

Special protection for children in conflict with the law in Indonesia

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KEYWORDS

Children
Special Protection in
Conflict with the law

ABSTRACT Article 18 states that Every child who is as a victim or perpetrator of a crime has the right to legal aid and other assistance. it is necessary to have a special handler in the process of protecting the child. It is regulated in Article 59 of Law No. 23 of 2002. The government has issued Law no. 11 of 2012 concerning SPPA, and Law no. 39 of 19 of 1999 concerning Human Rights Article 1 number (1) Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity. The problem of this paper is Legal Protection for Children in conflict with the law. The method used in writing this paper is normative juridical. Criminal and child protection measures with articles 69, 70 and 71. Law No. 11 of 2012 related to Article 61 points (6) and (7) is an effective way of handling children in conflict with the law. Restorative justice and diversion are used in the form of non-penal handling/ mediation, in accordance with the Convention on the Rights of the Child.

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1. INTRODUCTION

The age limit for children according to UUSPPA No. 11 of 2012 is 12 (twelve) years but not yet 18 – (eight_ teen), while the age limit for children in Law No. 23/2002 is children who are not yet 18 years old and children in the womb.

The discussion about children and protecting the developmental life of a child is never finished. Child problems are very important to maintain the continuity of generations. Child protection means maintaining human resources and developing optimal human resources, where the goal of the state is just and prosperous citizens, both spiritually and materially based on Pancasila and the 1945 Constitution.

According to Article 1 paragraph (2) of the Child Protection Law, child protection includes all activities that violate their right to live, grow, develop and participate, live with dignity, be protected from violence and discrimination. Article 3 Child protection aims to ensure the realization of children's rights to live, grow, develop and participate optimally, by upholding human dignity and worth (Trimaya, 2012).

Departing from the importance of the potential of children in a country, the focus of attention must be directed to the development of the right to grow and reproduce children as stated in Article 28B (2) of the 1945 Constitution, every child has the right to survival, growth and development and protection from violence and discrimination (Yusuf et al., 2020).

Providing protection to children in a country is a measure of the country's civilization because it needs laws that provide certainty and direction for this protection.

Advances in technology and the wider internet network that is easily accessible by the community, especially children, make it easier for children to access/download an application, where children do not really understand whether the application is suitable for their age and whether it has a negative impact on their growth and development. them, where they still have to be assisted.

Children need to get protection from advances in technology, especially smartphone technology, and lifestyle metamorphosis will bring about a transition to social life based on the process of developing the identity and behavior of children.

Technological developments affect children's lives. The influence of technology can cause revolutionary changes in the collection and dissemination of information in society. Technology was originally made by humans to make work easier for people in many ways. With the help of technology, all human activities have become easier and easier.

With the development of increasingly advanced technology, the use of technology is also very important to get the latest information both in Finland and around the world. Smartphones make it easier for parents to communicate with their children.

With the development of technology, new media has emerged which is called social media such as WhatsApp, Instagram, Facebook, Twitter, YouTube and blogs etc. which are used by the public and children to communicate with each other.

Departing from this, the government in this case provides limits in communication, so that there is no commotion, especially at the level of children, where they are

still vulnerable to their own growth and development, especially in the mindset about using social media such as cyberbullying.

That command refers to UUIITE. amended by Law no. 19 of 2016 amended UU No.112008 concerning ITE. UUIITE is a form of government regulation to protect online activities from the threat of misuse of social media, and illegal content articles used to regulate content distribution in virtual public spaces. As the article regarding cyberbullying in Article 45 UUIITE: (1) Everyone who fulfils the provisions of Article 27(1), Article 2, Article 3 or Article 4, is threatened with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Law violations against children who face lawsuits for their own actions, sometimes defamation, hate speech, insults, cyberbullying (cyberbullying) or other things that can violate UUIITE law. conflict with the law related to violations of the ITE Law.

1.1 Legal Basis on Child Protection

The government protects children's rights which are protected from the Geneva Declaration on Children's Human Rights. (1924), recognized in the Universal Declaration of Human Rights (1948), Declaration of the Rights of the Child (1959), which supports the Geneva Declaration on the Rights of the Child (1924), shows that children are necessary for optimal development. life Optimal growth and development require special support and protection.

The Convention on the Rights of the Child (1989) is a convention that is more concerned with the civil, political, economic, social and cultural rights of children. This convention emphasizes universal principles and legal norms relating to the basic right of the child to survive, develop, be free from harm, abuse and discrimination. According to Article 40, children are referred to in the Geneva Declaration on the Human Rights of the Child. (1924), recognized in the Universal Declaration of Human Rights (1948), and Declaration of the Rights of the Child (1959), which supports the Geneva Declaration on the Rights of the Child (1924), shows that children are necessary for optimal development. life Optimal growth and development require special support and protection. uh commit violations of the law are entitled to legal aid and fair treatment in a legal system that respects the child's rights, with an obligation to the government to set a minimum age for children above them cannot be prosecuted. held accountable and to ensure legal certainty and the speedy end of judicial or alternative proceedings.

