

Implementation of Legal Protection Against Children In Conflict With The Law At The Lumajang District Police(After The Enactment Of Law Number 11 The Year 2012)

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ABSTRACT

This study aims to find out how the implementation of legal protection for children in conflict with the law in Lumajang Police after the enactment of Law Number 11 the Year 2012. The research method uses a sociological juridical approach, by looking at secondary data and primary data in the form of reality on the ground and the reality that occurs in the community in connection with the implementation of legal protection for children in conflict with the law. The results showed that the process of examining cases at the level of investigation for children in conflict with the law or children suspected of committing a crime in principle had referred to the Children's Criminal Justice System Law Number 11 of 2012 with limitations existing in the PPA Unit of Lumajang Police. As well as the legal protection provided at the investigation level, the process is carried out by prioritizing a restorative justice approach and diversionary resolution, namely issuing criminal cases that come out of the trial mechanism.

KEYWORDS: legal protection, children in conflict with the law, the Criminal Justice System for Children

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I. INTRODUCTION

Children as part of the younger generation are successors to the ideals of the nation's struggle and human resources for national development. To realize quality Indonesian human resources and be able to lead and maintain the unity and integrity of the nation within the Unitary State of the Republic of Indonesia based on the Pancasila and the 1945 Constitution, continuous training is needed for the survival, growth, and development of physical, mental and social and protection from all possibilities that will endanger them and the nation in the future. In various ways such fostering and protection efforts are faced with problems and challenges in society and sometimes there are behavioral deviations among children, even more than that there are children who commit acts that violate the law, without knowing their social and economic status. Besides that, there are also children, who for one reason or another do not have the opportunity to get attention either physically, mentally, or socially. Because of the inadequate state of self, then both intentionally and unintentionally often children also take actions or behaviors that can harm themselves and or the surrounding community.

Deviations of behavior or acts that violate the law committed by children, are caused by various factors, including the negative impact of rapid development, the globalization flow in the field of communication and information, advances in science and technology and changes in the style and way of life of some parents, has brought fundamental social changes in people's lives that are very influential on children's values and behavior. Also, children who lack or do not receive love, care, guidance and guidance in the development of attitudes, behavior, adjustment, and supervision from parents, guardians or foster parents will be easily dragged into the flow of social relationships and the environment is less healthy and detrimental to his personal development.

Besides the considerations above, for the sake of children's growth and mental development, it is necessary to determine the difference in treatment in the procedural law and the threat of speech. In this connection, the regulation of exemption from the provisions stipulated in Law No. 8 of 1981 concerning Criminal Procedure Code for which the length of imprisonment is determined is following the interests of children and the distinction of criminal threats for children determined by the Criminal Law Code, where the sentence is determined ½ (one) half) of the maximum criminal threat committed by adults, while the death penalty and life imprisonment are not applied to children. The differentiation of treatment and threats regulated in this Law is intended to better protect and nurture the child so that he can meet his long future. Also, the distinction is intended to provide an opportunity for children so that through identification will obtain their

identity to become an independent human, responsible, and useful for themselves, family, community, nation, and state.

Settlement of children cases, as stipulated in the new Criminal Justice System Law, namely Law Number 11 the Year 2012 which came into force on 30 July 2014 there were many paradigm changes in dealing with children in conflict with the law. The paradigm changes in handling children dealing with the law are:

1. The settlement of cases of children in conflict with the law (ABH) must be part of the protection of children and an integral part of the national development process.
2. Obligations of the state, society, and family to protect children.
3. Protection of children in conflict with the law (ABH) must constitute the entire process, beginning with the prevention, resolution of cases, rehabilitation and reintegration programs of ABH to the community.
4. Do not get stuck in a formal case but look for the cause.

Therefore the paradigm developed in the Criminal Justice System for Children (Act No. 11 of 2012) is:

1. Must prioritize the restorative justice approach (Article 5 paragraph (1))
2. Must be sought diversion (Article 5 paragraph (3)), and
3. The diversion process is carried out through deliberations based on a restorative justice approach.

As said by DR. Sahardjo during the awarding of a doctorate honoris causa which states, "Every person is a human being and must be treated as a human being, even though he has gone astray, it should not be shown to the convicts that he is a criminal, on the contrary, he must feel that he is seen and treated as human" (Ma'mun, 2004: 26). Based on the conditions mentioned above and the real conditions in Lumajang Regency, the cases of violence against children, whether as victims, perpetrators or witnesses are increasing, which of course have to get treatment and treatment as regulated in various kinds of laws and regulations. regulations that apply then researched Lumajang Regional Police with a focus on the problem:

1. How is the Legal Protection of Children in Conflict with Law (AKH) After the Enactment of UUSPPA at Lumajang Regional Police Station?
2. What are the obstacles to the implementation of legal protection for children in conflict with the law at the Lumajang Regional Police Station and what are the alternative solutions?

