



A Philosophical Juridical Study on the Best Interests of Children in the Juvenile Criminal Justice System

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ABSTRACT

Children's rights must be upheld and implemented in all nations that have established conventions on children's rights. This includes taking all necessary legislative and other steps. This is because only children can determine whether a decision or policy will be applied to them, whether it is good or bad, it must be prioritized for the best interests of the child, one of which is by implementing the resolution of cases of children in conflict with the law, a child should not be punished, but they should be given protection and assistance. The aim of this research is to find out how the principle of the best interests of children is regulated in the SPPA Law. The method used is normative juridical. The research found that cases involving children must be resolved according to the juvenile criminal justice system through diversion which must be pursued at every stage of the criminal justice system. This is important for the child's future fulfillment and opportunity to become a productive and responsible individual. Children need to be protected through the principle of the child's best interests. According to the principle of the best interests of the child, all decisions regarding children, including those made by parents, society and the government, must be made by considering the best interests of the child.

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1. INTRODUCTION

In the perspective of criminal law, the best interests of children are reflected in efforts to protect children as perpetrators of criminal acts, known as children in conflict with the law. The law for children in conflict with the law has also been regulated internationally in the Convention on the Rights of the Child (hereinafter KHA). As is known, the Convention is one of the groups of sources of international law. Another group is what is called *international custom*, as well as *the general principles of law recognized by civilized nations*, as well as decisions or resolutions of international organizations.

These international documents morally and/or legally can be used as a reference in efforts to provide legal protection for children, although legally it still requires further steps so that these international documents can become the basis of law in practice. One of the documents related to the above is the KHA which has been ratified by Indonesia so that it has become part of positive law in Indonesia. The consequence of the ratification is that legislation related to children must adopt the contents of the provisions in the KHA. Therefore, various efforts have been made through legislation related to efforts to realize the best legal interests of children. One of them is the regulation of children as perpetrators of criminal acts through a special criminal law, namely Law Number 11 of 2012 concerning the Child Criminal Justice System (hereinafter SPPA Law).

2. METHODOLOGY

This scientific journal is compiled by means of qualitative methods. This type of research uses normative juridical, namely by looking for problem solving of legal issues that are happening or have become by researching and analyzing legal norms without looking at the practices that occur in the field and using the

legal approach method. (Triana Ohoiwutun & Samsudi, 2017) Marzuki Mahmud said that the legal approach is implemented by taking into account all laws and rules related to the legal issues handled, as well as the theoretical framework. This study used documentation data collection techniques. Marzuki Mahmud said that a researcher can use a conceptual approach, which offers an analytical point of view in solving legal research problems in terms of legal concepts whose approach is, or a conceptual approach, that is, a strategy used when the researcher does not depart from the existing legal regulations.

3. RESULT AND DISCUSSION

Talking about the best interests of the child in the perspective of criminal law cannot be separated from the tendency of the international community to care about the interests of children. One of the international instruments related to children's interests is called KHA. From a historical perspective, the KHA originated in 1979 when the International Year of the Child was proclaimed, at which time the Polish government proposed the formulation of a document that laid down an international standard for the recognition of children's rights and was juridically binding. This was the beginning of the formulation of the 1989 Convention on the Rights of the Child.

The KHA has been ratified by the Government of Indonesia through Presidential Decree (Keppres) No. 36 of 1990, including determining that no child shall be deprived of liberty unlawfully or arbitrarily, KHA is subjected to torture or other cruel, inhuman or degrading treatment/punishment, the death penalty, or life imprisonment. The KHA also postulates that member states shall respect and guarantee the rights of every child within their jurisdiction without discrimination of any kind, regardless of race, color, ethnicity, sex, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability, birth or other status of parents or legal guardians. Member States shall take significant measures to ensure that the child is protected from any form of discrimination or punishment based on the status, activities, expression of opinion, or beliefs of the child's parents, legal guardians, or family members. It is also affirmed by the KHA that in all actions concerning the child, whether undertaken by social welfare agencies, public or private, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

