



Legal Protection of Children as Perpetrators of Theft in the Investigation Process in Kerinci Police Resort

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Abstract

The writing of this journal in the form of research results based on theoretical problems in the implementation of the legal protection of children who commit criminal acts, especially the crime of theft in Indonesia Juvenile Criminal Justice System Law Number 11 of 2012 (IJCJS Law), provides guarantees of protection of children's rights seen from the rules contained therein so that in solving child cases, children can still grow and develop optimally without having to Lost their rights. The granting right of the child abuser because the child as the perpetrator also considered as the child of the victim, then child protection is all activities to guarantee and protect the child and his rights to live, grow, develop and participate optimally by the dignity and dignity of humanity, and get protection from violence and discrimination. Granting children's rights as perpetrators of criminal acts of theft in the investigation process in Kerinci Police Resort with Article 3 of IJCJS Law. Still, in practice, some rights are neglected. Everyone must uphold children's rights, but unfortunately, in the implementation of law enforcement, problems often experience obstacles and obstacles both caused by internal factors and external factors that affect the implementation of legal protection against Children perpetrators of criminal theft in Kerinci Police Resort. The purpose of this study is to outline how the investigation process should be and the rights that must fulfilled for children in the investigation process in Kerinci Police Resort. To achieve this goal, researchers use an empirical juridical approach that examines laws and regulations and looks at the reality seen from the perspective of the application of the law.

Keywords: *Legal Protection; Child Theft Investigation; Juvenile Criminal Justice System*

Introduction

Children are legal subjects and national assets that must grow into a generation that has the potential to participate in national development to achieve the goals of the Unitary State of the Republic of Indonesia as stated in paragraph IV of the Preamble to the Constitution of the Unitary State of the Republic of Indonesia. Therefore, the state must protect children who are still in the stage of finding their identity in their growth and development, especially when facing or in conflict with the law. Children as perpetrators of crimes are also considered as victims. Child protection is a child as a victim, witness, and perpetrator. Who should reaffirm that children are subjects, not objects because every child has dignity and must be protected to achieve the child's best interests. The best welfare for children is paramount because:

- a. The child of potential and successor to the ideals of the nation whose foundation has been laid by previous generations;
- b. For all children to assume responsibility, they have the opportunity to grow and develop reasonably;
- c. In society, children experience barriers in their mental, physical, social and economic well-being;
- d. The child can take care of himself;
- e. Removing these obstacles can only be implemented and achieved in the best interests of the child are guaranteed (Gultom 2013).

Human rights are often defined as rights inherent in human nature so that without those rights we cannot achieve human dignity. And that is why it is also said that such rights are inalienable and cannot be violated. Unveiling UDHR (*Universal Declaration of Human Rights*) dimulai dengan kata-kata: "...revognition of the inherent dignity and of the equal an inaliabie rights of all members of the human family...". The word equal here means that there should be no discrimination in state protection or state guarantees of the rights of such individuals (Reksodiputro 2020).

The definition of human rights by experts varies. However, the understanding of the disease certainly will not be too much different and have the same rights in the same order of magnitude. The difference in understanding of rights is motivated by the way people view the truth itself. Human rights have a natural, permanent, and universal nature given by God and cannot be discriminated against or should not be usurped by any person and any institution (Trimarlina, Sujana, and Putu 2019). As explained by Marjono Reksodiputro, even though a citizen has committed despicable or highly reprehensible acts (causing great moral chaos or anger in society), rights as citizens are not erased or lost (whether as suspects, defendants or convicts) (Atmaja Nr 2017).

The independence of the child must be protected and developed to obtain the right to life and the right of protection. Children's rights relate to human rights in the sense that child protection must receive special attention to obtain full human rights. Child protection is any form of activity to ensure and protect the child and his rights. In essence, the child cannot protect himself from various types of actions that can harm himself, so the protection of the child cannot be understood where protecting the child only his family or parents. There is a responsibility of the state, the government, to assume responsibility for the respect and fulfillment of the child's rights without discrimination. Child protection is all activities aimed at protecting children and their rights, the rules on human rights stipulated in children's rights become accommodated in the Child Protection Act and specifically also accommodated in the Law of the Criminal Justice System of Children (the principle of the implementation of child justice in Indonesia).

