

LEGAL PROTECTION FOR CHILDREN AS PERPETRATORS AND VICTIMS OF CRIME: A STUDY OF THE IMPLEMENTATION OF LAW NUMBER 11 OF 2012 CONCERNING THE JUVENILE CRIMINAL JUSTICE SYSTEM

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Abstract

This journal is written solely as an effort to provide solutions in providing legal protection for children in conflict with the law, either as perpetrators or as victims and witnesses in criminal acts. Such thinking arises because the implementation of Law Number 11 of 2012 cannot be fully implemented even though the Law has provided clear concepts in handling cases of children in conflict with the law while still paying attention to legal protection for children. In order to obtain a measurable analysis related to the problems that arise in the implementation of child protection and to find solutions to these problems, the author uses a normative legal research method with an analytical approach to legal synchronization and analysis of principles. The use of this method directs the author to be able to provide analysis and describe the problems of implementing legal protection for children in conflict with the law and describe the solutions in writing this journal.

Keywords: *Legal Protection, Children in Conflict with the Law, Juvenile Criminal Justice System*

INTRODUCTION

Children are the most valuable assets for families, communities, and nations, therefore in the process of their development and growth, children must receive affection from their parents and educate, care for the child until they are adults and able to be independent. Children in the process of development and growth in the fetus to adulthood experience development and character formation that is influenced by internal factors and external factors of the child's environment. In the process of character formation, children can commit acts that are contrary to criminal law or acts that are considered by society as reprehensible acts. When a child commits a criminal act or a reprehensible act, the child's rights cannot be reduced immediately but must be fulfilled, in such circumstances the state is obliged to provide protection to children both when they are perpetrators of criminal acts and as victims of criminal acts. The state is obliged to provide legal protection for children because legal protection for children can be used as one of the benchmarks for analyzing the progress of a country's civilization.

According to Arief Gosita, child protection is an effort to create conditions and situations that allow the implementation of children's rights and obligations in a humane manner. Therefore, it is clear in its implementation when children commit crimes or are victims of crimes, children must always be treated humanely. Based on Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System, what is meant by a child in conflict with the law is a child in conflict with the law, including children who are victims of criminal acts and witnesses to criminal acts. In the context of children as perpetrators of criminal acts, Article 17 paragraph (1) of Law Number 35 of 2014 concerning Child Protection has formulated that every child whose liberty is deprived has the right to:

1. Receive humane treatment and be placed separately from adults;
2. Obtain legal aid or other assistance effectively at every stage of applicable law; and
3. Defend yourself and obtain justice before an objective and impartial juvenile court and in a hearing that is closed to the public

With this provision, children as perpetrators of criminal acts must have their rights protected and be treated as stipulated in the points above. In addition to being perpetrators of criminal acts, children as victims of criminal acts must also have their rights observed and this is regulated in Article 18 of the Child Protection Law and in Law Number 31 of 2014 concerning Protection of Witnesses and Victims.

Although laws and regulations have formulated several provisions for legal protection for children who commit crimes, in its implementation, the handling of children who are in conflict with the law, either as perpetrators or as witnesses to victims of crimes, is very less biased towards the interests of children and has not fully considered the best interests of children, such as when handling children's cases in court, many judges still wear judge's uniforms, gavels, photos of the president, and witness podiums. This situation clearly does not take sides and pay attention to the mental state of children.

Handling of children in conflict with the law, whether they are perpetrators of criminal acts or witnesses to criminal acts, must pay attention to the provisions on the Convention on the Rights of the Child which has been ratified through Presidential Decree Number 36 of 1990, which provides guidelines that the criminal law process is the last step (*ultimate remedy*) against children who commit crimes, in addition, criminal punishment for children should avoid the application of juvenile prisons.

Legal protection for children in conflict with the law, either as perpetrators or as victims of criminal acts, is a must, but in practice it does not always go hand in hand with the provisions of the law. Thus, there are problems that must be immediately sought for analytical solutions so that legal protection for children does not experience obstacles or barriers. These problems are described in two parts, namely the problems of legal protection for children in conflict with the law and solutions to resolve the problems of legal protection for children in conflict with the law in Indonesia.

RESEARCH METHODS

The research method used in writing this journal is the normative legal research method. Normative legal research discusses doctrines or principles in legal science. The principles of legal protection for children, especially children who are in conflict with the law, both children as perpetrators of criminal acts and as witnesses to criminal acts along with their implementation are very important to analyze in this journal. In addition to the analysis of legal principles, the thing that we want to observe in writing this journal is research on legal synchronization, namely by observing the harmonization between a regulation and other regulations in order to gain an understanding that in child protection, one regulation and another are interrelated or even contradictory and do not support one argument with another argument.