If we look at the provisions of the KHA, all institutions related to children must be oriented towards the best interests of the child. The best interests of the child here should be interpreted as all efforts oriented towards the rights of children regulated in all applicable laws and regulations, in addition to services by various institutions that care about the best interests of children. The implementation of the main tasks and functions of the political superstructure and political infrastructure with regard to children's rights must be carried out optimally for the benefit of children, both in relation to the present and future interests of children. In the context of criminal justice, when a child enters the judicial process, the best interests of the child must be the top priority. This means that operationally, the involvement of many parties such as law enforcement officials, non-governmental organizations, advocates, parents/guardians of children must be able to formulate humane policies by considering many things both concerning the child's personal self, family environment and society at large.

3.1 The Best interests of the child in the SPPA Law

Looking at the preamble of the SPPA Law in point b, it is clearly explained that to maintain their dignity, children are entitled to special protection, especially legal protection in the justice system. This section is a form of real recognition of the importance of the dignity of children so that there is a message that children get special treatment. Furthermore, point c states that Indonesia as a State Party to the *Convention on the Rights of the Child* which regulates the principle of legal protection of children has the obligation to provide special protection to children in conflict with the law.

So the importance of children for the future of a nation has encouraged the international community to encourage countries in the world to make special regulations to protect the dignity of children. Likewise, the general explanation of the SPPA Law emphasizes that children are an integral part of human survival and the sustainability of a nation and state. It is stated that in the Indonesian constitution, children have a strategic role. The state guarantees the right of every child to survive, grow, and develop and to protection from violence and discrimination. Therefore, the best interests of the child should be realized as the best interests for the survival of humanity.

The elucidation of Article 1 letter d of the SPPA Law explains that the best interest of the child is that all decision-making must always consider the survival and growth of the child. There are three categories of children who are qualified by the SPPA Law as children in conflict with the law, namely children in conflict with the law, which in the SPPA Law is simply referred to as children, then there is the term Child Victim and also the term Child Witness. The three terms (Child, Child Victim, Child Witness) are all referred to as children in conflict with the law (ABH). Furthermore, in this study, the focus is on children in conflict with the law, which will only be referred to as children. If we look at the SPPA Law, there are at least three things related to efforts to fulfil the best interests of children. These three things are: 1) Diversion

as regulated in Chapter II Article 6 through Article 15. 2) Juvenile Criminal Justice Procedure Chapter III consists of Articles 16 to 62. 3) Punishment and Measures Article 69 to Article 83.

3.2 Diversion

Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. The underlying philosophy of diversion is what is referred to as the value of recovery from the state as it was before the criminal offense committed by the child. This is in accordance with Article 6 of the SPPA Law that Diversion aims to: a. achieved peace between victims and children; b. resolve children's cases outside the judicial process; c. prevented children from deprivation of independence; d. encouraged the community to participate; and e. in still a sense of responsibility in children. Diversion must be pursued at every level of examination.

With the success of diversion efforts, children are kept away from the stigma that will realistically always be attached to children when a child is dealing with the criminal justice system. This is an ideal way to prevent further victimization of children due to the influence of the criminal justice system. Furthermore, the regulation on juvenile justice procedures. Juvenile justice procedures are specifically regulated differently from adults. Philosophically, this means that the state and government are very careful when the diversion process or the transfer of cases from the criminal justice system does not reach an agreement.