II. LITERATURE REVIEW

Juridical Basis For Legal Protection Of Children In Conflict With The Law

As confirmed by the East Java LPA Secretary PriyonoAdiNugroho as a consequence of the article above is the handling of the AKH is different from adult criminal offenders. For AKH, the principle of "ultimumremidium" applies, or as a last resort if it is needed as a form of the best interests of the child. So when a child suspected of committing a crime is arrested if the lack of evidence is released immediately. If proven and apparently will not repeat the action and will not run away do not need to be arrested. If forced to detain AKH (Children in Conflict with Law) may not be mixed in a cell with adult detention. Special detention of children must be child-friendly, not scary/scary, not dirty/dirty and smelly. Law Enforcement Officials (APH) must care about children's problems, it is not justified to use violence to obtain evidence in an investigation. APH is authorized to conduct discretion, diversion and restorative justice if the condition of the AKH is possible so that the child does not need to be tried. And when tried does not have to enter the correctional institution.

Other legal foundations as referred to in Article 37 of the Convention on the Rights of the Child ratified by the Government of the Republic of Indonesia in Presidential Decree Number 36 of 1990 are:

- a. No child experiences torture ... either death or life.
- b. No child will lose his freedom illegally and arbitrarily. The arrest, detention, and punishment of a childare used as a last resort and for the shortest and most appropriate period.
- c. Every child deprived of liberty will be treated humanely ... Specifically, every child deprived of liberty will be separated from adults.
- d. Every child deprived of liberty will have the right to immediately receive legal assistance and other assistance ...

Whereas Article 64 of Law Number 35 the Year 2014 concerning Amendments to Law Number 23 the Year 2002 concerning Child Protection states:

"Special protection for children who are dealing with the law as referred to in Article 59 paragraph (2) letter b is done through:

- a. humane treatment by taking into account needs according to age;
- b. separation from adults;
- c. providing effective legal assistance and other assistance;
- d. enforcement of recreational activities;

- e. freedom from torture, punishment, or other cruel, inhumane and degrading treatment and rank;
- f. avoidance of imprisonment and/or life imprisonment;
- g. avoidance of arrest, detention or imprisonment, except as a last resort and in the shortest amount of time;
- h. the giving of justice before a child court that is objective, impartial, and in a hearing that is closed to the public;
- i. avoidance of publication of his identity;
- j. providing assistance for parents/guardians and people trusted by the child;
- k. providing social advocacy;
- l. giving of personal life;
- m. providing accessibility, especially for children with disabilities;
- n. providing education;
- o. delivery of health services; and
- p. granting other rights in accordance with statutory provisions.

Children's Rights Conflicting With The Law

The definition of a child as regulated in Article 1 point (1) of Law Number 35 the Year 2014 concerning Amendments to Law Number 23 the Year 2002 concerning Child Protection is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Attributed to the child's growth phase as explained by Soetodjo, above mentioned that the third phase, especially for points c and d, namely puberty and adolescence phase, where this period there are many major changes experienced by children who bring influence on attitudes and actions towards more aggressive. As a result, in this period many children in action can be classified into actions that indicate the symptoms of delinquency.

Juvenile delinquency is taken from the foreign term Juvenile Delinquency. Juvenile means young, children, young people, the characteristics of youth are typical traits in adolescence, while Delinquency means doing wrong, ignored/ignoring, which, while Delinquency means doing wrong, ignored/ignoring, which is then expanded it means to be evil, social, criminal, rule breaker, noisy maker, troublemaker, terrorist, irreparable, wretched, immoral, and others. (Soetodjo, 2006). According to Maud A. Merrill (Soetodjo, 2006), Juvenile Delinquency formulated as follows: A child is classified as a delinquent child when it appears that there are such anti-social tendencies that culminate so that the authorities are forced or should take action against him, in the sense of arresting him or alienating him.

