

Legal Regulations against Children Committing the Crime of Murder

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Abstract

The purpose of this study is to examine how Legal Regulations against Children Committing the Crime of Murder. The type of research method used in this research is normative juridical. The result shows that the legal arrangements for children who commit the crime of murder are very clearly regulated in the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection where for 2 (two) children in conflict with the law have been snared in Article 76C in conjunction with Article 80 paragraph (3). In addition, the examination of cases conducted by law enforcement officers, especially judges and public prosecutors, uses case examination using the Juvenile Criminal Justice System as regulated in Law Number 11 of 2011 concerning the Juvenile Justice System.

Keywords

legal regulations;
children; crime;
murder



I. Introduction

Children are part of the younger generation who are the successors of the ideals of the nation's struggle as well as human capital for national development. This child born in Indonesia is very clearly the successor of the nation who has the rights and obligations to participate in building the Indonesian state and nation. The quality of these children is largely determined by the process and form of treatment of them today. Indonesian children are Indonesian people who are raised and developed as complete human beings, so that they have the ability to carry out their rights and obligations as rational, useful and responsible citizens.

Indonesian children as children of the nation mostly have the ability to develop them to be able to carry out their rights and obligations as citizens who are responsible and beneficial to fellow human beings. However, the current condition is also determined based on the physical and mental state of a child in becoming a role by giving birth to positive or negative personalities in carrying out their daily lives in the community. A child's mental weakness often allows him to be abused legally or illegally, directly or indirectly by the people around him without being able to do anything.

Children are the creation of God Almighty, must be protected and protected with respect, dignity, and self-respect in a reasonable manner both legally, economically politically, socially, and culturally without distinguishing between tribes, religions, races, and groups. Children must be guaranteed the right of life to grow and develop in accordance with the nature and nature. (Rizal et al, 2020)

Bad conditions for this child, can develop continuously and affect his life in the family, society and country. Situations like this can endanger the state, because basically the progress or decline of a nation really depends on the role of parents and families in educating their children. Therefore, child protection needs special attention in nation building. Children need to be protected from the negative impacts of rapid development,

globalization in the field of communication and information, advances in science and technology, as well as changes in the style and way of life of some parents that have brought about fundamental social changes in people's lives that greatly affect the value of children and child behavior.

In 1989, governments around the world agreed to promise equal rights for all children by adopting the United Nations Convention on the Rights of the Child. On January 26, 1990, the Government of Indonesia signed the Convention on the Rights of the Child as a result of the UN General Assembly which was adopted on November 20, 1989. Every child can grow up healthy, go to school, be protected, have their opinions heard, and be treated fairly.

Deviations in behavior or unlawful acts committed by the child, among others, are caused by factors from within the child (family) and outside the child (environment). Therefore, the role of parents in maintaining and educating children in the development towards adulthood is a major obligation. Before children grow and develop into adults, then before, these children will experience a period or world of children. Furthermore, it is the children's world that will shape and prepare for the maturation process later. Every child needs to get the widest opportunity to grow and develop optimally, physically, mentally, socially and with noble character.

II. Review of Literature

2.1 Theory of the Juvenile Criminal Justice System

Prior to the enactment of the Criminal Procedure Code, the criminal justice system in Indonesia was based on the Inlaands Reglement which was changed to Het Herziene Inlaands Reglement (HIR) Stbld. 1941 Number 44. In 1981, the draft law on criminal procedure law was ratified by the plenary session of the House of Representatives on December 23, 1981, then the President ratified it as Law Number 8 of 1981 concerning the Criminal Procedure Code, also known as the Book of Laws Criminal Procedure Code. The criminal justice system in the Criminal Procedure Code is in the form of an integrated criminal justice system. This system is based on the principle of functional differentiation among law enforcement officers in accordance with the process of authority granted by the law. The criminal justice system in Indonesia is regulated in a statutory regulation in this case is Law Number 8 of 1981 concerning Criminal Procedure Code.