3.3 Special Criminal Procedures

The process of handling children in conflict with the law uses special regulations that are different from adults. The philosophy underlying why children in conflict with the law must be regulated specifically is the matter of children who are psychologically very different from adults. If drawn from the philosophy of criminal law, children are considered not yet aware of their actions so that children cannot be held accountable in criminal law. The judicial process that touches children must be such that it does not traumatize the child and experience other psychological losses that threaten the child's future. In the SPPA Law, these efforts can be seen in regulations regarding the identity of children who must be kept confidential in the news in print or electronic media. Then in the event that a child under the age of 12 (twelve) years commits or is suspected of committing a criminal offense, Investigators, Community Supervisors, and Professional Social Workers make a decision to: a. hand them back to their parents/guardians; or b. include them in education, coaching, and mentoring programs at government agencies or Institutions for Social Welfare (LPKS) at agencies handling social welfare, both at the central and regional levels, for a maximum of 6 (six) months. Institution for Social Welfare (LPKS) in the agency in charge of social welfare, both at the central and regional levels, for a maximum of 6 (six) months. Investigators, Public Prosecutors, Judges, Community Supervisors, Advocates or other legal aid providers, and other officers in examining cases of Children, Child Victims, and/or Child Witnesses do not wear togas or official attributes. The special regulation through the SPPA Law reflects the seriousness in treating children in conflict with the law so that their dignity is maintained.

3.4 Child Sanctions

The philosophy in sanctioning children is at the level of their ability to be responsible. In this context, it must be understood about what is called the individualization of punishment. Criminal sanctions must be tailored to the personality of the child who will be sanctioned. The choice of sanctions must be the main alternative to prevent victimization of children. The regulation on criminalization and punishment for children must provide alternative types and choices of sanctions for children. The philosophical meaning of the types and choices of sanctions for children is to maintain the dignity of children so that the positive side of children is protected and maintained so that they are still able to live their lives productively in society.

It is regulated in the SPPA Law that children can only be sentenced or subjected to actions based on the provisions in the SPPA Law, and children who are not yet 14 (fourteen) years old can only be subjected to actions. Several things that must be considered in the imposition of sanctions are such as the severity of the act, the personal circumstances of the child, or the circumstances at the time of the act or what happened later can be used as the basis for the judge's consideration not to impose punishment or impose measures by considering the aspects of justice and humanity.

The types of punishment are regulated differently from those that apply to the types of punishment for adults, namely the basic punishment for children consists of: a. warning punishment; b. punishment with conditions: 1) coaching outside the institution; 2) community service; or 3) supervision. c. job training; d. coaching in an institution; and e. imprisonment. (2) Additional punishment consists of: a. forfeiture of benefits obtained from the criminal offense; or b. fulfilment of customary obligations. Meanwhile, the types of measures are: a. return to parents/guardians; b. handover to someone; c. treatment in a mental hospital; d. treatment in LPKS; e. obligation to attend formal education and/or training held by the government or private entity; f. revocation of driving license; and/or g. repairing the consequences of the criminal offense. In

addition, it also regulates the guidelines for the imposition of these types of sanctions and the method of implementing each type of punishment and action. Sanctions are the authority of judges, in this connection it should be stated that there are general guidelines, especially for judges that the Indonesian Supreme Court has determined that judges' decisions must consider all aspects of a juridical, philosophical and sociological nature, so that the justice to be achieved, realized and accounted for in judges' decisions is justice oriented towards legal justice, moral justice and community justice. The juridical aspect is the first and main aspect based on the applicable law. The philosophical aspect is an aspect that is based on truth and justice, while the sociological aspect considers the cultural values that live in society. According to Mackenzie (Bagir Manan, 2006: 7-12).

4. CONCLUSION

The nature of the best interests of the child according to the SPPA Law is that all decision-making must always consider the survival and development of the child. Judging from the SPPA Law, systemically the decision towards the child must maintain the dignity of the child. Starting with the existence of diversion that allows the best decision for children at every stage of the judicial process, then special arrangements regarding procedures at each level of the judicial process, and the choice of sanctions that are best for children.

5. RECOMMENDATION

There are several theories or approaches that can be used by judges in considering the decision in a case, one of which is the Ratio Decidend theory. This theory is based on a fundamental philosophical foundation that considers all aspects related to the subject matter. Philosophical foundations are part of a judge's consideration in making a decision, because philosophy is related to the conscience and justice contained in a judge. Then the legislation is the basis for a judge to determine the decision to be handed down. In the decision, legal considerations are also stated which reflect the clear motivation for making the decision, namely to uphold the law and provide justice

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