

PROTECTING CHILDREN RIGHTS: MENTAL HEALTH PROTECTION AS CRIMINALS IN THE JUSTICE SYSTEM IN INDONESIA

STEFI SANDRA TATILU^{1*}, CAECILIA J.J WAHA², THEODORUS H. W. LUMUNON³
and WEMPIE JH. KUMENDONG⁴

^{1,2,3,4} Faculty of Law, Sam Ratulangi University, North Sulawesi, Indonesia.

*Corresponding Author Email: ¹stevisandra@yahoo.co.id

Abstract

Protection of children can be done by protecting children directly as an effort that is directly related to the interests of children. The research is a normative juridical research. In explaining and studying legal issues, legal concepts and steps are used which are normative approach. The results show that in the judicial process, children should be treated as humanely as possible because they have basic rights that must be respected by anyone in this world, namely human rights. Important for it is understood that the child's mental health condition as a criminal offender, because the condition of mental health of children who commit crimes can influence their behavior and judicial process. Therefore, it is important for the justice system to understand the mental health condition of children and take this into account in court proceedings. Children as criminals who have mental health disorders need special protection so they do not become victims of violence and discrimination during the trial process. They also need access to adequate and effective mental health services. Protection of children's mental health as actors in the justice system is very important to ensure that children get protection and respect for their rights.

Keywords: Children; Criminal Law; Human Rights; Mental Health

1. INTRODUCTION

Children's mental health needs to be maintained and cared for because children are the next generation of the Indonesian nation. Children are the continuation of the life of the nation and State in the future, so they need to be maintained and protected for their personality and mental development, including in the criminal justice system against children. The importance of the potential of children as future generation causes legal protection for them regarding all the rights attached to them. Protection of children is to protect humans and build a complete human being.¹ Ignoring the protection of children can cause various social problems that interfere with law enforcement, order, security and national development.

Protection of children can be done by protecting children directly as an effort that is directly related to the interests of children, such as prevention of anything that can harm or sacrifice the interests of children accompanied by supervision so that they develop properly and guard against disturbances to themselves both from within and outside themselves and indirect protection where the person who is handled is not the child directly but other participants in child protection, such as parents, coaches and so on. These indirect child protection efforts are as follows: first, preventing other people from harming the interests of the child through laws and regulations; second, increasing understanding of children's rights and obligations; third, mental, physical and social development of other participants in order to protect them; fourth, take action against those who hinder child protection efforts.

Aspect of mental is still pure according to tabula rasa theory that experience and treatment will shape the personality of child. Children are unique individuals who are different from adult human beings. Children have unique characteristics and dynamics, as explained in Act No. 35 of 2014 concerning Child Protection. The aspect of child protection in juvenile justice in terms of the psychological aspect aims to prevent children from violence, neglect, abuse, pressure, indecent treatment and anxiety.² Child protection aims to guarantee the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and discrimination, for the realization of quality, noble and prosperous Indonesian children. The position of children who are vulnerable to human rights violations requires special protection, because children do not have sufficient capacity to look after and protect themselves, including children who are in conflict with the law. Even though children have problems with the law, the legal process is expected to affect mental growth and development as a result of psychological treatment of children.

In the juvenile justice system, it is expected to avoid psychological violence, which can have an impact on the mental health of the child. Disturbed mental health, due to the effect of stress or frustration.³ A person can be said to be mentally healthy when feels well, both psychologically, emotionally and socially. Mental health affects how a person thinks, feels, acts, makes decisions, and interacts with other people. The child's weak position usually becomes a place to vent frustration and stress from parents, including siblings and older people who live around the child, and this will affect psychologically depressed children. Erroneous views about the position of children in the family where parents think that children are someone who does not know anything so that children are not given the opportunity to express their feelings.