The sources of study used in writing this journal use primary legal materials and secondary legal materials. Primary legal materials are legal materials that have authority such as laws and regulations, so the primary legal materials in writing this journal are Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 31 of 2014 concerning Protection of Witnesses and Victims, Law Number 35 of 2014 concerning Child Protection and implementing regulations of the relevant Laws. The secondary legal materials in writing this journal are in the form of books and legal literature that are relevant to the main issues that are the core of writing the journal.

The entire study obtained in this research will be analyzed descriptively analytically, namely outlining the conditions for implementing legal protection for children who commit crimes while analyzing the application of legal protection for children from the research that has been described to be compared with the rules on legal protection for children that are made in writing.

RESULTS AND DISCUSSION

1. Problems of Legal Protection for Children in Conflict with the Law

Based on data obtained from the Electronic Investigation Management (EMP) of the National Criminal Information Center of the Republic of Indonesia National Police in 2024, there were 40,079 children in conflict with the law since January 2024. As many as 20.83 percent of children were in conflict with the law or were reported or

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suspects or perpetrators. Meanwhile, 49.37 percent of children were victims of criminal acts. Meanwhile, 29.78 percent of children were subject to criminal sanctions. The high number of children in conflict with the law indicates that the criminal approach in handling children's cases is very dominant in Indonesia. However, the criminal approach does not mean that Indonesia does not have guidelines in its implementation, therefore Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was enacted. This law contains regulations on the procedures for handling cases of children who commit crimes. The norms contained in the regulations provide guidelines so that the handling of children's criminal cases as much as possible pays attention to the best interests of the child. This is stated in Article 2 of Law Number 11 of 2012 which states that the juvenile criminal justice system is implemented based on the following principles:

- a. Protection;
- b. Justice;
- c. Non-discrimination;
- d. Best interests of the child;
- e. Respect for children's opinions;
- f. Child survival and development;
- g. Child development and guidance;
- h. Proportional;
- i. Deprivation of liberty and relocation as a last resort; and
- j. Avoidance of retaliation

In addition, Article 3 of Law Number 11 of 2012 stipulates that every child in the juvenile criminal justice process has the right to:

- a. Treated humanely with attention to needs appropriate to his age;
- b. Separated from adults;
- c. Obtain legal and other assistance effectively;
- d. Doing recreational activities;
- e. Free from torture, punishment or other cruel, inhuman or degrading treatment;
- f. Not sentenced to death or life imprisonment;
- g. Not be arrested, detained or imprisoned, except as a last resort and for the shortest possible time;
- h. Obtain justice before a juvenile court that is objective, impartial, and in a hearing that is closed to the public;
- i. His identity was not published;
- j. Obtain support from parents/guardians and people trusted by the child;
- k. Obtain social advocacy;
- l. Getting a personal life;
- m. Achieving accessibility, especially for children with disabilities;
- n. Get an education;
- o. Obtain health services; and
- p. Obtain other rights in accordance with the provisions of laws and regulations

All of the above rules are then supported by several provisions of articles that can be used as a means to implement legal protection for children in conflict with the law. These articles are Article 15, Article 21 paragraph (6), Article 25 paragraph (2), Article 71 paragraph (5), Article 82 paragraph (4), Article 90 paragraph (2), Article 92 paragraph (4), Article 94 paragraph (4). All of these articles are very good in supporting the implementation of legal protection for children, but it turns out that in its implementation there are obstacles, namely the unavailability of all supporting regulations for the articles in question.

Based on the presentation outlined by the Criminal Justice Reform Institute, the articles that are supporting regulations for legal protection for children in conflict with the law have not been completed. Based on Law Number 11 of 2012, the government is required to create six materials in the form of government regulations and two materials

in the form of presidential regulations. However, until now not all of these supporting regulations are available so that the implementation of these supporting articles cannot be carried out optimally.