The criminal justice system demands a harmonious relationship between administrative subsystems in the implementation of an integrated criminal justice system. Pragmatically, the issue of judicial administration in the criminal justice system is a significant factor in the principles of law enforcement and justice through an integrated criminal justice system subsystem. If the problem of judicial administration is not good in concept and implementation, the objectives to be achieved by the existence of an integrated criminal justice system cannot be realized and what happens is the opposite, namely the failure of the legal principles and principles that form the basis of the normative framework of an integrated criminal justice system. In relation to efforts to provide legal protection for children in conflict with the law, the juvenile criminal justice system must be interpreted broadly, it is not only interpreted as handling children who commit criminal acts. However, the juvenile criminal justice system must also be interpreted to include the root causes of why children commit crimes and their prevention efforts. Furthermore, the scope of the juvenile criminal justice system includes a wide variety and complexity of issues ranging from children making first contact with the police, the judicial process, conditions of detention, and social reintegration, including the perpetrators in the process.

2.2 The Concept of Children in Conflict with the Law

Children according to language are the second offspring as a result of the relationship between a man and a woman. In the preamble of Law no. 23 of 2002 concerning the protection of children, 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 succeeds the ideals of the nation's struggle, has a strategic role and has 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, both physically, mentally and socially, and with noble character. It is necessary to make efforts to protect and realize the welfare of children by providing guarantees for the fulfillment of their rights and treatment without discrimination. From this explanation, it can be seen that the legislators (DPR and the Government) have legal politics that are responsive to child protection. Children are placed in a noble position as a mandate from God Almighty who has a strategic role in ensuring the continuity of the existence of this country. Through Law no. 35 of 2014, the guarantee of children's rights is protected, and the Indonesian Child Protection Commission (KPAI) was even formed which has the responsibility to increase the effectiveness of child protection. It can be seen that the legislators (DPR and the Government) have legal politics that are responsive to child protection. Children are placed in a noble position as a mandate from God Almighty who has a strategic role in ensuring the continuity of the existence of this country. Through Law no. 35 of 2014, the guarantee of children's rights is protected, and the Indonesian Child Protection Commission (KPAI) was even formed which has the responsibility to increase the effectiveness of child protection. It can be seen that the legislators (DPR and the Government) have legal politics that are responsive to child protection. Children are placed in a noble position as a mandate from God Almighty who has a strategic role in ensuring the continuity of the existence of this country. Through Law no. 35 of 2014, the guarantee of children's rights is protected, and the Indonesian Child Protection Commission (KPAI) was even formed which has the responsibility to increase the effectiveness of child protection.

The handling of children in conflict with the law so far has not fully sided with the child and has taken into account the best interests of the child. One of the weaknesses in handling children in court, for example, is that there is no children's waiting room and when a juvenile court is held, there are still many court attributes attached to the room, such as judges' clothes, hammers, photos of the president, and witness podiums. This situation is clearly impartial and pays attention to the mentality of children, even though the handling of children in conflict with the law (AKH) 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 is carried out as the last step and for the shortest and most appropriate period, and that criminal penalties for children should be avoided from juvenile prisons.

III. Research Methods

The type of research method used in this research is normative juridical. According to Suratman and Philips Dillah, "Normative legal research is also called doctrinal legal research or library research or document study, because it is aimed at written regulations or other legal materials. This normative legal research was conducted through a literature study of legal materials, both primary legal materials, namely laws and regulations related to children dealing with the law, and secondary legal materials, namely literature related to the topic of research problems. The research method used consists of various methods and activities carried out in order to collect data from legal materials needed in order to complete the preparation of this research.

According to Peter Mahmud Marzuki, there are several kinds of approaches in research, namely:

- a. Legislative approach (statute approach)
- b. Case approach (case approach).
- c. Historical approach (historical approach).
- d. Comparative approach.
- e. Conceptual approach (conceptual approach).

IV. Results and Discussion

The Big Indonesian Dictionary (KBBI) states that children are the second descendant. In the preamble to the Child Protection Act, it is stated that children are a mandate and gift from God Almighty, who has inherent dignity and worth as a complete human being. Furthermore, it is stated that children are buds, potentials, and the younger generation who succeeds the ideals of the nation's struggle, has a strategic role and has special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Law Number 4 of 1979 concerning Child Welfare (hereinafter referred to as the Child Welfare Law) states that a child is a person who must obtain rights which then these rights can ensure proper growth and development both spiritually, physically and socially. Children also have the right to services to develop their abilities and social life.

