

## **SPECIAL PROTECTION FOR CHILDREN IN CONFLICT WITH THE LAW**

### **Author:**

**Nyoto Budiyo**, Magister of Law Student;

Email : [nyoto@ombudsman.go.id](mailto:nyoto@ombudsman.go.id)

**Ramlani Lina Sinulan**,

Email : [rlinas@pascajayabaya.ac.id](mailto:rlinas@pascajayabaya.ac.id)

**Kristiawanto**,

Emal : [kristiawanto2019@gmail.com](mailto:kristiawanto2019@gmail.com)

[Universitas Jayabaya](http://Universitas Jayabaya)

### **Introduction**

In these recent years, it is widely published about children who come into contact with the justice system as a result of being suspected or accused of committing an offense and/or as the victim of an offense. The kinds of offenses were varied from juvenile misdemeanors such as fights, theft/larceny, and sexual offense to drugs. Children are included in the vulnerable group, who need special protection because they are not legally capable and require help to protect themselves. They became victims of criminal offenses because they aren't able to defend and protect themselves, while those who became the offender are mimicking the adults around them as they aren't able to determine which one is good which one isn't for them.

In actuality, there are act and constitution protecting children, as a victim or an offender. Those show the seriousness of the Indonesian Legal System in giving special protection to the child in conflict with the law. However, those acts and constitutions alone aren't enough, awareness from the adults around the children is badly needed to provide that special protection. It should be put into attention since children are prone to be a victim of criminal offenses from people closest to them, as well as children as an offender are prone to be an offender because they have adults around them doing so.

Children in conflict with law are like an iceberg phenomenon, there is very little to see on the tip but under it, there are a lot of problems unearthed. Power is one of the main factors why it happened, and also the way the authorities suggested a resolution through a family colloquy, thus leads to the offender not getting processed in the justice system. That fact is inversely proportioned with when the children are the offenders. Not every child gets a solicitor and gets through the justice system as the Criminal Justice System of Children in Law Number 11 of 2012 ruled. And that is why every child coming in contact with the law needs special protection.

### **Method**

The approach method used in this research is normative juridical, which is an approach method that stresses the normative law, as well as studies the legal principles used in the society by researching related literature. As a result, the data used is secondary data. This research is descriptive-analytic, supported by empirical researches, by analyzing data based on the relevant legal principles. This research provides information on how important a special treatment for children in conflict with law is, whether children as a victim or children as an offender.

### **Discussion**

#### **Children In Conflict With the Law**

The definition of a child in Indonesian Acts and Constitutions are varied, as a result of that, a child is legally treated accordingly to every act and constitution. Based on article 1 Number 1 Law Number 35 of 2014 Amending Law on Child Protection Law Number 23 of 2002, a child is "someone being below the age of 18 (eighteen) years, including those who haven't been born yet". The logical consequence from that definition is that whoever does a criminal act while being below the age of 18 (eighteen) years and haven't been married would be put on trial under the Criminal Justice System of Children in Law Number 11 of 2012.

Article 1 Number 2 of the Criminal Justice System of Children in the Law Number 11 of 2012 defined that, "A child who faced the law is a child who conflicts with the law, child who is a criminal offense victim, and child who is a witness of a criminal offense". Furthermore, Article 1 Number 3 of the Criminal Justice System of Children in the Law Number 11 of 2012 defined, "A child who conflicts with the law that from this moment onwards called as Child, is a child who is at least 12 (twelve) years old, but not yet 18 (eighteen) years old who does a criminal offense allegedly". Those articles sadly could provide a crack in the system for the adults to involve a child in a criminal offense. Some criminal offenses that involving children such as sexual offense, terrorism, psychotropic drugs abuse, et cetera.

On the 2nd of April 2016 in Bengkulu, there was a rape done by 14 (fourteen) males, 6 (six) of them are still under the age of eighteen. After a series of investigations, it was revealed that those males had been drinking alcohol and watched porn videos prior to the act. In 2018, there was a suicide bombing in Surabaya that involved a child in the process. Usually, children are being dragged into a criminal act to smoothen the way for the adults to finish what they've planned. The incapability of children in serious decision-making and empathy from people become one of the reasons why children are used in criminal acts.

The government has a paramount role in making a policy regarding the criminal act, especially for children in conflict with the law. According to Professor Sudarto, S., H., criminal act policy is the widest definition is the whole policies, through the acts and constitutions and official agencies, that aimed to reinforce the central norms in society. Aside from that, there is also a need for an official agency from the Government that could help the children to reintegrate into society after they have served their sentences. That would be part of the commitment from the Government in protecting its people to achieve prosperity as stated in the 1945 Constitution of the Republic of Indonesia.

Treatments to the children in conflict with the law need to be done not only after the criminal offense has been acted, but also after the children served their sentences. The label as ex-convict would be strongly attached to the child who has conflicted with law, and it would provide a challenge for them to reintegrate and be accepted in their community. That would start another cycle in which they would do another criminal offense and then it becomes a habit. The treatment has to be taken seriously and comprehensively to minimize criminal offenders as well as suppressing the number of criminality in Indonesia.

In March 2020 in Central Jakarta, an eye-grabbing criminal act happened as a 15 (fifteen) years old girl murdered her 5 (five) years old neighbor. The teenager was sentenced to 2 (two) years in prison and placed in Handayani Social Welfare Institution. It's been known that Mawar Saron Jakarta Legal Aid provided her the advocacy during the trial process.

