

Criminal Law Policy in Handling Street Children Who Commit Crime

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ABSTRACT

Handling of children, especially street children who commit crimes, is not balanced with many parties also thinking about and taking concrete steps. Likewise, in efforts to protect children's rights as perpetrators of criminal acts, many do not pay much attention to the interests and future of children. In fact, children are part of the younger generation as successors to the ideals of the struggle of the nation and state. The method used in this research is Empirical Juridical, analytical descriptive research specifications, primary and secondary data collection. Primary data collection was carried out by interviews with respondents. The criminal law policy in dealing with criminal acts committed by street children in Indonesia is currently still one with the policy in dealing with children in general. The policies used in dealing with street children are based on the Criminal Code and Law no. 3 of 1997 concerning Juvenile Courts which has now been replaced by Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

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1. INTRODUCTION

Indonesia has reform aspirations to place the law in the highest place in national and state life which to date has never been realized. The dream of placing the law in the highest place can be said to be just a dream and wishful thinking. This

statement is appropriate to express to describe the legal reality that exists and is currently occurring in Indonesia.(Roeslan, 1983)

In the field of law, there are controversial developments, on the one hand, legal material products, legal apparatus development, legal facilities and infrastructure show improvement, but on the other hand, this is not balanced by an increase in the moral integrity and professionalism of legal officials, legal awareness, service quality and the lack of certainty and legal justice resulting in the supremacy of law not being able to be realized. The increase in legal material products, development of legal apparatus, facilities and infrastructure has not been followed by concrete steps and the seriousness of the government and law enforcement officials in implementing and enforcing the law. The occurrence of interference in the judicial process, as well as overlapping and legal confusion, has resulted in a legal crisis in Indonesia. This legal condition means that the protection and respect for human rights in Indonesia is still worrying, which can be seen from various violations of human rights, including in the form of acts of violence, discrimination and arbitrariness.(Gultom, 2008).

Law enforcement is a means for the Republic of Indonesia to create order and security for all Indonesian people, including providing protection to children, especially street children. The history of child protection occurred at the end of the 19th century. At that time concerns began to hit European and American countries, the number of criminal acts committed by children and young people increased. At that time, treatment of criminals between children and adults was equalized, so this caused other countries to start making efforts towards child protection. Included in this effort was the formation of the first juvenile court (Juvenile Court) in Minos, United States in 1889, where the law was based on the principle of *parens patriae*, which means "the authorities must act if children need help.(Soetodjo, 2010)

Children are part of the younger generation as successors to the ideals of the struggle of the nation and state. In Law No. 35 of 2014 concerning Child Protection, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Children are the nation's next generation who have limitations in protecting themselves from the various influences of the existing system. Therefore, when a child becomes a perpetrator of a criminal act, the State must provide protection for him. In Indonesia, forms of child protection are regulated in Law No. 11 of 2012 as a replacement for Law No. 3 of 1997 concerning the Child Criminal Court System and Law no. 35 of 2014 concerning Child Protection. This law was formed to provide special protection, especially legal protection for children in the justice system and to differentiate treatment in law for children and adults who experience criminal cases. One example of the need to protect children is to minimize the forms of violations that may occur in handling children who commit criminal acts in the wrong way, namely by combining detention cells between children and adults.

2. METHODS

In existing scientific work, one of the aims is to find the truth of valid data or scientific truth. steps are used, following scientific research procedures and also using certain methods in an effort to conduct research.(Hadi, 2019) In general, research aims to find data, develop or test research. Finding means trying to obtain something to fill a void or deficiency, while developing means expanding and digging deeper into something that already exists. Thus, research methods are needed, in the broadest sense, involving certain processes, principles and procedures to find answers to existing problems.(Ronny Hanitijo Soemitro, 1990)

The term methodology comes from the word method, which means the way forward. 31 This method usually concerns the problem of how to work, namely

how to understand the object that is the target of the science in question. (Soekanto, 2006). Research is a basic means or effort to discover, develop, which is carried out using scientific methods. According to Soeryono Soekanto, Legal Research is: Legal research is intended as a scientific activity based on systematic methods and certain thoughts, which aims to study one or several particular legal phenomena by means of analysis, unless an in-depth examination of the legal facts is also carried out, then strive for a solution that arises in the symptoms in question. (Hasan, 1970)

Peter Mahmud Marzuki, stated that legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. As a prescriptive and applied science, apart from studying the objectives of law, the values of justice, the validity of legal rules, legal concepts and legal norms, legal science also sets procedural standards, provisions and guidelines in implementing rule of law. So, when conducting legal research, the following steps can be taken (Mahmud Marzuki, 2005)

1. Identify legal facts and eliminate irrelevant matters to determine the legal issue to be resolved;
2. Collection of legal materials and, if deemed relevant, also non-legal materials;
3. Conduct a review of the legal issues raised based on the materials that have been collected;
4. Drawing conclusions in the form of arguments that answer legal issues;
5. Provide a prescription based on the arguments that have been built in the conclusion. These steps are in accordance with the character of legal science as a prescriptive and applied science.