Several Substances of Articles in Law Number 11 of 2012 do not yet have supporting regulations even though they are very crucial in supporting legal protection for children. The author has summarized the substance of the article and the availability of supporting regulations. Article 15 discusses diversion and there are already supporting regulations, namely Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age; Article 21 paragraph (6) concerning the requirements and procedures for decision-making as well as education, coaching, and guidance programs in the case of Children under 12 (twelve) years of age committing or suspected of committing a crime has also been regulated in Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age; Article 25 paragraph (2) concerning guidelines for registering cases of Children and Child victims, there are no government regulations that regulate them so that the registration guidelines that aim to protect their identities from being published are hampered; Article 71 paragraph (5) regarding the form and procedures for implementing criminal penalties, there are no implementing regulations so that there are obstacles in the procedures for implementing criminal penalties against children which can cause ambiguity in the application of the concept so that children are not arrested, detained, or imprisoned, except as a last resort and for the shortest time; Article 82 paragraph (4) regarding Actions that can be imposed on Children, there are no implementing regulations so that there is no legal certainty in the application of this norm which is feared that this norm is rarely used in the concept of criminal decisions even though this norm supports efforts to ensure that children are free from torture, punishment or other cruel, inhumane, and degrading treatment; Article 90 paragraph (2) regarding the Implementation of the Rights of Child Victims and Child Witnesses, there are no implementing regulations so that there are no clear guidelines for implementing protection for child victims and witnesses; Article 92 paragraph (4) regarding the provision of education and training for law enforcers and related parties in an integrated manner is already available, namely in Presidential Regulation Number 175 of 2014 concerning Integrated Education and Training for Law Enforcers and Related Parties Regarding the Child Criminal Justice System; Article 94 paragraph (4) regarding the Government Regulation regarding the procedures for implementing coordination, monitoring, evaluation and reporting, there are no implementing regulations available so that the procedures for coordination between institutions are unclear.

All of the articles that do not yet have implementing regulations are very crucial in supporting legal protection for children, but it turns out that because of incomplete regulations, the implementation of the norms in the articles is not optimal, so the author confidently states that the unavailability of supporting regulations as intended is one of the problems and obstacles in implementing legal protection for children who are in conflict with the law, either as perpetrators or as witnesses.

In addition to the problem of the lack of laws and regulations, there are other problems that are obstacles in realizing legal protection for children, namely the minimal number of new institutions to replace places for arresting and detaining children. Arrest and detention of children is in principle the last resort and must be carried out in the shortest time. Arrests that can be justified according to within 24 hours and must be placed in a special child service room are placed in the Social Welfare Institution

Special Child Development Institutions (LPKA), Social Welfare Institutions (LPKS), Special Child Service Rooms (RPKA), and Temporary Child Placement Institutions (LPAS) are four institutions directed by the SPPA Law as a substitute for detention, development, and child prisons. LPKA is an institution or place for children to serve their sentence, while LPAS is a temporary place for children during the trial process. Based on observations made by the author, there are only 33 LPKA throughout Indonesia consisting of seven Class I LPKA and 26 Class II-B LPKA (18 of which are changes in nomenclature from the 18 existing Child Prisons. Meanwhile, 15 LPKA are temporarily still placed in adult prisons/detention centers), then the existence of the Social Welfare Institution (LPKS) which is a place to care for children who are arrested if there is no special child service room yet. & child development centers (under 12 years old) are not widely available throughout Indonesia so that services cannot be

carried out optimally and evenly, in addition, the existence of Temporary Child Placement Institutions (LPAS) which are temporary places for children during the ongoing trial process (replacing detention centers for children) for ages 14 -18 years are also not evenly available throughout Indonesia, impacting the possibility of children being placed in detention centers for adults, in addition, related to the availability of Special Service Rooms for Children (RPKA) at the Polsek level, not all Polsek have such rooms so that children will definitely be examined in the examination room for adults. The limited conditions of development institutions result in the guarantee of child protection in order to obtain justice in the Juvenile Court that is objective, impartial, and in a trial that is closed to the public being hampered.

2. Solutions to Resolve Legal Protection Problems for Children in Conflict with the Law in Indonesia

Based on the problems that have been described in sub-chapter 3.1 previously, it is clear that one of the points of obstacles in the implementation of legal protection for children in conflict with the law is the incomplete supporting regulations of several articles in Law Number 11 of 2012 which are very crucial in efforts to improve legal protection for children in conflict with the law. So the solution that can be taken is that the government is urged to immediately prioritize the formation of government regulations and presidential regulations so that legal protection instruments for children in conflict with the law can be implemented properly as one of the directions of Law Number 11 of 2012. This condition is important because the law that can work in society is a law that understands the needs and problems that arise in society so that it is demanded that the law can truly be useful solely for the benefit of society.

