (negative) behavior in children, which can lead to unlawful behavior, whether at a mild level (shoplifting or stealing) to a serious one (abusing or killing).
- b) Punishment and criminal acts against minors use educational punishment as a form of the current punishment system. By paying more attention to children's rights and obligations, and providing them with treatment that can advance or develop children's integration so that their role in society can be better.

The family is essential so that children do not commit mischief, resulting in punishment. Prevent children from committing delinquency with moral education in the family environment. Punishment and criminal offenses against minors must strictly consider the provisions stipulated in statutory regulations. Apart from that, you need to pay attention to the age limit of children because this is very important in criminal cases regarding children.

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