In its development, Indonesia has special rules for child protection, that is Law Number 4 of 1979 on Child Welfare, Law No. 3 of 1997 on Child Courts which is further replaced by Indonesia Juvenile Criminal Justice System Law Number 11 of 2012 (IJCJS Law) and Law Number 35 of 2014 on changes to Law Number 23 of 2002 on Child Protection. The establishment of these rules makes it clear that the state cares deeply about children's rights and protects them. Everyone should respect the rights of children. But unfortunately, in implementing law enforcement problems there are often obstacles and obstacles caused by both internal and external factors (Wahyudhi 2015).

Child protection based on Law Number 35 of 2014 on Child Protection Article 72 emphasizes the participation of the community in the implementation of child protection both individually and in groups. Child protection is all activities to ensure and protect the child and his rights to live, grow, develop, and participate optimally by the dignity and dignity of humanity and get protection from violence and

discrimination. Thus, children also need protection from the misimposition of laws and regulations applicable to them, resulting in mental, physical, and social harm. In this case child protection is known as legal protection/juridical (Abdurrachman, Sudewo, and Permanasari 2015).

Children who commit a criminal offense in English are called "Juvenile Delinquency," which is often referred to as a child crime. This term was first used in *United Nations Standart Minimum Rules For The Administration Of Juvenile Justice* (Beijing Rules) (Mofaryani, Sukinta, and Cahyaningtyas 2018) According to Kartini Kartono (1992:7) Juvenile delinquency is "Juvenile behavior or juvenile crime/delinquency, is a symptom of a disease (pathology) in children and adolescents caused by a form of social neglect so that they develop a form of neglect of deviant behavior" (Sutedjo 2017).

We must pay attention to the presence of the child, especially his behavior. As children get older, children sometimes behave out of control, they can do bad things to hurt others and themselves. Children who commit crimes/ crimes require special courts and special officials. Children who are faced with the law are handled through a special court institution, as they cannot be treated the same as adults, ideally handling children, child coaching should be done symptomatic (overcoming symptoms that arise) because it treats the child's events together by treating people who are sick. When it comes to child crime, it is a very serious problem and can lead to other avenues that cannot always be addressed alone but must be solved together with parents, society and government.

Develop the rights of children in criminal justice proceedings to ensure legal protection of children. A form of justice is the equal exercise of rights and obligations. The enforcement of rights and obligations for children who commit criminal acts requires help and protection. It is necessary to emphasize that the child's obligations are fulfilled by the situation, mental, physical, social conditions, and abilities and get facilities that suit their needs. Until now, many children commit crimes in everyday life, especially children who commit the crime of theft. More details can be seen in the table that the author describes below:

Table 1: Number of Children as Perpetrators of Theft in The Investigation Process in Kerinci Police Resort in 2016-2019

No.	Year	Number of Cases	Information
1	2016	4	Cases: 1. Violent theft (Phase II/P21) with Article 365 of the Criminal Code (3 Cases) 2. Theft by tampering (DIVERSION) with Article 363 Paragraph (1) of the 5th Criminal Code
2	2017	3	Cases: Theft committed by two or more persons (Phase II/P21) with Article 363 Paragraph (1) of the 4th Criminal Code (3 Cases)
3	2018	4	Cases: 1. Theft (DIVERSION) with Article 363 of the Criminal Code 2. Theft (Phase II/P21) with Article 363 of the Criminal Code (3 Cases)
4	2019	2	Cases: 1. Theft (Phase II/P21) with Article 363 of the Criminal Code 2. Theft (DIVERSION) with Article 363 of the Criminal Code
Amount		13 Cases	

Source: Kerinci Police Resort PPA Unit (2016 to April 2019)

Based on table 1 data on the number of cases from 2016 to April 2019, there were 13 cases of children as perpetrators of theft crimes in Kerinci Police Resort. Many events and events can be evidence that children have not been able to get legal protection in the investigation process with IJCJS Law. Current legal frameworks and policies are conducive to promoting children's rights but have some gaps. The legal framework should define government agencies and clear duties, authorities, and responsibilities

towards handling and providing child protection services because there are still shortcomings and weaknesses in protecting children's rights (especially as perpetrators) in criminal proceedings. There are those who still do not know the rights of children that should be given to them.