Meanwhile, protection related to the standard administration of juvenile justice comprehensively has been regulated in the UN Minimum Rules for Juvenile Justice (1985) which stipulates that the age of criminal responsibility for children should not be too low, let alone.

In countries that follow international conventions related to the protection of children in the realm of law, the UN is a minimum standard, which is obliged to ratify the results of the conversion to the side of national law in each country.

The United Nations Standard Minimum Rules for Juvenile Justice (Beijing Regulations) aim for the welfare of the child, to minimize intervention by the juvenile justice system and to reduce further harm caused by the justice system. It is emphasized in the Beijing Rule that the role of juvenile justice is an integrated part. The child's responsibility is measured by the degree of moral maturity and com-

patibility between the child's soul and the child's antisocial behavior. (Farhana, n.d).

Guidelines N Prevention of Juvenile Delinquency, 1990 (Riyadh Guidelines). This is a basic principle in dealing with children who have problems with the law and includes the following matters:

- a. N's Guide to Youth Fall Prevention, 1990 (Riyadh Guidelines).
- b. The successful struggle against juvenile delinquency requires societal efforts to ensure the harmonious development of youth and to respect, promote individuality from childhood.
- c. For the achievement of these Guidelines, a child-centred orientation must be pursued. Young people should have an active role and partnership in society and should not be seen as mere objects of socialization or control.
- d. In implementing these guidelines, the welfare of early childhood should be at the core of any prevention program in accordance with national legislation.
- e. It is important to recognize the need for reformed crime prevention policies and systematic research and policy development. Criminalizing and punishing children for behavior that does not seriously harm the development of the child or that of others should be avoided. Policies and policies must be inclusive of:
 1. Provision of opportunities, in particular educational opportunities, to meet the various needs of young people and to serve as a supportive framework for safeguarding the personal development of all young people, especially those who are shown to be endangered or socially at risk and in need of special care and protection;
 2. A certain philosophy and approach to crime prevention based on laws, processes, institutions, facilities and service networks designed to reduce the motivations, needs and opportunities or conditions that lead to the commission of crimes;
 3. Official interventions should be carried out primarily in the overall interest of young people and guided by fairness and equality;
 4. Safeguard the well-being, development, rights and interests of all young people;
 5. Consideration that youthful behavior or behavior that is contrary to social norms and values as a whole is often part of the process of maturation and growth and tends to disappear spontaneously in most individuals with the transition to adulthood;
 6. Awareness that, in mainstream expert opinion, labeling young people as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of consistent patterns of undesirable behavior by young people.
- f. Community-based services and programs should be developed for the prevention of juvenile delinquency, especially where no institutions have yet been established. Formal institutions of social control may only be used as a last resort. (Purwanti, 2016)

In the realm of juvenile law in Indonesia, Number 11/2012 concerning the Juvenile Criminal Justice System. And Law No. 23/2002 concerning Child Protection in Article 64 (1) (1), special protection for children who violate the law as referred to in Article 59 and children who violate the law through child victims of criminal acts is the duty and responsibility of the state and society (Trimaya, 2012).

Article 1 of the Universal Declaration of the Rights of the Child affirms that all human beings are born free and have equal dignity and rights, have minds and consciences, and are willing to treat one another in a spirit of brotherhood. The Convention on the Rights of the Child is a comprehensive set of children's rights. Children's rights are universal agreements that have been ratified as international instruments. The UN adopted the CRC in 1989, which is a multilateral agreement that is legally and politically binding on children's rights.

Children's rights appeared at the end of World War I as a reaction to the suffering caused by war disasters, especially for women and children. The League of Nations was moved by the many war orphans.

The beginning of the child's rights movement began with the movement of activists who protested and demanded public attention to the fate of children who were victims of war. One such activist, Eglantyne Jebb (founder of Save the Children), later developed a ten-point Declaration of the Rights of the Child, or Draft of Rights of the Child, which was adopted by Save. Children in 1923. Funding the International Union..

