



Legal reconstruction of regulations for juvenile protection as violent crime perpetrators against children based on the values of justice

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Abstract

The purpose of this research is to analyze and find out the regulations of weaknesses that arise in the legal protection of children as perpetrators of crimes of violence against children based on the value of justice, and to reconstruct the regulation of law protection of children as perpetrators of criminal acts of violence against children based on the value of justice. The research method uses a constructivist paradigm with a sociological juridical research approach and a descriptive juridical research type using Qualitative data analysis methods.

The results of the study show that the Weaknesses in the regulation of legal protection for children as perpetrators of criminal acts of violence against children at this time, from the aspect of legal substance, the legal formulation that regulates the protection of perpetrators and sanctions for criminal acts of child violence is still not precise. In terms of the legal structure, the synergy between law enforcement officers is not yet optimal, so the synergy is needed from the police, prosecutors, and the judiciary. From the aspect of legal culture, it is necessary to socialize about legal protection so that children who are in conflict with the law do not get a bad stigma as perpetrators of crime. Based on this, the Reconstruction of legal protection regulations for children as perpetrators of criminal acts of violence against children based on the value of justice in Article 59 a of Law Number 35 of 2014 and Article 18 of Law Number 11 of 2012.

Keywords: legal reconstruction, juvenile, justice value

Introduction

Article 18 of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection states that every child who is a victim or perpetrator of a crime is entitled to legal assistance and other necessary assistance. The Juvenile Criminal Justice System Law explains that children who are victims of criminal acts, hereinafter referred to as child victims, are children who are not yet 18 years old and experienced physical, mental, and/or economic losses caused by criminal acts. More specifically, in order to protect the rights of children that are victims of crime, related to services and assistance to victims in order to fulfill their rights, the government issued Regulation of the State Minister for Women's Empowerment and Child Protection Number 1 of 2010 concerning Minimum Service System for Integrated Services for Women and Children. Child victims of crime. Law Number 35 of 2014 Article 90 has been regulated as referred to in Article 89, Child Victims have the right to: medical rehabilitation efforts and social rehabilitation, both within the institution and outside the institution, security guarantees, both physical, mental, and social, easy access to information regarding the progress of the case.

Law Number 23 of 2003 in Article 4 states that every child has the right to be able to live, grow, develop, and participate fairly in accordance with human dignity and protection from violence and discrimination.

Children who experience cases with the law, in the criminal justice process are still needed and processed in laws and regulations that are currently in effect and have not yet applied the concept of diversion and restorative justice, which in general provides the best protection for children.

The application of the concept of restorative justice or restorative justice is a fair settlement that involves the perpetrators, victims, their families, and other parties involved in a criminal act jointly seeking a solution to the crime and its implications, by emphasizing restoration back to its original state.

In the preamble to Law Number 23 of 2002 concerning Child Protection, it is stated that:

“Children are a mandate and gift from God Almighty, who has inherent dignity and worth as a whole human being. Furthermore, it is said that children are buds, potentials, and the younger generation who will succeed in the ideals of the nation's struggle, have a strategic role, and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Therefore, so that every child will be able to take on these responsibilities, he needs to get the widest possible opportunity to grow and develop optimally, physically, mentally, socially, and has a noble character. Guarantees for the fulfillment of their rights as well as treatment without discrimination.”

Juvenile Children are not to be punished but must be given guidance and coaching so that they can grow and develop as normal children who are healthy and fully intelligent. Sometimes children experience difficult situations that can lead them to act against the law (Cebotari, 2021) ^[1]. However, children who violate the law does not deserve to be punished, let alone put in prison. Because the presence of children in places of detention and imprisonment placed

together with adults will place children in situations that are prone to become victims of various acts of violence.

When looking at the framework of the Indonesian state, realizing quality Indonesian human resources and being able to lead and maintain the unity and integrity of the nation within the unitary state of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the development of children is an integral part in those efforts. Therefore, problems regarding children in conflict with the law must be resolved appropriately in order to protect children's rights so that they are able to become quality Indonesian human resources (Widodo, 2018) ^[9] as mentioned above.

On this basis, this concern and concern for children is outlined by the formation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in lieu of Law Number 3 of 1997 concerning Juvenile Court. The replacement of this law is considered necessary because the old law is no longer relevant to the legal needs of society and has not comprehensively provided legal protection to children in conflict with the law. The purpose of the enactment of this new law is to create a judiciary that truly guarantees the protection of the best interests of children in conflict with the law. Sentencing should be a last resort so that in its implementation this new law prioritizes the restorative justice model, namely restoration to its original condition, which needs to be prioritized by other means outside the court. One of them is the diversion, namely the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice. This diversion is the most appropriate solution so that children are not brought to court. For this reason, this diversion must be an obligation in handling children in conflict with the law, both at the level of investigation, prosecution, and to the examination of cases in court.

