

LEGAL PROTECTION OF CHILDREN AS CONVICTS

Hamdi Hasibuan¹

¹Universitas Muhammadiyah Sumatera Utara
(e-mail: hamdi.lapas@gmail.com)

Abstract: Appropriate handling and law enforcement is needed against children as perpetrators of criminal acts of abuse. If a child violates the law, the child must be held accountable for his actions, however, even though he must be held accountable for his actions, the child must be protected. Child protection is closely related to the five pillars namely, parents, family, community, government, regional government and the state. The five are related to each other as child protection providers. According to Article 4 of the SPPA Law, a child who is undergoing a criminal period has the right to Remission or reduction of his criminal past, Assimilation, Leave to visit family, Conditional release, Leave before release, Conditional leave and other rights in accordance with statutory regulations. In addition, the principle of protection in the SPPA Law can be seen in terms of imposing sanctions. Children as perpetrators of criminal acts can be subject to 2 (two) types of sanctions, namely action sanctions (perpetrators of crimes under 14 years old) and criminal sanctions (Article 69 of the SPPA Law).

Keywords: *Legal Protection, Children, Convicts.*

Introduction

According to Lilik Mulyadi, in terms of the juridical aspect, the definition of a child in the eyes of Indonesian positive law is defined as an immature person, a minor or underage circumstances, or often also referred to as a child under the supervision of a guardian (Mulyadi, 2005).

Children are part of the younger generation as one of the human resources which is a potential successor to the aspirations of the nation's struggle, which has a strategic role and has special characteristics and characteristics. Furthermore, explained in the elucidation of Law no. 11 of 2012 concerning the Juvenile Justice System that children are an integral part of human life and the sustainability of a nation and state. Thus, children are an important component of the Indonesian nation so that their position is as a party that must be protected.

Appropriate handling and law enforcement is needed against children as perpetrators of criminal acts of abuse. If a child violates the law, the child must be held accountable for his actions, however, even though he must be held accountable for his actions, the child must be protected. Child protection is closely related to the five pillars namely, parents, family, community, government, regional government and the state. The five are related to each other as child protection providers (Fitiyani, 2016).

Literature Review

1. Legal arrangements regarding children in Indonesia

Law No. 11 of 2012 concerning the Juvenile Justice System also explains that children have a strategic role which is expressly stated that the state guarantees the right of every child

to survival, growth and development as well as protection from violence and discrimination. Therefore, the best interests of children should be internalized as the best interests for the survival of mankind. The consequences of the provisions of Article 28B of the 1945 Constitution of the Republic of Indonesia need to be followed up by making government policies aimed at protecting children. Law No. 23 of 2002 concerning Child Protection, explains explicitly in Article 1 Paragraph (2), "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and humanity, as well as experiencing violence and discrimination". Thus, children must be protected so that they can grow as one of the components of the next generation of the nation that can optimally contribute to the nation and state, or in other words child protection is carried out to improve the quality of human resources owned by the Indonesian nation.

Children in their development experience a period of transition from toddlers to children and teenagers. During the transition period, children experience difficult times because they have to make adjustments to physical and psychological changes. So this will affect the pattern of social life. Apart from the transition period, the problems that children often face are due to the lack of parental care, the problem of poverty which positions children to become criminals such as theft, the widespread circulation of pornographic media so that many children become perpetrators of sexual violence and there are many other causes. other. In cases of violence and other crimes, children are often involved, both as witnesses and victims.

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Legal Protection of Children

The state's commitment to protecting its citizens, including children, can be found in the preamble to the 1945 Constitution. This is reflected in the sentence: "...Then instead of that, to form an Indonesian State government that protects the entire Indonesian nation and all of Indonesia's bloodshed." Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice, national independence was formulated ...". The state's juridical commitment to protect its citizens mentioned in the fourth paragraph, then elaborated in Chapter XA on Human Rights (HAM). Specifically for legal protection of children, Article 28B paragraph (2) of the 1945 Constitution states: "Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. The rights stated in Article 28 are of course not the monopoly of adults only, but also children. Some of those rights are:

- a. The right to live and defend life and livelihood (Article 28 A of the 1945 Constitution).
- b. The right to recognition, guarantees, protection and legal certainty that is just and equal before the law (Article 28 D paragraph (1) of the 1945 Constitution).
- c. The right to personal protection, honor, dignity and property under his control as well as the right to feel safe from the threat of fear to do or not do something which is a human right (Article 28 G paragraph (1) of the 1945 Constitution).
- d. The right to be free from torture or treatment that degrades human dignity (Article 28 G paragraph (2) of the 1945 Constitution).