Article 1 number 1 of the Child Protection Law states that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb". According to the Child Welfare Act, the definition of a child is a person who must obtain rights which then these rights can guarantee proper growth and development both spiritually, physically, and socially, or the child is also entitled to services to develop his abilities and life social. Children also have the right to care and protection both during the womb and after they are born. Child protection is the effort and activity of all levels of society in various positions and roles, who are fully aware of the importance of children for the homeland and nation in the future. If they have matured their physical and mental social growth, then it is time to replace the previous generation. Child protection is all efforts made to create conditions so that every child can carry out his rights and obligations for the development and growth of children naturally. Legal protection for children can be interpreted as an effort to protect the law against various freedoms and rights of children (fundamental rights and freedoms of children) as well as various interests related to the welfare of children. So the issue of legal protection for children covers a very broad scope.

In the constitution of the Unitary State of the Republic of Indonesia, where the 1945 Constitution of the Republic of Indonesia as the highest legal norm has outlined that every

child has the right to survive, grow and develop and is entitled to protection from violence and discrimination. The provisions of Article 1 number 12 of the Child Protection Law state that children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, state, government, and local governments. The principle of child protection also adheres to the principle of non-discrimination which instructs the state not to discriminate against children for any reason. No one should treat a child regardless of whether he or she comes from any ethnic, sect, economic or social group. Every child has the right to get justice for their rights without being limited by differences in ethnicity, skin color, religion, social status and so on.

All rights recognized and contained in the Convention on the Rights of the Child must be applied to every child without any distinction. This principle is contained in Article 2 paragraph (1) of the Convention on the Rights of the Child (hereinafter abbreviated as CRC) which states that "States parties respect and guarantee the rights set out in this convention for every child within their jurisdiction without discrimination in the form of regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property status, disability or not, birth or other status of the child himself or his guardian valid". Furthermore,

The principle of the best interests of children, something that adults think is good is not necessarily good according to the size of the child's interests. Considerations in decision-making regarding the future of children are not with the size of adults and are not centered on the interests of adults, therefore children should be involved in every policy making related to children.

This principle is stated in Article 3 paragraph (1) of the Convention on the Rights of the Child as abbreviated (KHA): "In all actions involving children carried out by government and private social welfare institutions, judicial institutions, government institutions or legislative bodies, the best interests of for children must be the main consideration (Article 3 paragraph 1 KHA)". This principle reminds all child protection providers that the considerations in making decisions are about the future of the child, not by the size of adults, let alone centered on the interests of adults. What according to the size of adults is good, is not necessarily good according to the size of interest. It may be that adults mean to provide assistance and help, but it destroys the future of the child.

The principle of child survival and development is a very large concept of child life and must be viewed as a whole for the sake of the child himself. This can be seen in the problems of everyday life that involve children's lives, especially in the selection of educational paths for children. Every child has an inherent right to life, and maximum survival and development must be guaranteed. This principle is contained in Article 6 paragraph (1) of the CRC which states that "States parties recognize that every child has an inherent right to life". Then in paragraph (2) states that "States parties will guarantee to the maximum extent the survival and development of children".

This principle has a very clear message that the state must ensure that every child will guarantee their survival because the right to life is something that is inherent in him, not a gift from the state or individuals. To guarantee the right to life means that the state must provide a conducive environment, adequate living facilities and infrastructure, as well as access for every child to obtain basic needs. The principle of respect for children's opinions emphasizes that children have personality autonomy. Therefore, children should not only be seen in a weak, accepting and passive position. The child has experiences, desires, imagination, obsessions, and aspirations, even children are very distinctive and often not understood by adults, and children have their own world and expectations which are certainly different from adults. This principle aims to give freedom to children in order

to develop their creativity and intellect. This principle is contained in Article 12 paragraph (1) of the CRC that "States parties shall ensure that children who have their own views have the right to express their views freely in all matters affecting the child, and these views will be respected according to their age level and maturity of the child".

4.1. Protection of Children under the Convention on the Rights of the Child

The protection of children according to the convention on the rights of the child begins with concern for children's problems which began to be recorded in the 1920s, after World War I. In that war, women and children suffered the most. Adult men may be injured but he can still hold his head proud of his heroic stories during the war. However, this is not the case with women and children who have to run, hide, be threatened and depressed both physically and psychologically during the war.

