



Legal Analysis of the Imposition of Sanctions for Children as Perpetrators of Criminal Acts of Abuse Resulting in Death

Imam Dharmawan Ruslan; Syamsuddin Muchtar; Haeranah

Faculty of Law, Hasanuddin University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i3.1514>

Abstract

This study aims to determine the arrangements for imposing sanctions on minors who commit criminal acts of persecution resulting in death and to determine the legal considerations of judges in passing verdicts of torture that result in death with the principles of protecting children's rights. This research method uses qualitative research then presented descriptively. Data collection techniques were done through literature assessment, field research, and direct interviews. The results showed that children who are in conflict with the law have rights that must be maintained. The arrest, detention, and imprisonment carried out are the last resort, the placement of children deprived of liberty must be separated from adults, in cases of abuse that must be kept secret to prevent labeling and children in conflict. Sanctions given to children on some of these decisions are not a means of revenge but in order to provide a deterrent effect so that children do not repeat their actions. To the Law Enforcement, the judge in giving his decision must consider the condition of the child as the perpetrator of the crime, regarding the ability to account for his actions.

Keywords: *Law; Imposition of Sanctions; Children; Criminal Acts*

Introduction

Crimes in the form of mistreatment or even cause death or injury to someone either intentionally or because of errors and neglect has caused unrest in the community (Fletcher, 1998). For this reason, in realizing the peace and prosperity of the community, in order to enjoy legal certainty, legal order and legal protection which is centered on justice and truth, the state has created legal rules and sanctions for the perpetrators according to the form of crime that has been committed, as stipulated in the Criminal Code (Shova, 2017).

The facts show that the type of crime is increasing in addition to the more rapid development of industrialization and urbanization. Children who violate the norms that live in society and commit a crime can be said as children who are dealing with the law. Children who are dealing with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts (Fahrurrozi, 2015). Criminal acts committed by children are similar to those committed by adults, the main difference lies in the perpetrators, namely those committed by children. The age limit is usually used as a benchmark for the extent to which a child can be held accountable for

his crime in examining child crime, special rules that are used as the basis, namely Law Number 11 of 2012 concerning the Juvenile Justice System, amendments to Law No. 3 of 1997.

In fact, there are still many judges' decisions that are not appropriate and running as mandated in Law No. 11 of 2012, namely because there are still many children who are dealing with the law, which should have received protection and diversion but were not carried out by law enforcement officials at the police, prosecutors level. , until the judge's decision.

The high number of children who have deviant behavior (delinquency) needs to receive serious attention, so that children who are expected to become potential future generations will be protected. Efforts to protect children who have problems with the law have been carried out, both at national and international levels (Boothby & Stark, 2011; Eleanora & Sari, 2019). Globally and internationally the attention of the world to children begins with the Geneva Declaration on the Rights of the Child in 1924, which is recognized by the international community through formal statements in the United Nations Declaration of Universal Declaration of Human Rights. Likewise in the Convention on the Rights of the Child (Convention on Children The Right of The Child) UN Resolution 40/25 dated 20 November 1989 expressly states legal guarantees that must be given by participating countries to children who commit criminal acts (Herwin, 2019).

According to Arief (2007) Legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights as well as various interests related to child welfare. So, the problem of legal protection for children covers a very broad scope. This is evident from the many international documents / instruments relating to the problem of children. Therefore, the Constitutional on the Rights of the Child (KHA) with Presidential Decree No.36 of 1990 has opened a new chapter in the application of international instruments in juvenile justice in Indonesia. Legal actions taken against children under the age of 18 must consider the best interests of the child. This is based on the assumption that children cannot commit crimes or inculx and cannot be fully responsible for their actions (Achmad, 2005).

The issue of legal protection for children requires special attention, special consideration, special services and special treatment as well as obtaining special protection for children in legal and judicial matters. This study aims to determine the arrangements for imposing sanctions on minors who commit criminal acts of persecution resulting in death and find out the legal considerations of judges in passing verdicts of torture that result in death with the principles of protecting children's rights.

Methods

This research method uses qualitative research then presented descriptively. The research location chosen by the researcher in collecting data to support this research is in the jurisdiction of the Sungguminasa District, Gowa Regency. Data collection techniques through literature assessment, field research, and direct interviews. Primary data is data obtained from interviews and secondary data in the form of data obtained through literature, articles, regulations and other documents. Data obtained through research activities both primary and secondary data were analyzed qualitative research then presented descriptively.