Children who are in conflict with the Law as regulated in Article 1 point 3 of Law Number 11 the Year 2012 concerning the Criminal Justice System for Children are: "Children in conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but are not yet 18 (eighteen) years suspected of committing criminal offenses ". From some of the above description, it can be concluded that juvenile delinquency is an act or act of violation of norms, both legal norms and other social norms committed by young children (Soetodjo, 2006). Since the enactment of the Child Protection Act, children's rights are relatively more fully listed in all aspects that include political, economic, and socio-cultural aspects as well as the responsibilities of the government, regional government, society, and parents in fulfilling these rights. The implementation is based on Pancasila and is based on the 1945 Constitution and the basic principles of the Convention on the Rights of the Child which include:

1. Non-Discrimination means that all rights recognized and contained in the CRC must be applied to every child without any difference. This principle is a reflection of the principle of Universality of Human Rights.
 2. The best interest of the child means that in all actions involving children, what is best for the child must be the main consideration.
 3. Survival and development mean that the right to life inherent in every child must be recognized and that the child's right to survival and development must be guaranteed.
 4. Respect for the views of the child means respect for the rights of children to participate and express their opinions in decision making, especially when it comes to matters that affect their lives (Huraerah, 2007: 36).
- Article 5 of the Criminal Justice System for Children (Act No. 11 of 2012) states that the Criminal Justice System for Children must prioritize a restorative justice approach and must be sought diversion.

Restorative Justice and Diversity

As mentioned above, one of the manifestations of a new paradigm in the juvenile justice system currently implemented in Indonesia based on Law No. 11/2012 is the existence of restorative justice and diversion in the handling of children in conflict with the law. Article 1 Number (6) of Law Number 11 the Year 2012 states: "Restorative justice is the settlement of criminal cases involving the perpetrators, victims, the families of the perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state and not retaliation. " Diversity, as regulated in Article 1 Number 7 of Law No. 11 of 2012, is the transfer of the settlement of child cases from the juvenile justice process to processes outside of

criminal justice. So diversion must be sought to start from the level of investigation in the police, prosecution in the prosecutors, and examining cases in district courts. There are even administrative sanctions and imprisonment for police, prosecutors, and judges who violate the provisions of Article 7 paragraph (1) that does not seek diversion may be subject to criminal sanctions. This is as stated in Article 96 as follows: "Investigators, Public Prosecutors, and Judges who deliberately did not carry out the obligations referred to in Article 7 paragraph (1) shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 200,000,000.00 (Two Hundred Million Rupiah) ".

The diversion effort must be carried out starting from the process of examining cases at the police, namely investigation, prosecution, and trial by prioritizing the existence of several requirements, namely:

- a. criminal offense that threatens a criminal under 7 years
- b. is not a repeat of a criminal offense

Investigators, Public Prosecutors, and Judges in giving diversion must pay attention to several matters as regulated in Article 9 UUSPA, namely:

- a. Criminal category
- b. Child age,
- c. The results of community research from Bapas, and
- d. Support the family and community environment.

III. RESEARCH METHODS

In this study the approach used is a sociological juridical approach, meaning that in conducting research not only see from secondary data or from a positive legal perspective, but also from primary data in the form of reality on the ground and the reality that occurs in society in connection with the implementation of legal protection for children who are in conflict with the law after the enactment of Law Number 11 Year 2012 in Lumajang Regional Police, in this case in the PPA Unit of Lumajang Regional Police. Because in this PPA Unit the initial process for the commencement of the investigation of child criminal cases for children who commit crimes in the Lumajang Regency.

IV. RESEARCH RESULTS AND DISCUSSION

Legal Protection Of Children In Conflict With Law In The Lumajang Police Resort PPA Unit

With the enactment of Law Number 11 the Year 2012 concerning the Criminal Justice System for Children since 30 July 2014, the most fundamental substance in this Law is the strict regulation of Restorative and Diversity Justice intended to avoid and keep children away from the justice process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to the social environment naturally.

Article 3 of the Law on the Criminal Justice System for Children (Law No. 11 of 2012) which provides legal protection for children who are in conflict with the law. Its implementation in the Lumajang Police Precinct can be proven through the mechanism of the Summoning, Arresting, and Examination processes carried out by the LumajangPolres PPA Unit, as follows :

1. Calling the parties Children in conflict with the law, the investigator must also pay attention to the time of teaching and learning activities in schools, or other places of learning, where parties are called to learn. This is solely intended so that the child's right to get an education is not severed. And according to BripkaHeryaUtama, this is a form of respect for investigators on the right of child growth and development that must be given.