Based on what is stated above, it can be formulated the following problems: *First*, what is the form of legal protection against children perpetrators of theft crimes in the investigation process in Kerinci Police Resort? *Second*, what factors affect the implementation of the legal protection of children as perpetrators of theft in the investigation process in Kerinci Police Resort?

In the previous research, the first article entitled Implementation of Diversion Agreement at the Level of Investigation in the Juvenile Justice System discussed the name of the implementation of the diversion agreement at the level of investigation in the Kerinci Police Resort (Nurhaliza, Liyus, and Wahyudi 2021); The second article, is The Investigation of Criminal Acts Committed by Minors According to Law Number 35 of 2014 concerning Child Protection, discusses the extent to which legal protection can be applied or carried out by an underage suspect, has committed a criminal act under Law Number 35 of 2014 concerning Child Protection. The articles remain focused on how to resolve a child's case in the investigation process with an emphasis on diversion and children's rights under Law Number 35 of 2014 on Child Protection. This article is different from the previous article, which focuses more on the process of investigating Children perpetrators of theft crimes committed in Kerinci Police and what external and internal factors affect the implementation of the legal protection of children as perpetrators of theft crimes in the investigation process in Kerinci Police Resort with IJCJS Law. With these efforts, it is expected that investigating criminal acts committed by children can be carried out without depriving the child of rights and future.

Research Method

The research method used in this article is an empirical juridical method, commonly referred to as field research, by reviewing the provisions of applicable law and legal reality. This empirical juridical research discusses the implementation of normative law provisions or legislation that apply to the legal protection of children as criminals in investigating social research or social environment to clarify the facts, which then leads to identification (Muliawati and Setyowati 2019). The areas targeted for this research are the jurisdiction of process in Kerinci Police Resort with IJCJS Law in Kerinci Regency and Sungai Penuh City, Jambi Province. The sampling method used in this research is by way of Purposive Sampling, which is sampling based on task and job criteria that can answer the problems raised by the author. Where the respondents understand and know all the things studied and considered to represent all populations. Based on these criteria, the respondents were three Kerinci Police Resort PPA Investigators, Head of Kerinci Police Resort PPA Unit, six children as criminals, and two P2TP2A officers to support the discussion to be analyzed in this study. Primary data sources were obtained directly from field research through predetermined and secondary respondents obtained from literature research. From the data collected, both primary data and secondary data, selected and classified in the form of qualitative analysis, then concluded.

Research Result and Discussion

Form of Legal Protection of Children as Perpetrators of Theft in the Investigation Process in Kerinci Police Resort

Kerinci Police Resort is the command structure of the police/implementing the duties of the Republic of Indonesia police in the district/city area. One of the duties / authorities of the Kerinci Police is to carry out investigations, detentions, and investigations in the field of Justice. As for the criminal case

handled by Kerinci Police Resort, one of them is a Criminal Case whose perpetrator is a Child. The case of child crimes in Kerinci Police Resort jurisdiction is not a criminal offense that is quite high, but still classified as a criminal offense that deserves attention.

From the data source of the Kerinci Police Resort PPA Unit, the perpetrators of theft crimes committed by children based on the male sex in 2016 to April 2019 there were ten boys and three girls who committed the crime of theft. This shows that although relatively small, not only boys but also girls commit criminal acts. This can be caused by wrong association, lack of attention, and emotional condition. In criminal cases committed by children in general, the provisions violated are criminal regulations contained in the Criminal Code. In the law of the juvenile criminal justice system, police investigators carry that investigation into the bad boy's case. Article 26 paragraph (1) of IJCJS Law that "The investigation into child cases is carried out by investigators determined based on the decree of the Indonesian police chief or other officials appointed by the Police Chief." Child Investigator who carries out duties and authorities as a special investigator in conducting investigations and protecting children who face the law.