The juvenile criminal justice system is implemented based on the following principles:

1. The principle of protection, which is meant by the principle of protection, includes activities that are direct and indirect from actions that harm children physically and/or psychologically.
2. The principle of justice the principle of justice is that every settlement of a child's case must reflect a sense of justice for the child.
3. The principle of non-discrimination What is meant by the principle of non-discrimination is the absence of different treatment based on ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of children, order of birth of children, as well as physical and/or mental conditions.
4. The principle of the best interests of children
The principle of the best interests of children is that all decision-making must always consider the survival and development of the child.
5. The principle of respect for the opinion of children.
The principle of respect for children's opinions is respect for children's rights to participate and express their opinions in decision making, especially regarding matters that affect children's lives.
6. The principle of survival and child development.
The principle of survival and child development is the most basic human right for children who are protected by the state, government, community, family, and parents.
7. The principle of fostering and guiding children.
The principle of fostering and guiding children is an activity to improve the quality, piety to God Almighty, intellectual, attitude and behavior, skills training, professional, as well as physical and spiritual health of children inside and outside the criminal justice process.
8. Proportional principle
The principle of proportionality is that all treatment of children must show the limits of the needs, age and condition of the child.
9. The principle of deprivation of liberty and punishment as a last resort The principle of deprivation of liberty and punishment as a last resort is basically that children cannot be deprived of their liberty, unless forced to do so for the purpose of settling cases.
10. The principle of avoidance of retaliation
The principle of avoiding retaliation is the principle of avoiding retaliation in the criminal justice process.

The purpose of the Juvenile Criminal Justice System, according to Gordon Bazemore, states that the juvenile criminal justice system (SPPA) is different, depending on the paradigm of the juvenile criminal justice system adopted. There are three well-known juvenile justice paradigms, namely the individual treatment paradigm, the retributive paradigm, and the restorative paradigm.

1. The Goals of the Juvenile Criminal Justice System with the Individual Development Paradigm

The purpose of the juvenile criminal justice system with the individual development paradigm is the emphasis on the problems faced by the perpetrators, not on the actions/losses caused. This responsibility lies in the responsibility of the system in meeting the needs of the actors. The imposition of sanctions on the juvenile criminal justice system with the paradigm of individual development is irrelevant, incidental and generally inappropriate.

2. The Purpose of the Juvenile Criminal Justice System with a Retributive Paradigm

The purpose of the juvenile criminal justice system with a retributive paradigm is determined when the perpetrator has been sentenced, the goal of imposing sanctions is achieved by the fact that the perpetrator has been sentenced to a crime and with an appropriate, definite, worthy and fair punishment. The form of punishment is in the form of confinement, electronic supervision, punitive sanctions, fines and fees. The success of community protection is seen in the circumstances of whether the perpetrator has been detained, whether the recidivist is reduced by prevention or detention.

3. The Purpose of the Juvenile Criminal Justice System With a Restorative Paradigm

The purpose of the juvenile criminal justice system with a restorative paradigm for children is the principle of avoiding retaliation. As an effort to prevent children from retaliation in the criminal justice process, an effort is called restorative justice. Restorative justice is a settlement process that involves the perpetrator, the victim, the family of the perpetrator/victim, and other parties involved in a crime, jointly seeking a solution to the crime and its implications by emphasizing the restoration of its original state.

Restorative justice is a concept of thought that responds to the development of the criminal justice system by emphasizing the involvement of the community and victims who feel excluded from the mechanisms that work in the current criminal justice system. On the other hand, restorative justice is also a new frame of mind that can be used in responding to a crime for law enforcement and legal workers. An investigation is a series of actions carried out by an investigating official in accordance with the method in the law to seek and collect evidence, and with that evidence make or become clear on the criminal act that occurred and at the same time find the suspect for the perpetrator of the crime.

Investigators who are directly related to the enforcement of children's rights include the following:

1. Arrest

Arrest is an investigator's action in the form of temporary restraint on the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or trial in matters and according to the method regulated in this law (Article 1 Point 20 of the Criminal Procedure Code).