In relation to the matters above, the author uses methods as follows:

1. Approach Method

Based on a framework of thought, namely juridical-empirical, meaning that apart from examining objects of a juridical nature, it also looks at reality and is

based on experiences that occur in social life. This approach method is used to achieve a balance between normative juridical matters and empirical juridical matters. The existing balance can later be used to see how criminal law policies deal with street children who commit criminal acts.

2. Research Specifications

The specifications used in this research are descriptive analysis. The descriptive method is to describe or depict the current state of the research object based on existing facts and problems in detailed, systematic and comprehensive as everything related to criminal law policy in dealing with street children who commit criminal acts. analytically is to describe an object based on elements or components which are sometimes included in it which are supported by data obtained and analyzed with general knowledge.(Mahmud Marzuki, 2005)

Descriptive analysis data is in the form of written or verbal statements of respondents as well as real behavior, which is researched and studied as a whole, which is linked to legal theories and statutory regulations relating to the problems studied. This research will try to solve existing problems and observe how the criminal law policies in force at the Semarang Police Department handle street children who commit criminal acts.(Ronny Hantijo Soemitro, 2001)

3. Data type

As explained above, this research is empirical juridical research, so the type of research data includes: primary data, in addition to secondary data being needed as support. Thus, the data in this research includes: primary data. Data obtained from interviews. Interviews were conducted with sources related to the problem in question, namely officers within the Semarang Police, street children who commit crimes, and representatives of NGOs who take care of street children. In this research, the interview technique used was free guided interviews. What this

means is an interview that is a combination of guided interviews in which the interviewer brings a guideline which is just an outline of the things that will be asked.

Secondary Data This data was obtained from a literature study. This literature study is to look for conceptions, theories, opinions, or discoveries that are closely related to the main problem. Literature here can be in the form of statutory regulations, books, files, scientific papers that are related to the problem to be researched. Later these secondary data materials will be used to complete the theories needed in legal writing.

4. Data Collection Methods

Every scientific research requires data to solve the problems it faces. Data must be obtained from the right data source, because inappropriate data sources result in the data collected being irrelevant to the problem being researched, which can lead to errors, usually in preparing interpretations and conclusions. (Nawawi & Hadari, 1995)

5. Data Analysis Method

This data analysis was carried out guided by applicable laws and regulations, including Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Number 35 of 2014 concerning Child Protection, as well as other laws and regulations related to the title of this research. as well as the opinions of experts or experts related to criminal law policies in dealing with street children who commit criminal acts. This Qualitative Analysis is based on general facts, so that even though the location is limited, the response is small, if the data obtained is a valid reality, then the data is sufficient to prove the truth.

3. FINDINGS AND DISCUSSION

Criminal law policy in dealing with criminal acts committed by street children, children who commit criminal acts really need protection, in this case street children. The issue of legal protection for children is one way to protect the nation's growth in the future. Legal protection for children concerns all applicable legal regulations. This protection is necessary because children are part of society who have physical and mental limitations. Therefore, there is a need for a policy from the government to protect the rights of children, especially children who have problems with the law. The laws used to deal with street children currently in Indonesia do not specifically regulate street children. The same treatment will be given to street children who commit crimes as children in general. Policies in dealing with children include:

Positive criminal law (KUHP) regarding perpetrators of offenses includes 4 (four) categories as follows: Those who commit the act, Those who order the act to be committed, Those who participate in the act. Those who encourage other people to commit acts in four ways or forces (by promises, by abusing power/dignity, by violence/threats, by providing opportunities, means, or information).

The four categories above can fully apply to children because even though in terms of age and physical development children are different from adults, it's just that the form of sanctions received by children is different from adults. Article 37 of the Criminal Code The power of the father, the power of the guardian, supervisory guardian, custodian, and supervisory guardian, both over his own child and over another person's child, can be revoked in the event of a conviction: a parent or guardian who intentionally commits a crime together with a child who is underprivileged age (*minderjarig*) under his authority, parents or guardians who, with respect to children under their authority, commit the crimes mentioned in Chapters XIII, XIV, XV, XVIII, XIX and XX of the Second Book.

The revocation referred to in paragraph (1) may not be carried out by a criminal judge against persons to whom the rules as a result of the Civil Law Law regarding the revocation of parental authority, guardian authority and guardian authority apply. Article 40 of the Criminal Code If a person under the age of sixteen owns, enters or transports goods in violation of the regulations on state income and rental, the regulations on shipping control in certain parts of Indonesia, or the regulations on prohibitions entering, removing and continuing to transport goods, the judge can impose a penalty of confiscation of the goods, also in the event that the guilty hand them back to their parents, guardians or custodians without any penalty.

Article 45 of the Criminal Code In prosecuting a person who is under the age of majority (*minderjarig*) for committing an act before the age of sixteen, the judge can determine: to order that the guilty person be returned to his parents, guardian or care, without any penalty; or order that the guilty person be handed over to the government, without any penalty, namely if the act constitutes a crime or one of the violations mentioned. Articles 489, 490, 492, 496, 497, 503, 505, 514, 517-519, 526, 531, 532 , 536 and 540 and two years have not passed since being declared guilty of committing a crime or one of the violations mentioned above, and the verdict has become permanent; or impose a penalty.