Looking at the sentences she got, it may seem like it does not give the victim's family some kind of justice. However, sentencing is not based on revenge theory but focusing on the deterrent effect for the convict and society in general. Every human being who does a criminal act and has proven to fulfill the elements of that act, they have to take responsibility. Criminal responsibility is attached to the person who did the criminal act, not the act itself. Therefore, the criminal sentence is given to the person based on their ability to be responsible for the criminal act they did. And that is why forgiving and justification are known in criminal law.

### **Crime with Violence That Cause A Conflict In The Society Norms**

A conflict is a social symptom that presents in social life, as a result of that, conflict is inherent, which means conflict will always be in every time and space wherever and whenever. Usually, the conflict that happened to a child is a personal conflict, which as explained by Soerjono Soekanto is happening between individuals because of personal problems or differences in viewing things. A child is not capable to manage their emotions and that is why a child tends to use violence in handling things that in their views, are perceived as a negative outcome. That referred to an aggressive attitude caused by escalated anger or fear or could be a result of an attitude that they learned in their environment. Violence is part of the crimes that could be punished through a justice system.

According to Schultz, the up and down of a crime rate in a country is not related to change in the legal system or tendencies in sentencing, but it is related to whether or not there is a big change in culture in the society. The moral value embedded in a child has a massive influence on their day-to-day behavior, aside from their environment that also has a role in giving the influence. The acceptance from the family and the society to the children who has a conflict with the law could be a benchmark of whether or not they will become a repeat offender.

Crime with violence in society is considered as an infringement of religious norms, civility norms, and legal norms. A child who has a conflict with the law tends to get a bad label which actually would only worsen the situation. So, even if a child did not get any sentencing they will get a social sanction. A restorative justice approach is needed in handling crime with violence that involving a child, it is because the handling process not only paying attention to the victim's interest but also paying attention to the interest of the children in conflict with the law as mentioned.

## **Treatment for Children In Conflict With the Law**

Positive law is not enough to treat children in conflict with the law, a new alternative is needed to restore faith within them to not repeat or do another criminal offense. Rehabilitation is required in the reintegration process after the child served their sentence as a responsibility, so they could live side by side with society again. While in rehabilitation it is important to recognize the grass root of the problem that caused them to conflict with the law. As people may already know, misbehavior is easy to learn from someone else through interaction and communication, and while they are doing that, they learn how to do crime and also reasons (values, motives, rationalization, and behavior) that support those crimes.

The government has to prepare a space for the children in conflict with the law to heal their trauma and all those negativities inside them so they could be accepted in society with ease. If they can reintegrate and be accepted, the possibility of that child repeats the offense will decrease. It could also be a prevention system for the Government in handling the high crime rate in society.

That space should at least have an effective and efficient religious education as well as moral education as a way to convince the children that they could do better. Aside from the children, their family should also be put in attention. That is because the family, as the closest environment for the child, will determine their mind and body in regards to the child's behavior. Educating the family of the children in conflict with law is as important as it is with the children and also will give an added support for the children not to repeat or do another criminal offense.

Family is the smallest unit in society that will shape a child's behavior, and that is why dealing with the family is an integral part of handling the children in conflict with the law. The learning process of a child in doing criminal offense is most likely comes from the family or their closest environment. The family of the children in conflict with the law has to be educated on moral education needed to raise and educate a child.

Adults in the family are not allowed to use their children to do criminal offenses, as well as the environment around the children. Article 81 Section (2) of the Criminal Justice System of Children in the Law Number 11 of 2012 stated, "prison sentence given to a child is maximum 1/2 (one per two) from a maximum prison sentence for adults" and that article provided a way for the adults to involve children in criminal offense because they know the children would only be sentence half from the maximum sentence for an adult.

That law is made not for justifying children in conflict with the law, instead, it is made to protect children in conflict with the law because they are not able to determine the consequences of what they did. A child is not yet able to understand fully the intention and the goal of the criminal offense they are made to do. It is important to widen the investigation of the criminal offense to get more information and insights as to why they did it and also close the investigation properly so there would be no child coming in conflict with the law.

## **Conclusion**

Handling children in conflict with law should not only be focusing on the criminal responsibility but also after they served that responsibility. Restoring the confidence in them to do better in life and protecting them from another criminal offense is the aim of the treatment. While the child is looking for their true self, they should get proper guidance as they are not yet able to weigh the risks and the negative impacts caused by the criminal offense.

A child could only see and mimic someone else's behavior without knowing the negative impact, very often the child thinks that the criminal offense is a fun thing to do and it is simply to reach a degree of satisfaction they think they need. The feeling of wanting to be recognized by their peer group is a push for them to do whatever they want. Sometimes a simple reason could lead them into a criminal offense that in the end lead them to serve a sentence.

The Government has a responsibility to stop or at least minimize the number of cases of children in conflict with the law. Aside from reinforcing justice through positive law that applies in Indonesia, the Government should also use their policy-making wisely in handling and treating children in conflict with the law. Providing an official institution runs by the Government with experts working in it is essential in handling children in conflict with the law after they served their sentence, especially the cases where they are not welcomed back by their family and society.

Restoring children to their basic nature to do the good and right things is also a part of the prevention system to decrease the crime rate in society. And that is why it is paramount for the Government to give serious attention as well as serious act to handle it since the number of children in conflict with the law has been increasing in the last few years. All and all, the environment around the children in conflict with the law should also be put into attention and is given proper guidance and support because it is where the children learns how to do crime and ended up committing one.

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