Convention is an international law or called an international instrument. In the International Instrument there are 10 statements regarding the rights of the child or the draft declaration of the rights of the child

- a. Right to name and citizenship,
- b. National rights,
- c. The right to equal treatment and non-discrimination,
- d. Right to protection
- e. Right to education
- f. The right to play,
- g. Entertainment /Travel rights,
- h. The right to adequate food,
- i. the right to health
- j. The right participate in development

In 1924 the League of Nations adopted the Declaration on the Rights of the Child. This declaration is also known as the "Geneva Declaration". Following the end of the Second World War in 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights on 10 December. This event, held annually on World Human Rights Day, is an important development in the history of human rights and the declaration addresses several issues relating to the special rights of children.

Indonesia adopted the Convention on the Rights of the Child and its Protocol through Presidential Decree No. 36 of 1990 and Law no. 5 of 1998 as ratification of the Convention Against Torture and Other Cruel Treatment or Punishment. inhuman, which violates human dignity. Therefore, it is legally necessary to implement the convention

and make it a victim of violence or a child in conflict with the law that is not well developed Said (n.d.).

1.2 Special Protection Of Children In Confidence With The Law (ABH)

Like a double edged sword. on the Internet. In addition to the positive impacts, the rapid development of information technology also has various negative impacts. These include the spread of fake news, availability of pornography, online bullying, ease of dealing with foreigners and information security issues.

In essence, technology makes it easy for humans to achieve what they want, but behind the convenience it will also be a disaster for adult humans who abuse the technology. adults, it will provide a more optimal understanding of the technology, but for children under the age of 18, they are still unstable, they are likely to take actions that are not appropriate in using the technology, and result in violations of regulations or delinquency in terms of using technology

30 percent of Indonesia's population are children. They belong to the digital native generation, the generation that was born when technology developed and used gadgets and the internet as tools for learning and playing. So today's children are accustomed to using the internet. This should be a concern for all of us, so that children don't get lost on the internet (Said, n.d.).

According to a report by the Indonesian Child Protection Commission (KPAI), until August 2021, there were 123 cases of children violating the law (ABH). The most violations were physical violence with 30 cases and sexual violence with 28 cases. In addition, children were responsible for traffic accidents and theft in 13 and 12 cases respectively (Jayani & Yudhistira, 2021).

According to the Juvenile Justice Act Number 11 of 2021, children who are violated by the law are children who violate the law, child victims of crime and child victims of crime. witnesses of a crime.. Where physical violence is more dominant. but in terms of school children as netizens who do not understand cybercrime and the ITE Law. Digital literacy is necessary not only for adults but also for children. Don't be ignorant and expose yourself to the ITE Law because there are also many who are not aware that they have committed cyber crimes."

The child's process of finding his identity is very important: "The earlier a child knows his own identity, the more it can influence the way they evaluate it positively and negatively", many teenagers search the internet (social media). identity by commenting on what they have learned. He downloaded it because he couldn't get it at home.

69 percent of young people communicate with foreigners, an average of 38 percent of whom are under 13 years of age. Although a lot of content that is not worth watching. Of course, as a parent, you have to monitor and control it properly. Cyberbullying, sexual images, and sexual messages are most common among children compared to other online incidents. For example, if a child is being bullied, they may have much bigger worries because the child is emotionally ill and mentally immature.(Agustini, 2020)

The first step in providing additional protection to children against the law, especially UUIITE, is to teach them digital skills and crime information on social media that children should avoid. , that is:

- a. Spread Hoax news

- b. Defamation
- c. Online fraud
- d. Cyberbullying
- e. Spreading hatred, and
- f. Privacy violation

Therefore, parents must instill understanding in their children so they can understand and be careful about the actions they (children) take using internet technology and social media applications.

In principle, criminal acts committed by children cannot be separated from the various pressures of life, both economic and social. Children who receive less or no attention, both physically, mentally and socially, behave and engage in anti-social behavior that is detrimental to themselves, their families and society. As a result, not a few children become perpetrators or criminals (Sari, 2021)

Article 4 Law No. 23 of 2002 Every child has the right to live fairly, grow, develop and participate in accordance with human dignity and be protected from violence and discrimination.

One of the efforts to prevent and prevent children from being exposed to the law at this time is the application of the Juvenile Criminal Justice System (SPPA). The purpose of holding a criminal justice system is not only to impose criminal sanctions, but to put more emphasis on the responsibility of the perpetrators, which is often referred to as the restoration of justice.

Restorative justice is the cornerstone in dealing with children in conflict with the law, which is a developing paradigm in the investigation of criminal acts committed by a child. Restorative justice is a growing option for dealing with children with legal problems in various countries, as it offers a comprehensive and effective solution (Farhana, n.d).