2. Every attempt to arrest a suspect of a Child in Conflict with the Law is made, the officer must prioritize the principle of presumption of innocence to a child suspected of committing a crime, and avoid arrest attempts at school or other places of study; and, if the arrest is carried out outside the child's environment (outside the school/home), the officer must immediately inform the condition to the family and community leaders in the suspect's child environment for assistance. If the arrest is carried out because the child was caught red-handed, he must also immediately inform the parent/guardian within no more than 1 × 24 hours after the arrest. Children who do not have parents/guardians, then the head of the RT / RW where the child is domiciled, or to other relevant institutions, including the Ministry of Social Affairs. During the arrest, the suspect must be treated humanistically like a child, and not as a miniature adult. The process of examining the offender's child, child victim, and witness's child must be adjusted to the time stated on the summons or agreement made orally. The child being examined must be accompanied by a parent/guardian, lawyer, PK-Bapas, and social assistance. The examination process will be held in the Special Service Room (RPK) by the investigator, adjusting to the situation and condition of the child being examined. Investigators may conduct the interview process a list of questions has been made before the examination while asking children to examine play to eliminate trauma. The child being examined is entitled to legal assistance or other assistance, a special companion whom he considers comfortable, a companion from PK Bapas, as well as a companion from the family (parent/guardian). During

the examination process, the investigator is obliged to provide special protection for the child being examined, and a special companion for children with special needs (deaf, blind, hearing impaired).

3. According to BripkaHaryaUtama in terms of handling cases of children in conflict with the law, of course, also different from handling cases of adults. This requires the participation of Law Enforcement Officials (APH), the community, as well as related institutions such as Advocates, Corrections Agency (BAPAS), Professional Social Workers (Social Workers), Social Workers (TKS), and Non-Government Organizations (NGOs). APH consists of police, prosecutors, and court levels. Then the NGOs involved are NGOs working in the field of children, such as the Integrated Service Center for Empowering Women and Children (P2TP2A), and so on.

From the description and explanations as mentioned above, it is seen, that Children in Conflict with Law in Lumajang Regency have received protection as regulated in Law Number 11 of 2012 concerning SPPA, although the implementation has not been 100% maximum. Where protection is at the police level, in this case, Lumajang Police PPA Unit, as the initial institution that carries out the criminal investigation process of children. The process that has been carried out has used the restorative justice approach and the principle of diversification has been carried out, although not all cases can be applied. That is, among others, mentioned in the General Explanation of the SPPA Law and the explanation of the members of the LumajangBripka Police Station PPA IrdaniIsma.

According to BripkaIrdaniIsma and BripkaHaryaUtama, the settlement of criminal cases involving children at the police level, in this case, the Lumajang Police PPA Unit is always sought to be completed through a restorative justice approach involving perpetrators, victims, families of victims, and other related parties. In this effort, the parties were asked to sit together to find a fair solution by emphasizing recovery, and not retaliation. BripkaIrdaniIsma stressed, "We as child investigators always strive to be able to do diversion for every case of Children in Conflict with the Law, namely by resolving cases of children outside the court process". Related to the implementation of diversionary efforts, then based on considerations and suggestions made by the Community Guidance Officers of the Penitentiary Center (PK-BAPAS), Social Workers (PEKSOS), and Social Welfare Workers (KESOS), investigators can refer to the offender's child, witness's children, or children of children victims, to agencies and / or institutions that deal with child protection, including social welfare institutions. However, up to now in Lumajang Regency there is no Safe House which should be used as a stopover for children during the process of examining cases or post-examination in court. During the investigation process, the investigating officer must be able to maintain the confidentiality of the child's identity, and not be allowed to carry out physical or psychological intimidation, threats, and torture. Officers are also not permitted to wear official uniforms during the investigation process for alleged criminal acts of Children Conflicted with Law.

Obstacles and Alternative Solutions to the Implementation of Law Number 11 the Year 2012

As for some of the obstacles faced by the Lumajang Police PPA Unit in handling children in conflict with the law during the investigation process using the Restorative Justice approach and resolution efforts through diversion as regulated in Law Number 11 the Year 2012 Concerning the Juvenile Justice System, including:

1. Limitations on the number of child investigators available, namely in Lumajang Police who have 21 police officers, there are only 5 child and female investigators, namely 3 policewomen and 2 police
2. Limitations on the number of Community Guidance (BAPAS) in Malang, amounting to 7 people to handle 7 regional territories (Malang Raya, Pasuruan Regency, Pasuruan District, Probolinggo District, Propolinggo District, and Lumajang District, so this also influences the schedule for the diversion.
3. In Lumajang there has been no change in regulations regarding the Perda of Child and Women's Protection as stipulated in UUSPPA, even though the Lumajang Regency Government has declared the Lumajang Regency Eligible for Children, so many infrastructure facilities that should have been available are not yet available, such as safe houses, one-stop services, areas - kid-friendly area, etc.
4. The availability of adequate budgeting is not yet available, because the new legislation without being accompanied by adequate budget changes affects the implementation mechanism. Example: Costs are still being charged for making the Diversity Agreement Determination by the Chairperson of PN Lumajang, which was previously not budgeted.
5. Not yet built up synergy between institutions that should protect children, because each related service/institution is still running partially.
6. The short amount of time determined for the completion of the diversion agreement effort until the Stipulation of the Chairperson of the Lumajang PN Chairperson 15 (fifteen) working days, because it is not uncommon to collide. For example, The case was caught red-handed last night, the police investigator had no holiday, but for the Public Prosecutor and the PN, there was already a holiday, so the diversion agreement