The power of investigation is a critical phase in the operationalization of the integrated criminal justice system to achieve the purpose of law enforcement. This is because, in the investigation stage, it can be known that the suspect of a crime or criminal act can be identified before the perpetrator is finally charged and tried in court and given criminal sanctions by his actions. Based on interviews with the head of the PPA Unit in Kerinci Police, there has been a special crime unit. Specifically, the examination of children facing the law is carried out in the PPA Unit room. At the time of the examination was attempted to separate the child in the investigation process because there was no special children's examination room in Kerinci Police Resort, so for the process of investigating the examination of children in the PPA Unit room, there has been no separation between the women-only investigation room and the child-only investigation room, due to the lack of facilities and infrastructure in Kerinci Police Resort.

In conducting investigations, investigators are effective and empathetic, use language that is easy to understand, do not use coercion, and do not wear a service uniform so that children are not intimidated, which can cause fear and trauma if it is deemed necessary to involve community leaders in the Kerinci Police Resort jurisdiction. Investigators who handle child cases must keep the child's identity or anything else that can reveal the identity of the child who is facing the law in terms of printed or electronic media coverage, thus avoiding labeling or stigmatizing the child. This reflects the legal protection of children who face the law. In the process of investigating the child's case, there are also arrests and detentions. Here's the data of Arrest and Detention in Kerinci Police Resort on child criminal cases.

The results of interviews with child investigators Kerinci Police Resort based on IJCJS Law can be known that arresting children is for investigation at the latest 1x24 hours. The implementation of arrest duties is carried out by the Kerinci Police Resort Special Unit of Children to carry out arrest actions against children suspected of committing criminal acts based on sufficient evidence and a limited time in one day. The arrest of a child must be humane to his age and must not use tools or weapons and other coercive attempts or actions.

The results of the interview of the six children of perpetrators of theft can be concluded that at the time of the arrest process, there was a presentation against the perpetrator. The investigation process was not separated from adults. Therefore, when asked for information, there were also perpetrators of simultaneous female crimes in the investigation room who were being questioned. Then, there was no effort to create a familiar atmosphere or family literature among investigators who were interviewed. While detained in the Police, there were several children of criminal offenders who interviewed investigators who claimed that his place of detention was merged with adults. And there are also children of criminal offenders who are treated harshly by being bullied and told to undress when arrested and taken to the Police for examination. At the time of detention in the detention room Kerinci Police Resort,

there is no special detention room for children, so there is no separation between suspected child and adult suspect. Then when the diversion is often made, the victim does not want to reconcile with the child perpetrator, the difficulty of agreement when the implementation is done diversion.

Child investigator Kerinci Police Resort explained that those who handle child cases in committing diversion must consider the category of criminal acts, the child's age, the results of community research from Bapas, and the support of the family and community environment. Kerinci Police Resort also cooperated with the Social Service in P2TP2A to handle cases that entered the Kerinci Police. And the constraints of the city's P2TP2A to facilitate the child protection process, there is a P2TP2A team involving the police prosecutor's office and counseling for legal counsel, psychology, etc. How do we make one door for this child process do not have to go back and forth the distance of access from the police station to P2TP2A is too far and here see below-average economic conditions for that how can one door in it be complete all from the report, visum, companion and many others.

Social Service of Sungai Penuh City also conducts assessments, collecting as much information as possible before and during assistance. This information is needed to get a comprehensive picture of the individual and the accompanied party's problems, needs, and resources. There are obstacles in the performance of P2TP2A there are many reports received. There are also unresolved reports in P2TP2A. It must be taken to the police due to the lack of human resources owned by the P2TP2A Social Service of Sungai Penuh City so that the handling of criminal reports carried out by children handling is very time-consuming and cannot be implemented optimally. There are constraints from parents of children who do not approve because there must be parental consent before identification. Sometimes, some parents work as migrant workers. Parents often have died and work outside the area and lack understanding of the community.

In connection with the granting of children's rights given by the Kerinci Police at the Investigation stage, the authors also interviewed children as perpetrators of criminal acts.