It is proper for law enforcement officers to provide appropriate sanctions for perpetrators of violent crimes so that the law is truly enforced and order is created in society. However, apart from that, law enforcement officers must also pay attention to other, more comprehensive considerations in imposing sanctions when the perpetrator of the crime is a child. Because sanctions are not only expected to have a deterrent effect on children as perpetrators of criminal acts so that they do not repeat their actions and prevent others from committing these crimes but also must pay attention to the best interests of the child.

Based on the above background, the authors are interested in conducting research titled "Legal Reconstruction of Regulations for Juvenile Protection as Violent Crime Perpetrators against Children Based on the Values of Justice" where the authors raise 2 (two) main issues as follows:

1. What are the weaknesses of the current legal protection regulations for Juvenile as perpetrators of crimes of violence against children?
2. How is the reconstruction of the regulation of legal protection for Juvenile as perpetrators of criminal acts of violence against children based on the value of justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According

to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) ^[8].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) ^[2]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses of the Current Legal Protection Regulations for Juvenile as Perpetrators of Crimes of Violence against Children

The problem of child protection in Indonesia is basically quite heavy and complex, as can be seen in the handling of children in conflict with the law (ABH). This problem is quite serious because: 1) in the judicial process, human rights violations tend to occur as a lot of evidence shows the practice of violence and torture against children who are included in the judicial process; 2) the perspective of children has not been considered in the judicial process; 3) prison, which is a place for punishing children is proven not to be the right place to foster children to reach the expected maturity process; 4) during the judicial process, children in conflict with the law lose their basic rights such as the right to communicate with their parents, the right to education, and the right to health, including the right to obtain defense from a legal advisor or lawyer, and 5) there is a stigma attached to children after the judicial process is complete that may greatly affect their psychological and social development in the future (Syzonenko, 2021) ^[7].

Based on Article 1 paragraph (2) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and children who are criminal witnesses.

Factors causing Children to face the Law (ABH) are grouped into internal factors and external factors. Internal causes of ABH include: (a) Limited economic conditions of the ABH family; (b) Family is not harmonious (broken home); and (c) Lack of attention from parents, either because parents are busy working or working abroad as migrant workers. Meanwhile, external factors for ABH include: (a) The influence of globalization and technological progress without being balanced by the mental readiness of children; (b) The child's social environment with his friends is not good; (c) The absence of institutions or forums for venting counseling where children express their feelings; (d) Lack of children's play facilities resulted in children not being able to channel their creativity and then directing their activities to violate the law (Pranitawati, 2018) ^[6].

Child protection activities have at least two aspects, the first is related to policies and laws and regulations governing the protection of children's rights and the second aspect concerns the implementation of these policies and regulations. Restorative justice Law no. 11 of 2012 as a regulation that regulates juvenile justice is the answer to the weakness of the previous law governing juvenile justice, namely Law no. 3 of 1997. The regulation of this Act also still has gaps that become weaknesses in providing protection for children, especially in this case in regulating restorative justice. The presence of legislation regarding children gives a new breath to the nation's attention to the next generation.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System provides conditions for investigators, public prosecutors, and judges who settle children's cases which include:

- a. Has experience as an investigator, public prosecutor, and judge;
- b. Have interest, attention, dedication, and understanding of children's problems;
- c. Has attended technical training on juvenile justice.

If these conditions are not met, it will be carried out by investigators, public prosecutors, and judges who carry out their respective duties of investigating, prosecuting, and examining criminal acts committed by adults. These requirements are not easy requirements to get law enforcement officers who really understand the reality of children, moreover the unequal distribution of human resources, and the ability of each region to carry out this technical training pattern. In addition to diversion which is required to use a restorative justice approach, other stages of criminal justice also apply this approach, namely in terms of guidance, supervision, and assistance during the process of carrying out a crime or action and after undergoing a crime.

Peace between victims and children is very different when looking at the principle of the best interests of children. This means that the diversion agreement will never be reached if it sees the consent of the victim and or his family, regardless of the best interests of the child. According to Hadi Supeno (2010) ^[3], if a diversion agreement is not reached, there will be great opportunities for imprisonment for children. Article 3 paragraph 1 of the Convention on the Rights of the Child states that: "*in all actions concerning children carried out by the government and private social welfare institutions, judicial institutions, government institutions or legislative bodies, the best interests of the child must be the main consideration.*" The best interest of the child is one of the

principles in the juvenile criminal justice system which is that all decision-making must always consider the survival and development of the child.