The second solution is that the government must move quickly to resolve the problem of the lack of Special Child Development Institutions (LPKA), Temporary Child Placement Institutions (LPAS), and Social Welfare Institutions (LPKS) as an effort to increase legal protection for children in conflict with the law. The government through the Directorate General of Corrections must immediately map the number of children in conflict with the law whose cases have been decided or are in the process of being examined to then be used as one of the materials to formulate the concept and development plan for LPKA, LPKS, and LPAS throughout Indonesia. The government must indeed be ready to allocate a budget for the development of infrastructure as intended not merely so that LPKA, LPAS, and LPAS stand as a building, but rather focus more on efforts to guarantee legal protection for children where the examination of cases of children in conflict with the law must be carried out separately from adults.

The third solution is to increase understanding for law enforcement officers through juvenile justice education instruments that focus on the application of restorative justice in handling juvenile cases, restorative justice can be realized, one of which is through diversion efforts as referred to in Article 15 of Law Number 11 of 2012. The application of diversion must be attempted as much as possible and if possible have a high percentage of success. This is important so that the volume of detention of children in conflict with the law can be reduced, because in fact the detention of children has its own psychological impact on children. In addition, efforts to implement diversion need to be carried out seriously, namely to increase opportunities for children in conflict with the law, both perpetrators and victims or witnesses, to reconcile with an agreement that provides a sense of justice for victims of criminal acts. Because in handling juvenile cases, the criminalization approach is the ultimum remedium (last resort) so that real efforts must be made to realize this principle in handling juvenile cases.

Strengthening the capacity and capabilities of law enforcement officers. Strengthening the capacity and capabilities of law enforcement officers is carried out starting from law enforcement officers who carry out investigation activities to examining child cases. Law enforcement officers are equipped with the paradigm that children should not be punished but can be given sanctions as stipulated in Article 82 paragraph (4) of Law Number 11 of 2012. With this paradigm of thinking, in its implementation, law enforcement officers will always strive to ensure that children are not subject to criminal penalties but are given sanctions that are proportional to the actions they have committed. This paradigm is not easy to do, although it is not too difficult, because each law enforcement agency actually already has an orientation that supports the implementation of Law Number 11 of 2012 through the issuance of regulations issued by each agency.

The final solution and the author's proposal is to unify all the materials of the laws and regulations that

regulate child protection efforts in a master regulation using the omnibus law concept in the formation of the master regulation. The formation of the master regulation is important as an effort to simultaneously correct the articles in several laws and regulations related to legal protection efforts for children in conflict with the law. Because indeed several laws and regulations related to child protection are not integrated into one unit, making it difficult for the general public to understand the legal protection instruments for children. This master regulation will later become the main guideline for law enforcement officers in handling child cases because it has been compiled completely and comprehensively.

CONCLUSION

Based on the discussion that has been conducted, it was concluded that the problems in the application of legal protection for children in conflict with the law, either as perpetrators or victims and witnesses, lie in the incomplete situation of implementing regulatory instruments from Article 15, Article 21 paragraph (6), Article 25 paragraph (2), Article 71 paragraph (5), Article 82 paragraph (4), Article 90 paragraph (2), Article 92 paragraph (4), Article 94 paragraph (4), which are crucial articles in efforts to provide legal protection for children in conflict with the law. In addition, the lack of special child development institutions, temporary child placement institutions, and social welfare institutions are problems that must be resolved immediately, in addition to the problem of the large number of children being processed criminally in the last year.

In order to resolve the problems of implementing legal protection for children in conflict with the law, the government must move quickly to prioritize the formation of implementing regulations for the provisions of Article 15, Article 21 paragraph (6), Article 25 paragraph (2), Article 71 paragraph (5), Article 82 paragraph (4), Article 90 paragraph (2), Article 92 paragraph (4), Article 94 paragraph (4) of Law Number 11 of 2012 so that obstacles in implementing legal protection for children in conflict with the law are not hampered. Then it is necessary to prepare a work plan for the formation of LPKA, LPAS and LPKS with accurate data related to the need to establish these institutions as one of the instruments of legal protection for children.

Strengthening the paradigm of resolving children's cases with a restorative justice and diversion approach must be implemented and prioritized by law enforcers and understood through strengthening the understanding obtained from education on handling children's cases. Finally, the government needs to compile a codification of legal regulations related to child protection using the omnibus method in order to synchronize related regulations and correct regulations that need to be corrected to be immediately formulated in the form of a master regulation that covers several regulations. This is solely to facilitate the implementation of legal protection for children in conflict with the law.

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