Table 2: Identity of the Child Theft interviewed

Number	The Identity of the child offender	place and date of birth	Types of Criminal Acts
1	AW	Koto Baru/10-02-2002	Theft
2	AA	Koto Keras/05-12-2001	Theft
3	DA	Sungai Penuh/31-10-2002	Theft
4	AK	Koto Baru/12-01-2001	Theft
5	ED	Koto Renah/31-05-2003	Theft
6	RS	Lawang Agung/14-01-2003	Theft

Source: Kerinci Police Resort PPA Unit (2016 to April 2019)

The form of the legal protection of children as criminals in obtaining their rights needs to be pursued as stipulated in Article 3 of IJCJS Law included rights in the investigation process can be known in the table below:

Table 3: Granting Children's Rights as Perpetrators of Theft in the Investigation Process in Kerinci Police Resort

No	Children's Rights	Name of Child Perpetrator of Criminal Acts					
		AW	AA	DA	AK	ED	RS
1	Treated humanely with due regard to needs according to their age	√	√	√	√	√	√
2	Separated from adults	-	-	√	√	-	√
3	Get legal and other assistance effectively	√	√	√	√	√	√
4	Free from torture, punishment, or other cruel, inhuman, and degrading torture or other treatment	√	√	√	√	-	-
5	Not arrested, detained, or imprisoned, except as a last resort and in the shortest time	√	√	√	√	√	√
6	Unpublished identity	√	√	√	√	√	√
7	Obtain the assistance of parents/guardians and people trusted by children	√	-	√	√	√	√
8	Gaining social advocacy	√	√	√	√	√	√
10	Gain accessibility, especially for disabled children	-	-	-	-	-	-

Based on the table above in granting children's rights with Article 3 IJCJS Law has not been seen to the maximum, and getting its rights specifically has not been fulfilled properly by Article 3 of this Law. As for the rights of children as criminals in the table above that are not fulfilled, that is:

Table 4: Granting Unfulfilled Rights of Children as Criminals in the Investigation Process in Kerinci Police Resort

No.	Unfulfilled Child Rights	Information
1	Separated from adults	Of the six Children of Theft Crimes that the author interviewed, there were three children who were not separated from adults. Investigator DS Chandra explained that "At the time the suspect child AW was examined at the same time in the room also carried out the investigation process with adults (women) because there is no special room for children then we conducted a merged investigation process" Investigator Rika Fitriyani explained "In the suspected ar child did not be separated at the time of detention because at that time there were some adult prisoners and could not be separated due to inadequate facilities. AD at the time of the investigation process along with the examination of witnesses (adults) against other cases".
2	Free from torture, punishment, or other cruel, inhuman, and degrading torture or other treatment	Investigator DS Chandra explained that "RS at the time of his arrest he did not want to admit where to put the additional keys he used to steal the motorcycle we told him to undress so that he would admit and tell where the evidence was."
3	Gain accessibility, especially for disabled children	Head of The Women and Children Protection Unit (UPPA) Kerinci Ragil Titisari, S. Pd. explained, "Because so far the Child Criminals that we handle no child who has a disability."
4	Obtain the assistance of parents / guardians and people trusted by children	Investigator Rika Fitriyani explained that AA child offenders do not fulfill this right "because parents who work as migrant workers and AA live only with their grandmothers."

If looking at the table of granting the rights of children as perpetrators of criminal acts received by children is not fully stipulated in IJCJS Law, on the rights in the Act, it is expressly explained that each child as a criminal offender is entitled to special legal protection both by the parents themselves, the state through its competent and assigned officials to it, as well as from the public. However, there are still unfulfilled children's rights.

Factors That Affect the Protection of Children as Criminals in the Investigation Process in Kerinci Police Resort

The success of legal protection may be influenced by several factors that have a neutral meaning, so the negative or positive impact lies in the content of these factors. This factor has a close relationship with each other, which is the essence and benchmark of the effectiveness of law enforcement. The success of the legal protection process for children in the investigation process in Kerinci Police Resort is not solely about the enforcement of applicable laws but also depends on factors that affect the implementation. Factors that affect the protection of children as criminals during the investigation process in Kerinci Police Resort are divided into 2 factors there are:

1. Internal factors are those that come from within the Kerinci Police Resort itself, there are:
 - a. Facilities are factors that affect the legal protection of children in Kerinci Police Resort. The state, government, and local government are obliged and responsible for providing facilities to implement child protection. However, in Kerinci Police Resort, there is no detention room intended for children as litigious. At the examination, sometimes child suspects are still united with adult suspects in the Women's and Children's Services Unit Room.
 - b. Regarding detention, the absence of a special child detention room in Kerinci Police Resort station is quite an obstacle. The juvenile suspect detention room mixed with the adult suspect's detention room can affect the child's mental and psychological for the worse.
 - c. legal counsel, legal counsel against suspected children often does not accompany his client, when the police make news of the examination of criminal acts committed by children.
 - d. Lack of education or special training for child investigators.
2. External factors are those that come from outside the Kerinci Police Resort are:
 - a. Child Preparator of Criminal Acts
 - a) Sometimes, the child is just silent in the investigation process and does not speak clearly, making it difficult for investigators in the investigation stage.
 - b) At the time of conveying the rights of suspects, sometimes the suspect does not understand what is protection because some suspects come from families who do not attend school.
 - c) At the time of detention of the child suspect in the detention cell, they are crying continuously about the possibility of it happening because the child feels guilty (psychologist child) and afraid of the threat of punishment imposed on him.
 - b. Parents
 - a) At the time of conveying about child protection laws for the fulfillment of children's rights, parents do not understand what child protection is because A some parents do not go to school.

- b) The suspect's parents sometimes scold the suspect during the investigation process, making the suspect feel cornered and unwilling to speak.
 - c) Some parents work as migrant workers. Parents often have been absent and work outside the area or children who only live with their grandmothers only so it is difficult to get approval or assistance when the child is investigated.
- c. Society
The public's view of criminal acts committed by children and children labels stigmatizes children.
- d. BAPAS
Handling of cases is done in good coordination. However, some shortcomings can be resolved by communication both within and between authorized institutions, accompanied by consideration from the BAPAS items, but the delay in sending community research to investigators due to the vast working area of BAPAS the lack of Community Guidance Personnel.
- e. P2TP2A
The lack of human resources in P2TP2A of Sungai Penuh City Social Service resulted in the handling of reports of criminal acts committed by children. Handling is very time-consuming and not implemented optimally.

Conclusion

From the presentations submitted, researchers can conclude that the implementation of children's rights law is not enough only in the realm of legal substance but also in the realm of legal governance. Based on existing data on criminal cases committed by children handled by Kerinci Police Resort in carrying out Investigations, must prioritize Legal Protection of Children Perpetrators of Theft both in terms of Investigators who handle, that is Child Investigators and or Investigators who are authorized by law. Then in the Investigation Process, the Investigation must be packaged in a family atmosphere, respecting and providing facilities and infrastructure for the rights of children of criminal offenders as stipulated in the law. Investigators from the Women's and Children's Services Unit also requested assistance to BAPAS and P2TP2A. Then the implementation of legal protection against children who commit theft in the investigation process is influenced by internal factors and external factors; internal factors of facilities and facilities as well as budget and legal advisors, external factors from outside the Kerinci Police Resort, there are the children of criminal offenders, parents, communities, BAPAS, P2TP2A.

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Indonesia Constitution of 1945.

Indonesia Child Protection Amendment Law Number 35 of 2014. Indonesia Child Protection Law Number 23 of 2002.

Indonesia Juvenile Criminal Justice System Law Number 12 of 2012.

Interview Result

Interview with Rika Fitriyani., Member of the Satreskrim Unit PPA at Kerinci Police Resort, in the Unit PPA Room.

Interview with Ragil Titisari, Head of the Satreskrim Unit PPA at Kerinci Police Resort, in the Unit PPA Room.

Interview with DS Chandra., Member of the Satreskrim Unit PPA at Kerinci Police Resort., in the Unit PPA Room.

Interview with Agustin Wela Asih, Member of P2TP2A Social Service of Sungai Penuh City, in the Dinas Social Office.

Interview with Haidir, SE., MM, Head of Dinas Social of Sungai Penuh City, in the Dinas Social Office.

Interview with AW, AA, DA, AK, ED, RS., Child of the perpetrator of the crime of theft, in the house of each perpetrator.

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