Other causal factors originating from the family are poverty, unemployment, mobility, isolation, inadequate housing, unexpected children, depression, unrealistic expectations for children, character disorders/mental disorders. As for psychological protection efforts for child offenders so they are not treated discriminatively have been carried out in juvenile justice practices, including providing assistance in every process of handling child cases. Legal protection for children is necessary considering that children do not have sufficient capacity to defend and fight for their own rights, their position is weaker compared to other groups in society. Violations of human rights in the form of violent treatment are criminal acts that cause both material and immaterial losses which result in feelings of insecurity, both for individuals and society, so that it needs to be restored immediately in realizing the rule of law to achieve peace, order, tranquility, justice and prosperity for all Indonesian people.

A fact shows that the juvenile justice system has not freed children from trauma and mental stress. Data from the 2021 Child Protection Task Force of the Ministry of Women Empowerment and Child Protection assesses that currently Indonesia is experiencing an emergency situation of violence against children and there are thousands of cases of violence against children every year, the Indonesian Child Protection Commission noted that the number of cases of child perpetrators in 2021 was 126 cases. Physical and psychological violence against children in Indonesia mostly occurs in West Java, DKI Jakarta, East Java, Banten and

North Sumatra.

Several cases of children as criminals have a great impact on mental health which requires solutions to provide legal protection for children.⁴ The impact of psychological pressure causes children to experience things that they don't understand and frighten, even become terrorized in their lives, but are unable or don't dare to express it for various reasons (such as threats from perpetrators, no significant others they trust) even though they tell them things that what he experienced was that it was not uncommon for the adults around her to not believe her story and think it was just fantasy.

Aspects of legal psychology related to the study of psychological impact on children are more dangerous than physical and sexual violence. Physical violence will stick with children until they become adults. Children will be affected by the conditions in which they grew up with the violence. Children who experience psychological violence tend to be quieter, unresponsive to something, withdrawn, and so on. If these conditions are not treated quickly, there will be severe depression in children and eventually suicide. According to the convention on the rights of the child, parents, society and all parties should prevent psychological impacts on children, especially psychological violence. It is important for parents to educate their children with love, do not say dirty words, snapping in front of their children. Children must get protection more than the others. This situation will encourage children to live better and avoid psychological pressure.

2. METHODOLOGY

The research is a normative juridical research. In explaining and studying legal issues, legal concepts and steps are used, which are normative approach.⁵ The approach used were statute and conceptual approaches related to research issues. Legal materials resulting from data processing were analyzed using conceptual and comparative approaches, laws and regulations relating to violence against children inside and outside the household. This paper provides information on the latest trend in research.

3. RESULTS AND DISCUSSION

3.1. Mental Health Protection of Children as Criminals in the Judiciary: Initiating a Model of Suitable Child Development Legally

Legally, suitable child development is very important because their human rights are recognized and protected by law. In addition, good child development can also help children grow and develop optimally. According to Piaget, good child development must be carried out by paying attention to the stages of children's cognitive development. Children at certain stages of development have different abilities to think and behave, so that child development must be adapted to that stage of cognitive development⁶. In addition, good child development must also be carried out by paying attention to children's rights, such as the right to education, the right to develop physically, intellectually and emotionally, and the right to be protected from all forms of violence, exploitation and discrimination. Vygotsky's theory emphasizes that child

development must be carried out by paying attention to the influence of social interaction and the child's cultural environment. Children learn through social interaction and also from the cultural environment that shapes children's mindset and behavior.⁷

In terms of children development legally, parents or guardians must ensure that children get access to their rights and do not become victims of actions that violate children's rights. Parents or guardians must also understand the procedures for complaints in the event of a violation of a child's rights. In the context of legal child development, the government's role is also very important. The government must provide adequate support and facilities for child development, such as access to education, health services and protection from violence and exploitation. By taking into account the principles of child protection and children's rights, the suitable children development legally can be carried out effectively and efficiently. In the long term, good child development will have a positive impact on the future of children and also for the progress of the nation and state.