process could be delayed even though for daycarecenters in conflict with the law (for example safe houses) not yet in Lumajang.

Based on the obstacles that occur in the Lumajang Police PPA unit in the framework of implementing a restorative justice approach and the idea of a diversion resolution at the investigation level as stipulated in UUSPPA, namely Law Number 11 of 2012, several alternative solutions can be carried out including:

1. Need to be done and given training on diversion and restorative justice for law enforcement officials, so that in applying diversion to children in conflict with the law can be done properly and to equalize the perceptions of child investigators, child prosecutors and child judges about the best interests of children in the implementation of the System Criminal Justice for Children.
2. From the aspect of the wider community, a counseling about diversion ideas is needed so that the community will be of the importance of diversion in the administration of the juvenile justice system. Because educating children is important to prepare Indonesia's young generation to come. Introducing the law and teaching children to obey the law early on also needs to be done by parents and educators in schools. The law must also provide space for children to continue to develop and be protected according to their growth capacity. For this reason, it is hoped that young people in the future will be able to comply with applicable laws. Implementation of diversion in the juvenile criminal justice system can be used as a vehicle to educate children who have already committed crimes or violations of the law about the importance of obeying the law.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Based on the results of the discussion relating to the title of the research Implementation of Legal Protection Against Children Conflicting with Law Post the enactment of Law Number 11 the Year 2012 Regarding the Child Criminal Justice System (Study in Lumajang Police) can be given several conclusions, namely:

- a. The process of examining cases at the level of investigation for children in conflict with the law or children suspected of committing a crime has in principle referred to the Children's Criminal Justice System Law Number 11 of 2012 with limitations that exist in the Lumajang Police Resort PPA Unit.
- b. Legal protection is provided at the level of investigation, the process is carried out by prioritizing a restorative justice approach and diversionary resolution, namely issuing criminal cases that come out of trial mechanisms. This is an embodiment of the principle of child protection, especially the principle of non-discrimination which prioritizes the best interests of the child and protection of the right to life, survival and development of the child so that respect for children is needed, including for children who commit criminal acts. Besides that, correctional institutions are not a way to solve children's problems and precisely in correctional institutions prone to violations of children's rights This is what drives the idea of diversion, especially through the concept of restorative justice becomes a very important consideration in resolving cases of children in conflict with the law or children who suspected of committing a crime.
- c. Other forms of legal protection are during the investigation process or deliberations for diversion, children in conflict with the law or children suspected of committing criminal acts are always accompanied by parents, guardians, Community Guidance (BAPPAS), Professional Social Workers / Social Workers from the Social Service District. Lumajang and not infrequently teachers, village heads, and lawyers / legal advisors.
- d. The implementation of Restorative Justice reached in the diversion agreement can be done through activities such as resttusi, mediation of victims, and perpetrators/violators. Deliberation on family groups, recovery services in the community both victims and perpetrators, victim services, community restoration, or restorative fines. Restorative justice is a way to impose sanctions on children in conflict with the law by giving victims the right to actively participate in the diversion deliberation process.

Suggestions

Some suggestions that can be submitted to eliminate obstacles in implementing Law Number 11 of 2012 concerning the Law on the Criminal Justice System for Children, in dealing with cases involving children in conflict with the law at the investigation level, namely:

- a. There is a need for consistency and synergy in the implementation of child protection in Lumajang Regency, especially in this case, children who are in conflict with the law either by providing competent apparatuses through training and training, adequate and adequate facilities and infrastructure in adequate budgeting.
- b. Required changes in regulations in terms of child protection arrangements at the Lumajang Regency level as desired by Law Number 11 of 2012 concerning the Law on the Criminal Justice System for Children
- c. Legal counseling on the Child Protection Act and the Juvenile Criminal Justice System to the community needs to be constantly carried out, especially regarding the restorative approach and diversion.

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