Results and Discussion

Regarding the types of sanctions given to minors according to Law Number 11 of 2012 concerning the Juvenile Justice System, the severity of the actions, the personal circumstances of the child, the circumstances at the time the act was committed or what happened then can be used as a basis for the judge's basic consideration for not impose penalties or impose actions taking into account aspects

of justice and humanity, and the following types of sanctions are given to minors: (1) Criminal warnings; (2) Criminal conditions: coaching outside the institution, community service; or supervision, job training, coaching in work, and prisons. The additional crimes consist of deprivation of profits derived from criminal acts, and fulfillment of customary obligations.

The age limit for minors that can be imprisoned is 14 (fourteen) years to 18 (eighteen) years because in that age there is an increase in emotional terms, the child becomes more aggressive, if the child commits a crime within the age limit of that child sanctions will be given in accordance with the offenses committed by the child, if the child commits a serious criminal offense to eliminate the lives of others then the child will get a penalty of imprisonment with the judge's consideration first, but if the child gets imprisonment sanctions can have an impact bad on the psychological condition, we know where the childhood is a time when someone really needs love, especially from parents or guardians to be able to develop and learn like children in general. This situation will not be found if the child is placed in a correctional facility that is bounded by high walls and in an environment that is not harmonious between one and another (Marlina, 2009). Crimes cannot always be understood by children, the criminal often leaves scars in their hearts. The high crime rate that ends in imprisonment, shows that this type of crime is ineffective and has not reached the desired goal.

The imprisonment imposed is intended so that the child becomes a deterrent and does not want to repeat his crime again, it is not uncommon to reduce the child's self-esteem and cause deep resentment. Imprisonment does have a negative impact on a child's psychology, these effects could include the child's loss of self-confidence, fear and so on. The impact is not only psychologically, but there are 2 (two) other major impacts on the imprisonment of children, namely the social dimension, namely the child in prison thinks that he has been discarded by the community, the risk is definitely psychological, if he is a dignified person his dignity will be fall, the dimension of education that is people who are in prison most likely do not have the opportunity to continue their education.

Persecution in the Criminal Code

Legislation regulates various types of sanctions given that in reality a child may commit or be involved in various criminal cases. This type of criminal sanction also describes the severity or the frequency of the actions committed by a child. Types of sanctions that are appropriate for the case of a child who has committed abuse resulting in death.

Acts of mistreatment or mishandeling are regulated in Chapter XX, book II of the Criminal Code, which is contained in Article 351 paragraph (1). In the formulation of Article 351 of the Criminal Code, that the law only talks about "persecution" without mentioning the elements of the criminal act of persecution itself, except only to explain that "intentionally harming health" (others) is the same as persecution. What is meant by persecution is intentionally causing pain or causing injury to other people's bodies. To mention that a person has mistreated another person, then that person must have opzet or an intentional to, cause pain to others, cause injury to other people's bodies or harm the health of others, in other words that person must have intentional aimed at actions to cause pain to others or to cause injury to the body of others and harm the health of others.

To be able to be called as a persecution, it does not need to be intentionally done directly by the perpetrators aimed at making the other person feel sick or become disrupted, but the pain or disturbance of the health of the other person may occur as a result of the intentional perpetrators indicated in other actions.

According to researchers, children's inner attitudes that abuse others can be categorized as intentional. The element of intentionality is that who intentionally will be subject to sanctions, what is

intended intentionally is to want and know that if a person commits a criminal act intentionally must want what he does, and must also know what he is doing along with the consequences. Based on the case examples there is an average child who commits a criminal offense based on deliberate intentions to hurt others. Many things become the background of the child abuse including revenge for hurting others. In criminal law, if there is an intentional element, then the sanction must apply in accordance with what has been violated. A child who commits a criminal offense that causes death intentionally must receive a sanction, even though the child in Indonesia receives legal protection, but if the child harms a person, he/she must still get the sanctions contained in the applicable law in Indonesia.

The conclusion in these cases if the element of "intentionally" has been proven, then the child is worthy of responsibility for his actions in the form of imprisonment for having committed a criminal offense to eliminate the lives of others.

Number of cases of persecution in 2016 to 2019

Based on the results of research conducted by researchers at the Sungguminasa District Court, Gowa Regency, that the number of cases of abuse committed by minors and who have received court decisions is amounted to 6 (six) cases. Namely the first in 2016 there were 1 case with a 5 year imprisonment sanction, second in 2017 there was 1 case with a 3 year imprisonment sanction, third in 2018 there was 1 case with a 4 year prison sentence and then the fourth in 2019 there were 3 cases with 2 years imprisonment imposed.

From the results of the study show that the criminal acts of abuse committed by minors experience an increase from each year and from the imposition of sanctions also vary, depending on the extent of the role of children in committing crimes.