Article 45 of the Criminal Code requires that a child who commits a criminal act before the age of sixteen, the judge can order that the child be returned to his parents, guardian or guardian, without any penalty if the act he has committed has not passed two years since being declared guilty of committing the crime. or one of the violations of the articles mentioned in Article 45, and the decision becomes permanent. In Article 46 of the Criminal Code, the contents of this article stipulate that shelters for a child who has been sentenced are handed over to the government.

Article 46 of the Criminal Code If the judge orders that the guilty person be handed over to the government, then he is put in a state educational center, so that he receives education from the government or in the future in another way, or handed over to a certain person or to a legal entity, foundation or charitable institution for provide education, or in the future, at the expense of the government, in other ways; in both cases above, the maximum age is eighteen years. The rules for implementing paragraph (1) of this article are determined by law. Article 47 of the Criminal Code stipulates provisions regarding the length of punishment for children who have committed criminal acts.

Article 47 of the Criminal Code If the judge imposes a sentence, the maximum principal penalty for the child's criminal offense is reduced by one third. If the act constitutes a crime punishable by the death penalty or life imprisonment, a maximum prison sentence of fifteen years is imposed. Additional penalties mentioned in article 10 sub b, numbers 1 and 3, cannot be imposed. With the enactment of Law Number 3 of 1997, the provisions of Articles 45, 46, 47 of the Criminal Code were declared invalid (Article 67 of Law No. 3 of 1997).

Article 78 Paragraph 2 For persons who were under eighteen years of age at the time of committing the act, each of the expiry periods above is reduced to one third. What is meant in Article 78 Paragraph 2 of the Criminal Code is that for children whose age has not yet reached 18 years, the expiry date is reduced by one-third of each expiry date in Article 78 Paragraph 1, namely those relating to:

- a. Regarding all offenses and crimes committed with printing, after one year;
- b. Regarding crimes that are punishable by a fine, imprisonment or imprisonment for a maximum of three years, after six years;
- c. Regarding crimes punishable by imprisonment for more than three years, after twelve years;

- d. Regarding crimes that are punishable by the death penalty or life imprisonment, after eighteen years.

Article 82 The authority to prosecute violations that are punishable only by a fine is extinguished if the maximum fine and costs incurred if the prosecution has been initiated are voluntarily paid, with the authority of the official appointed for this purpose by general regulations, and within a specified time determined by him. If confiscation is determined in addition to the fine, then the goods subject to confiscation must also be handed over, or the price must be paid according to the official's estimate in paragraph (1). In cases where the crime is aggravated due to repetition, the aggravation remains in effect even though the authority to prosecute criminal offenses committed previously has been removed based on paragraphs (1) and (2) of this article. The provisions in this article do not apply to persons who are not yet of legal age, who at the time of committing the act were not yet sixteen years old. What is meant by the article above is that children who are not yet 16 years old at the time of committing a criminal act do not apply to the provisions as stated in Article 82 Paragraphs 1-3.

4. CONCLUSION

The criminal law policy in dealing with criminal acts committed by street children in Indonesia is currently still one with the policy in dealing with children in general. Various types of legislation in Indonesia relating to children contain types of criminal acts, criminal liability, and types of sanctions for perpetrators of criminal acts who are classified as children. One of them is Law no. 3 of 1997 concerning Children's Courts, specifically regarding sanctions against children in this Law, children aged 8 (eight) to 12 (twelve) years are only subject to action, such as being returned to their parents, placed in a social organization, or handed over to the State, while children who have reached the age of over 12 (twelve) to

18 (eighteen) years are subject to punishment. The differentiation of treatment is based on the child's physical, mental and social growth and development.

REFERENCES

- Gultom, M. (2008). *Perlindungan hukum terhadap anak dalam sistem peradilan pidana anak di Indonesia*.
- Hadi, S. (2019). *Metodologi riset*.
- Hasan, F. (1970). *Koentjaraningrat, Metode-Metode Penelitian Masyarakat. Jakarta: Gramedia*.
- Mahmud Marzuki, P. (2005). *Penelitian hukum. Jakarta: Kencana Prenada Media, 55*.
- Nawawi, H., & Hadari, M. M. (1995). *Instrumen penelitian bidang sosial*.
- Roeslan, S. (1983). *Beberapa Asas Hukum Pidana dalam Presfektif (Jakarta: Aksara Baru*.
- Soekanto, S. (2006). *Pengenalan Penelitian Hukum. Grafindo, Jakarta*.
- Soemitro, Ronny Hanitijo. (1990). *Metodologi penelitian hukum dan jurimetri. Ghalia Indonesia, Jakarta, 167*.
- Soemitro, Ronny Hantijo. (2001). *Bahan Kuliah Metodologi Penelitian Hukum. UNDIP*.
- Soetodjo, W. (2010). *Hukum Pidana Anak, Bandung: PT. Refika Aditama*.