Various problems faced by ABH, among others: (a) they face a trial process and are put in prison; (b) All ABH who are serving a sentence in the Detention Center are no longer continuing their education; (c) The room and detention house are not very child-friendly because the ABH in the detention center are mixed with adult prisoners; (d) ABH always gets nicknames/labels from the community as "convicts" or bad boys; (e) Awareness of law enforcement agencies about the importance of children's perspectives in handling ABH with a restorative approach has not been fully implemented (Lane, 2018) ^[4].

The handling of children in legal cases so far is still very less in favor of children and has not fully paid attention to the best interests of children. One of the weaknesses in handling children in court, for example, is that there are still not many district courts in Indonesia that have a child waiting room. Even when a juvenile court is held, there are still many court attributes attached to the room. For example, the judge's clothes, hammer, photos of the president and vice president as well as the witness stand. This situation is clearly impartial and pays attention to the mentality of the child. The handling of children in conflict with the law (ABH) must be in accordance with the convention on children's rights which has been ratified by Presidential Decree no. 36 of 1990 which mandates that the legal process be carried out as the last step and for the shortest and most appropriate period. And criminal punishment for children should be avoided to be sent in juvenile prisons.

The needs in the ABH handling process are: (a) The ABH handling process should prioritize a restorative justice approach (b) there needs to be synergy between related institutions, both law enforcement and government institutions, including community leaders in resolving ABH cases; (c) it is necessary to strive for a community/community-based ABH handling process; (d) the process of handling ABH At the level of law enforcement agencies must be responsive to the needs of children and lead to the best interests of children.

Children who violate the law or commit criminal acts are strongly influenced by several factors, namely mainly factors from outside the child such as association, education, playmates, and the surrounding environment because the actions taken by children are generally a process of imitating or influenced by negative actions from other people. That is around it. When a child commits a crime, the formal justice system will place the child in the status of a prisoner whose impact will bring considerable consequences for the child's growth and development. The process of punishing children who commit crimes through the formal criminal justice system by putting children in prison does not succeed in making children a deterrent and becoming better person to support the process of growth and development, it could be that prison actually makes children more professional in committing criminal acts.

The purpose of the juvenile justice system, which is not solely aimed at imposing criminal sanctions on children as perpetrators of criminal acts, but rather focuses on the premise that the imposition of sanctions is a means of supporting the realization of the welfare of children as perpetrators of criminal acts (Maidin, 2014) ^[5].

In order to realize the welfare of children as perpetrators of criminal acts, as far as possible the involvement of children in the juvenile criminal justice process is avoided. In an effort to avoid the negative impact of the juvenile criminal justice process, law enforcement officers must be given the authority to divert the settlement of juvenile criminal cases from the criminal justice process to processes outside the criminal justice system. In an effort to avoid the negative impact of the juvenile criminal justice process, law enforcement officers must be given the authority to divert the settlement of juvenile criminal cases, from the criminal justice process to processes outside the criminal justice system.

Children who are in conflict with the law also need to be protected from errors in the application of the laws and regulations imposed on them, which may cause mental, physical, and social harm. Children according to their nature, a child does not have enough reasoning power to distinguish between good and bad things. Crimes committed by children in general are a process of imitating or being influenced by other people or the influence of the media that children see and read. The formal criminal justice system which ultimately places children in prisoner status will have a considerable impact or consequence on the growth and development of children. The process of punishment given to children through the formal criminal justice system by placing children in prison did not succeed in deterring the child and becoming a better person to support the process of growth and development.

The weak principle of the best interest of the child must obtain the consent of the victim and or the victim's family as well as the willingness of the child and or his family so that in this case the benchmark is the existence of peace between the victim and the child, not the best interest of the child. In this case, the diversion process should prioritize the best interests of the child, not just peace between the victim and the child.

In terms of legal culture, criminal acts committed by children can happen because digital technology is currently so easily accessible, so children can easily imitate or imitate. And this imitation culture can be used as a habit because his friends can also do things that are not commendable.

2. Reconstruction Of The Regulation Of Legal Protection For Juvenile As Perpetrators Of Criminal Acts Of Violence Against Children Based On The Value Of Justice

Indonesia as a country that has ratified the Convention on the Rights of the Child (Convention on the Rights of the Child) through Presidential Decree Number 36 of 1990 is bound by the obligation to provide protection for children, including providing special protection to children in conflict with the law. One form of protection is to implement a special criminal justice system for children in conflict with the law. Article 40 paragraph (1) of the CRC states that "*The States Parties recognize the right of every child who is declared as an accused or recognized as having violated the criminal law to be treated in a manner that is in accordance with increasing the respect and dignity of the child, which reinforces the child's respect again. to the human rights and freedoms of others and which takes into account the age of the child and the desire to promote the reintegration of the child and the return of the child to a constructive role in society*". This State obligation is also reaffirmed in the

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, that the objectives of juvenile justice are: the criminal justice system for children/adolescents will prioritize the welfare of adolescents and will ensure that any reaction to juvenile offenders will always commensurate with the conditions both for the violators of the law and for the violations of the law.