Judge's Legal Considerations in Dropping the Decision of Criminal Acts of Abuse Resulting in Death

Protection of children's rights will be carried out in an orderly, orderly and responsible manner so that legal regulations are needed that are consistent with the development of Indonesian society. In relation to the issue of legal protection for children, in Article 28B paragraph (2) of the 1945 Constitution, stresses the seriousness of the government in protecting the rights of children. Before discussing deeper the principles of protection of children's rights, talking about Law Number 35 of 2014 amending the Law Number 23 of 2002 concerning Child Protection, the law discusses all about the protection of children especially the rights of children, because children have the right to do anything but do not violate the law and the children's rights must be protected by the Indonesian government.

The regulations on children are regulated in Law Number 11 of 2012 concerning the Juvenile Justice System. In the Law on Juvenile Justice there are no rules on the rights of children, the law only regulates the juvenile justice system, therefore the government establishes a law so that children are entitled to have a right contained in the Act.

Law Number 35 of 2014 changes to law Number 23 of 2002 concerning Child Protection. There are several children's rights contained in the Law on Child Protection. With the rights possessed by the child that plays a role in guaranteeing the fulfillment of these rights is the state, government, community, family, and parents are fully responsible and responsible for the implementation of child protection.

Speaking of children's rights, children's rights are a part of human rights that are guaranteed, protected, and fulfilled by parents, families, communities, governments, and the state. Legal protection and its rights for children are one of the approaches to protecting Indonesian children. The principles of

protection of children's rights according to Law Number 35 of 2014 amendments to law Number 23 of 2002 concerning Child protection are to provide welfare, care, care and guidance based on love both in the family and in special care for growth and develop naturally. Referred to as care is a variety of efforts made to children who do not have parents and neglected, and children who experience problems will be returned to a substitute parent or family so that they can grow and develop properly, both spiritually, physically and socially.

Children also have the right to protection of the environment which can harm or hinder their growth and development properly. Every child has the right to receive protection from the targets of torture, torture, and rule of law, the child has the right to obtain freedom in accordance with the law as in other countries (Jauhari, 2014). Arrest, detention, or criminal offenses of children are only carried out if in accordance with applicable law and even then only be done as a last resort if the child violates the law.

Special protection for children who violate the law includes children who commit criminal acts is the obligation and responsibility of the government. For children who commit crimes, the treatment given to children must be humane in accordance with the rights of the child. Imposition of sanctions against children must be appropriate in the best interests of the child, not only that continuous monitoring and recording of the development of children in conflict with the law. Children who violate the law are specifically protected by certain institutions, but children who have violated the law will still get the right sanctions and make a deterrent, so as not to repeat them again.

Potential Rights Violated at the Level of Criminal Implementation

Cases of abuse that result in death must be subject to sanctions imprisonment while still protecting the rights of children as follows: (1) General, namely the child has the right to receive protection from torture, torture, imprisonment, and obtain freedom according to the law, obtain health services and social security; Children can get protection from the abuse of political activities, involving arms disputes, involving social unrest, involving events that contain elements of violence and involvement in warfare. (2) Specifically, among others: Obtaining health services and social security, Obtaining education and teaching; Children with disabilities receive rehabilitation, social assistance, and maintenance of social welfare; The right to be cared for by his own parents.

The reason why the purpose of regulating general and special rights for children is because in Indonesia children receive protection as stipulated in Law Number 35 of 2014, amendments to law Number 23 of 2002 concerning Child Protection. Even though the child gets sanctions for having committed a crime, but still must get their rights while the child is serving a sentence. Because prison sanctions imposed on children have the potential to violate the right of children to live and grow, get health care and social security, obtain proper education and teaching, and the right to be cared for by their own parents.

Specifically, the imposition of sanctions against child offenders is regulated in Act Number 11 of 2012 concerning the Juvenile Justice System. Sanctions for children differ from sanctions against adults who commit criminal acts or who violate the law, and therefore the Law on the Juvenile Justice System regulates the sanctions imposed on minors who commit crimes.

Sanctions given to minors who commit criminal acts of persecution that result in death of someone, if seen from Article 354 paragraph (3) of the Criminal Code confirms that "if the act causes the death of a person, then the guilty person shall be sentenced to a maximum imprisonment of seven years", but if a minor who commits a criminal offense that results in death will be given a sanction that is less than 7 (seven) years in prison because the sanction imposed on the child is not the same as an adult or $\frac{1}{2}$ (one half) of the sanction given to adults.

Sanctions imposed on children by imprisonment (deprivation / revocation of independence) by a judge are still the main means of imposing criminal sanctions on children. However, it should be seen whether the imprisonment of imprisonment is consistent with the principles of child protection. In the Child Protection Act, indeed the child must be protected by all of his rights, but still if the child commits a crime that can harm a person, the child must still get sanctions that have been applied in the Juvenile Justice System Law. In the opinion of researchers, imprisonment still needs to be imposed on children in serious cases such as taking the lives of others. However, given the imprisonment can have a negative impact on children with mental development, so in practice, children must get education, coaching, so that the mental child is not disturbed, children who get imprisonment still have to get legal protection, they deserve education even if the child in prison.