Restorative justice must be carried out as a form of protection for children in conflict with the law because in principle it cannot be separated from the surrounding context so that it is unfair if they have to be subject to retaliation regardless of its existence. and the circumstances involved. The implementation of Restorative Justice in the Juvenile Justice System Law is through the Diversion Mechanism, where the court is in the form of decisions (Articles 12 and 52) and non-conciliation/conciliation, which can be carried out outside or inside the court, with products. court in the form of decisions, namely criminal or legal action (Article 69). Dialogue and mediation mechanisms are carried out by involving perpetrators and victims, but also with other parties. Based on the conclusions of the research results, there is no significant tendency in criminal practice to apply the law which aims to restore a fair situation to protect the rights of children in conflict with the law (Sosiawan, 2016).

The aim of restorative justice is the best interest for the child concerned without harming the interests of the victim and society. UU no. 23 of 2002 Article 64 Special protection is protection in emergencies for children, children in conflict with the law, children from minority and isolated groups, children who are exploited financially and/or sexually, children who are victims of people smuggling. Drug abuse, alcohol.

Considering the contents of Article 64 which regulates sentencing if children face the law, then in implementing

special protection for children according to Law Number 11 of 2012 concerning Child Criminal Law Article 1 point (6). in the context of just compensation, is the settlement of crimes in such a way that the perpetrators, victims, relatives of the perpetrators/victims and other close people seek a fair solution together, prioritizing restoration of the original situation rather than revenge, then the right of restitution is to achieve the goal as referred to in Article 1 point (7) diversion is one of the judicial processes that aims to restore a just situation that can be achieved through conversion, namely the treatment of naughty children outside the court.

The process of diversion in carrying out restorative justice is a protective step especially for children who are in conflict with the law, which based on Government Regulation Number 65 of 2015 concerning Guidelines for Handling Children who are not yet 12 years old, provides certainty for children who are in conflict with the law due to ignorance of their actions, provides special protection, that is, the child will be brought before the court if the age at which the act of violating the law was committed was 12 years old in accordance with Article 1 Point (3) P.P.No. 65/2015.

The provision of special protection is also provided by UU No: 11/2012, that the law is very concerned about the growth and development of children and special protection for children in several fields, such as:

- a. Field of Child Criminal Control Procedures, from Articles 16 to 25
- b. Field of Investigation Articles 26 to 29
- c. Arrest/Detention Section Articles 30 to 40
- d. The criminal field is divided into imprisonment and action

Handling children in conflict with the law through non-penal settlement outside the court (Restorative justice) so that it has a negative impact on the child's developing body and guarantees and respects the dignity of the child, and a process that is not too formal that will provide comfort for the child in trouble, for steps related to restorative justice, then the Diversion process is a deliberative-based justice or judicial approach, where the settlement process involves the parties involved. Such as perpetrators, victims and their families and law enforcement officials.

In the process of Diversion associated with a commitment to maintain the dignity of the child, then based on the Differential Association theory Based on this the principles of the differential association theory are:

The circular process related to the obligation to respect the dignity of the child is then based on the differential association theory. Building on this, the principles of differential association theory are:

- a. Bad behavior is learned;
- b. Such learning is a product of interaction
- c. Crime cannot happen without the help of other people; is the function of socialization;
- d. Learning takes place in close groups;
- e. Criminal investigation techniques, namely:

Legal Influence and Motivation Law Responses to social rules and laws are not uniform across society, and children are in constant contact with others who have different opinions about the benefits of following the law. Some children who admire them may openly hate or break laws or ignore their contents. Children experience what Sutherland calls "cultural conflict" when they confront differences and differing attitudes about what is right and wrong, or moral and immoral. The conflict between social attitudes and cultural norms underlies the concept of differential associations. Different associations can vary in duration, frequency, priority and intensity. The quality of social interaction influences whether a person learns to obey or ignore laws. Those that last a long time have a greater impact than those that are brief (Sari, 2021).

2. CONCLUSIONS

Legal protection for children in conflict with the law, the author relates to special protection for children who are dealing with Law Number 11/2008 concerning Information and Electronic Transactions (ITE) which was amended by UU No. 19 of 2016. Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Judging from the data that the author tried to go to various courts around Jakarta, especially at the West Jakarta state court, the problems of children in conflict with the law are not related to uu ite, but they are more in the realm of general criminal acts such as fighting, theft, etc.

The author has concluded from the explanation above that special protection for children who have problems with the law has been included both in Law No. 23 of 2002 concerning child protection Article 64 and also in related laws such as Law Number 11 of 2012 concerning the Criminal Justice System Children, as well as Government Regulation Number 65 of 2015 regarding the diversion process for children who commit crimes who are not even 12 years old.

Therefore, the authors conclude that special protection to maintain growth and development, and the dignity of children is very optimal with the availability of these rules.

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