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System Article 1 paragraph 6 reads: "*Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a solution. just by emphasizing restoration to its original state, and not retaliation.*"

Law enforcement officers, especially those that come from the Police, from the beginning of handling cases where the perpetrators are minors, should be able to act according to procedures and objectively find the initial source of the incident, not only on the location but also the background of the incident. Law No.1 of 1974 Article 47 paragraph (2) concerning Marriage, namely: "*Parents represent the child regarding all legal actions inside and outside the Court.*" It is also a matter that can be used in the future as a basis for prosecution against parents if the handling of the incident is related to the negligent nature of the parents of the perpetrator and results in a major event which is also contained in Law no. 1 of 1974 concerning marriage, in Article 45 paragraph (1) concerning the obligations of parents. So restorative justice here does not necessarily make cases where the perpetrator is a minor into diversion and escape from criminal snares in order to provide an optimal deterrent effect so that the value of justice can be shared between the perpetrator and the victim and their family.

Children as part of the younger generation are the successors to the ideals of the nation's struggle and human resources for national development. In the context of realizing quality Indonesian human resources who are able to lead and maintain national unity and integrity within the unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, continuous guidance is needed for survival, growth and physical, mental and social development and protection from all possibilities that will endanger them and the nation in the future (Widodo, 2019) ^[10]. Providing opportunities for children so that through coaching, their identity will be obtained to become independent, responsible, and useful human beings for themselves, their families, communities, nations, and countries. The task of parents is very important in the growth and development of children's mental and spiritual health as there is still many negligence from parents that can lead to child delinquency so the risk of children becoming perpetrators of crimes is so great.

Based on this, the legal reconstruction proposed by the author is in Article 59 A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, by adding letters e and f so that Article 59 A reads:

Article 59 A:

Special Protection for Children as referred to in Article 59 paragraph (1) is carried out through efforts:

- a. *prompt treatment, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of disease and other health disorders;*
- b. *psychosocial assistance during treatment until recovery;*
- c. *providing social assistance for children who come from underprivileged families; and*
- d. *Providing protection and assistance in every judicial process.*
- e. *Child victims who experience violence for the actions of child criminals are required to provide compensation (restitution) proportionally, based on the ability of the perpetrator's parents.*
- f. *The legal protection and rehabilitation in question must be accompanied by parents and state institutions such as the Witness and Victim Protection Agency (LPSK), the Indonesian Child Protection Agency (LPAI), and the Correctional Center (Bapas).*

Then legal reconstruction is also required in Article 18 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, by adding a sentence of fair law enforcement so that Article 18 reads: "*In handling cases of Children, Child Victims, and/or Child Witnesses, Community Counselors, Social Workers, Investigators, Public Prosecutors, Judges, and Advocates or other legal aid providers must pay attention to the best interests of the Child and create a family atmosphere that is maintained*".

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses in the regulation of legal protection of Juvenile as perpetrators of criminal acts of violence against children currently, can be seen in the terms of legal substance, legal structure, and legal culture. From the aspect of legal substance, there is still no firm legal formulation that regulates the protection of perpetrators and sanctions for perpetrators of child violence. In terms of the legal structure, the synergy between law enforcement officers is not yet optimal, so the synergy is needed from the police, prosecutors, and the judiciary. From the aspect of legal culture, it is necessary to socialize about the legal protection of children as perpetrators of violent crimes so that parents can optimally accompany and educate children because criminal acts committed by children, in general, are a process of imitating or being influenced by other people or from the influence of the media. Seen and read by children, and so that children who are in conflict with the law do not get a bad stigma as perpetrators of crime.
2. Based on the discussion, the legal reconstruction proposed by the author is in Article 59 A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, by adding letters e and f, that is: "*e. Child victims who experience violence for the actions of child criminals are required to provide compensation (restitution) proportionally, based on the ability of the perpetrator's parents*". And "*f. The legal protection and rehabilitation in question, must be accompanied by parents and state institutions such as the Witness and Victim Protection Agency (LPSK), the Indonesian Child Protection Agency (LPAI), and the Correctional Center*

(Bapas)". Then, legal reconstruction is also required in Article 18 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, by adding a sentence of fair law enforcement which makes legal aid providers must pay attention to the best interests of the Child and create a family atmosphere that is maintained.

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