In Act Number 35 of 2014 changes to Act Number 23 of 2002 concerning Child Protection. Children are given the right to grow, develop, and participate appropriately according to human dignity and dignity and get protection from violence and discrimination. In Law 11 of 2012 concerning the Juvenile Justice System, children have the right to be free from torture, punishment or other cruel, inhumane and degrading treatment. If a child is sentenced to prison, then the possibility arises that the child will get violence from elements in the LPAS. The child does not get direct protection from his parents, so the protection is given to the State, and especially to the officers in LPAS. Criminalization has the potential to influence a child's psychological development so that the child cannot participate properly as is the case for children who are free.

In Law Number 35 Year 2014, amendments to Law Number 23 Year 2002 concerning Child Protection, children are given the right to obtain an identity from a nationality. In Law Number 11 Year 2012 concerning the Juvenile Justice System, children's identities will not be published. The trial with the defendant was held in private. If a child is subject to imprisonment, the child is protected by his or her dignity by hiding his or her identity in reporting this matter in order to avoid stigmatization of the child. So that when the criminal justice process is finished, the child can re-mingle with the community with their original identity without the burden of stigma from the community.

In Law Number 35 Year 2014, amendments to Law Number 23 Year 2002 concerning child protection, children are given the right to know their parents, to be raised and raised by their own parents. In Law Number 11 Year 2012 concerning the Juvenile Justice System, children can get the assistance of a parent or guardian trusted by the child. If a child is sentenced to imprisonment, then the child can temporarily be raised and cared for by his own parents, the impact of the child will be less attention from his parents will have a negative impact on the child's psychological but it is only temporary, parents are freed to keep a look children in LPAS.

In Law Number 35 Year 2014, amendments to Law Number 23 Year 2002 concerning Child Protection, children are given the right to health services and social security. In Law Number 11 Year 2012 concerning the Juvenile Justice System, children are entitled to health services. If a child is imprisoned, in reality the child is not always provided with health services. Not every LPAS provides proper health services for children. Health care is only provided if a child suffers from illness and to obtain it must go through complicated procedures. Prisoners must first report to the prison director if they want to get health care.

In Law Number 35 Year 2014, amendments to Law Number 23 Year 2002 concerning Child Protection, children are given the right to receive proper education and teaching in the context of developing their intelligence. In Law Number 11 Year 2012 concerning the Juvenile Justice System, children are entitled to education. If a child is subject to imprisonment, then the child does not get education and teaching, whereas it should, children who undergo imprisonment must have an education and teaching.

In Law Number 35 Year 2014, amendments to Law Number 23 Year 2002 concerning Child Protection, children are given the right to obtain protection from inhumane torture, torture and sentencing. In Law Number 11 Year 2012 concerning the Juvenile Justice System, the length of punishment for children is half of the sanctions for adults, and for a child can not be sentenced to death, meaning that the regulation of the imposition of sanctions for children in both Acts is consistent. The fact is that children who are undergoing detention often get ill treatment, such as sexual harassment, torture, and others.

In Law Number 35 Year 2014, amendments to Law Number 23 Year 2002 concerning Protection, children who are victims or perpetrators of criminal offenses are entitled to legal assistance. In Law Number 11 Number 2012 concerning the Juvenile Justice System, children are entitled to receive legal assistance and other assistance effectively. If a child is subject to imprisonment, the child receives legal assistance. Provision of legal assistance by lawyers is regulated in Law Number 18 of 2003 concerning Advocates. Children who are victims and perpetrators are entitled to legal assistance. For those who cannot afford an advocate, they are required to provide free legal assistance. For those who are able to advocate have the right to get an honorarium from their clients who have received legal assistance.

Based on various explanations, the regulation on the punishment of children in Law Number 11 Year 2012 concerning education, skills training, guidance and fulfillment of rights so that they do not have a negative psychological impact on the child, even if the child is in the child's LPKA (Special Guidance Institution) continue to live the days as usual. The juvenile justice system is consistent with Law Number 35 of 2014 amending the Law Number 23 of 2002 concerning Child Protection. Both of these Laws place children as subjects that must be protected, it's just that deviations from the two Laws are very likely to occur at the level of criminal justice.

Conclusion

Children in conflict with the law have rights that must be maintained. The arrest, detention and imprisonment carried out are the last resort, the placement of children deprived of liberty must be separated from adults, in cases of abuse that must be kept secret to prevent labeling, and children in conflict. Sanctions given to children in some of these decisions are not a means of revenge but to provide a deterrent effect so that children do not repeat their actions.

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