Article 30 of the SPPA Law states that:

- 1) The arrest of a child is carried out for the purpose of investigation for a maximum of 24 (twenty four) hours.
- 2) Arrested children must be placed in a special child service room.

- 3) In the event that a special service room for children does not yet exist in the area concerned, the child is deposited in the LPKS.
- 4) The arrest of children must be carried out humanely by taking into account the needs according to their age.
- 5) The cost for each child placed in LPKS is borne by the budget of the ministry that carries out government affairs in the social sector.

2. Detention

Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with his determination according to the method regulated by law. Van Bemmelen said detention is a beheading that cuts both parties because this cruel act can be imposed on people who are not necessarily guilty.

Article 32 of the SPPA Law states that:

- 1) Detention of a child may not be carried out in the event that the child receives a guarantee from the parent/guardian and/or institution that the child will not escape, will not destroy or destroy evidence, and/or will not repeat the crime
- 2) Detention of a child can only be carried out under the following conditions:
 - a. The child is 14 (fourteen) years old or more; and
 - b. Suspected of committing a crime with a threat of imprisonment of 7 (seven) years or more.
- 3) The terms of detention as referred to in paragraph (2) must be stated explicitly in the detention order.
- 4) As long as the child is detained, the child's physical, spiritual and social needs must be met.
- 5) To protect the safety of the child, the child can be placed in LPKS.

Prosecution is explained in Article 1 point 7 of the Criminal Procedure Code that "Prosecution is prosecuting a defendant before a criminal judge by submitting the case of a defendant with his case file to the judge, with a request that the judge examine and then decide the criminal case against the defendant". Legal protection of children's rights during prosecution is specifically regulated in Article 41 and Article 42 of the SPPA Law. Article 41 of the SPPA Law states that "Prosecution of children's cases is carried out by the public prosecutor determined by the decision of the Attorney General or other officials appointed by the attorney general". The requirements to be appointed as a public prosecutor in a child case are as follows:

1. Has experience as a public prosecutor;
2. Have interest, attention, dedication and understanding of children's problems; and
3. Has attended technical training on juvenile justice.

The criminal justice process is a juridical process, where the law is enforced without compromising the freedom of expression and defense where decisions are made with certain motivations. The rights that need to be considered and fought for are:

1. Rights are enforced as those who have not been proven guilty;
2. The rights to be protected from harmful actions, causing mental, physical and social suffering;
3. The right to receive assistance from legal counsel;
4. The right to receive transportation facilities and counseling in participating in facilitating inspections;
5. Right to express opinion;
6. The right to a closed trial in his interest;
7. The right to receive humane guidance in accordance with Pancasila and the 1945 Constitution and the idea of a correctional facility;

8. The trial as far as possible is not postponed, as a consequence, careful preparation before the trial begins;
9. The right to be able to relate to parents and their families.

The trial examination of children's cases is carried out by a judge who is determined based on the decision of the Chief Justice of the Supreme Court at the suggestion of the Head of the District Court concerned through the Head of the High Court Article 44 of the SPPA Law states that "Judges examine and decide cases of children in the first instance with a single judge". In the process in court, the head of the court is obligated to appoint a judge to handle a child case no later than 3 (three) days after receiving the case file from the public prosecutor

The trial of children's cases is closed in order to create an atmosphere of calm and full of kinship, so that children can express all events and feelings openly and honestly during the trial. In the trial process, in principle, children are tried in a special children's court room and a children's court waiting room which is separated from the adult court waiting room. The time for the trial of children takes precedence over the time of trial for adults. In addition, the judge examines children's cases in a trial which is declared closed to the public, except during the reading of the verdict. In a child's trial, the judge is obliged to order parents or guardians, community counselors, advocates or other legal aid providers to accompany the child.

V. Conclusion

The legal arrangements for children who commit the crime of murder are very clearly regulated in the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection where for 2 (two) children in conflict with the law have been snared in Article 76C in conjunction with Article 80 paragraph (3). In addition, the examination of cases conducted by law enforcement officers, especially judges and public prosecutors, uses case examination using the Juvenile Criminal Justice System as regulated in Law Number 11 of 2011 concerning the Juvenile Justice System.

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