Child protection is all efforts made to create conditions so that every child can exercise his rights and obligations for the proper development and growth of children physically, mentally and socially. Gosita explained that child protection is a joint activity aimed at securing, procuring, and fulfilling the spiritual and physical well-being of children in accordance with their interests and human rights (Gosita, 1985). Based on laws and regulations and explanations from Gosita, child protection is a manifestation of justice in a society, thus child protection is sought in various fields of state and social life, where child protection activities can bring legal consequences, both written and unwritten. The law is a guarantee for the certainty of child protection. This is because child protection is an area of national development. Protecting children means protecting people, that is, building a whole person. As stated by Gosita, it is necessary to strive for legal certainty for the continuity of child protection activities and to prevent abuses that bring unwanted negative consequences in the implementation of child protection.

Children in the criminal justice process have several rights that need to be considered and fought for, including: (Soetodjo, 2010)

- a. Every child has the right to be treated as innocent;
- b. Every child has the right to get protection from actions that are harmful and cause mental, physical and social suffering;
- c. Every child has the right to receive assistance from legal counsel to assist in the criminal justice process;
- d. Every child has the right to receive counseling in participating in expediting examinations
- e. Every child has the right to express his opinion
- f. Children have the right to a closed trial in their interests to avoid mental, physical or social pressure;
- g. Every child has the right to receive humane guidance in accordance with statutory regulations;
- h. As far as possible the trial is not postponed, the consequence is careful preparation before the trial begins;
- i. Every child has the right to be able to relate to his parents and family.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System regulates protection regarding guarantees for the safety of children who become witnesses in Article 90 Paragraph (1) point (b) which states "safety guarantees, both physical, mental and social". Safety guarantees are needed as a child who becomes a witness in a criminal justice trial. As someone whose testimony becomes evidence, there is a tendency that the testimony given by children will harm the perpetrator or benefit the victim. Therefore, the existence of witnesses could be threatened by other parties who feel aggrieved by the testimony. In this case, testimony is one of the tools of evidence in a trial so that the disappearance of a witness

also means the loss or obstruction of evidence to be used as evidence in a criminal court trial. As a real form of protection for the safety or security of child witnesses, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System provides flexibility for child witnesses to provide the necessary testimony during the trial process.

2. Legal Protection for Child Offenders

There are differences in the criminal justice process for adults and children who commit crimes, namely, the law mitigates criminal acts committed by children, because there are children's rights that must be protected. The differences in the judicial process can be seen, one of them in the provisions of Article 3 of the SPPA Law which regulates the rights of every child in the criminal justice process, including:

- a. Treated humanely by paying attention to the needs according to their age;
- b. Separated from adults;
- c. Obtain effective legal and other assistance;
- d. Doing recreational activities;
- e. Free from torture, punishment or other cruel, inhuman and degrading treatment;
- f. Not sentenced to death or life imprisonment;
- g. Not be arrested, detained, or imprisoned, except as a last resort and for the shortest time;
- h. Obtain justice before a child court that is objective, impartial, and in a session that is closed to the public;
- i. His identity is not published;
- j. Obtaining the assistance of parents/guardians and people trusted by the child;
- k. Obtaining social advocacy;
- l. Gaining a personal life;
- m. Gaining accessibility, especially for children with disabilities;
- n. Obtaining education;
- o. Obtaining health services; And
- p. Obtain other rights in accordance with the provisions of the legislation.

According to Article 4 of the SPPA Law, a child who is undergoing a criminal period has the right to:

- a. Remission or reduction of criminal past;
- b. Assimilation;
- c. Leave to visit family;
- d. Parole;
- e. Leave ahead of free;
- f. Conditional leave;
- g. Other rights in accordance with statutory regulations.

Furthermore, the principle of protection in the SPPA Law can be seen in terms of imposing sanctions. Children as perpetrators of crimes can be subject to 2 (two) types of sanctions, namely sanctions for actions (perpetrators of crimes under 14 years old) and criminal sanctions (Article 69 UU SPPA):

- a. Sanctions for action include returning to parents/guardians, handing over to someone, treatment in a mental hospital, treatment in LPKS, obligation to attend formal education and/or training held by the government or private bodies, revocation of a driver's license and/or repairs due to a criminal act (Article 82 of the SPPA Law).
- b. Criminal sanctions include principal punishment and additional punishment (Article 71 of the SPPA Law):
 - 1) Principal crimes which include warning sentences, sentences with conditions (consisting of coaching outside institutions, community service, or supervision), job training, coaching within institutions and prisons.
 - 2) Additional punishment which includes, deprivation of profits derived from criminal acts or fulfillment of customary obligations.

Conclusion

According to Article 4 of the SPPA Law, a child who is serving a criminal period has the right to Remission or reduction of his criminal period, Assimilation, Leave to visit family, Conditional release, Leave before release, Conditional leave and other rights in accordance with laws and regulations. In addition, the principle of protection in the SPPA Law can be seen in terms of imposing sanctions. Children as perpetrators of criminal acts can be subject to 2 (two) types of sanctions, namely action sanctions (perpetrators of crimes under 14 years old) and criminal sanctions (Article 69 of the SPPA Law).

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