The results of research show that in the process of investigation and trial for children in conflict with the law, there is no guidance standard for children. In the judicial process, children must be treated humanely because they have basic rights that must be respected by anyone in this world, namely human rights. According to the Big Indonesian Dictionary, human rights⁸ means an authority, the power to do something. According to the legal dictionary,⁹ rights have the meaning of power, authority granted by law to legal subjects. According to Mertokusumo¹⁰ that rights are interests protected by law. The intended interests are individual or group demands that are expected to be fulfilled. Interests essentially contain powers that are guaranteed and protected by law. The development of children in the judicial process must be considered, because every child has human rights that must be respected and upheld. The protection and enforcement of everyone's rights is the responsibility of the state which is carried out by the central government and regional governments. For this reason, the state is obliged to respect and uphold the rights of every Indonesian citizen.

Mental health includes aspects such as emotional stability, the ability to maintain good interpersonal relationships, the capacity to solve problems and make decisions, and the capacity to deal with stress and negative feelings. To maintain mental health, people must prioritize maintaining a healthy lifestyle, monitor and address mental health problems when they arise, and make the most of available mental health services. Mental health plays an important role in a person's quality of life and helps individuals to reach their optimal potential.

A report from WHO states that around 450 million people worldwide have mental health disorders, with a prevalence of 20% occurring in children (O'Reilly, 2015)¹¹. With the number of incidents increasing every year, expanding knowledge regarding mental health in children and adolescents is important. Children's mental health itself is a good emotional, psychological and social condition that allows children to develop positively and prepare themselves for the challenges of life in the future. This involves positive cognitive development, good understanding and management of emotions, and the capacity to cope with problems and respond adaptively to stressful situations. The period of childhood and adolescence which is still closely related to the developmental period makes it difficult to diagnose and provide

treatment (Remschmidt, et al., 2007).¹²

Mental health is very important for children who commit crimes. In some cases, mental health issues can play a role in influencing a child's behavior and triggering inappropriate behavior.¹³ Overall, treating the mental health of children who commit crimes is critical to helping them get the help they need and preventing reoffending. It can also help children develop social skills and live a better and happier life. Thus mental health plays an important role in helping a person reach their potential and live a better and happier life. It's also important to take mental health seriously and seek help when needed.

At present, there are already many institutions such as hospitals, government agencies and even international organizations such as WHO which are intensively increasing public awareness and providing treatment for mental health. World Mental Health Day has also been established, which is celebrated every 10 October. Many mental health themes continue to change every year to increase public awareness of the importance of mental health. In 2018, the theme raised by WHO is "young people and mental health in a changing world." This theme focuses on building resilience in youth and helping them overcome the challenges that exist in the world today.

The justice system must not reduce the welfare of children. Child welfare is an order of life for children that can guarantee their normal growth and development, both spiritually, physically and socially. Bullying, stigma and discrimination are experienced by these children so that they need protection for the fulfillment of children's rights through various countermeasures in the form of handling, coaching, mentoring and recovery. So efforts to implement international legal instruments that have been ratified and national legal instruments with various government policies related to radicalism and terrorism by issuing various regulations to fulfill and protect children's rights as perpetrators of criminal acts of terrorism.

Protection of the mental health of children in conflict with the law is very important to ensure that children who are involved in the criminal justice system do not experience greater harm as a result of these negative experiences. Children in conflict with the law often experience severe psychological and emotional pressure, such as fear, anxiety or depression. Protection of the mental health of children in conflict with the law so that they can recover from these negative experiences and can participate positively in community life again.¹⁴ The following are the stages in protecting the mental health of children in conflict with the law:

1. Identification and recognition: this stage includes the introduction of children in conflict with the law and identification of the mental health problems they experience. This can be done by the police, lawyers, doctors or other related professionals.
2. Evaluation and diagnosis: this stage includes evaluation and diagnosis of the mental health of children in conflict with the law. This is done by a doctor or other qualified mental health professional.
3. Intervention and treatment: this stage includes intervention and treatment given to children in conflict with the law who experience mental health problems. This is done

- by a doctor or other mental health professional using a variety of appropriate treatment methods.
4. Rehabilitation and reintegration : this stage includes the social rehabilitation and reintegration of children in conflict with the law after the intervention and treatment process. This is done by involving families, communities, and a supportive environment to help children adapt and become productive again in everyday life.
 5. Follow-up and monitoring: this stage includes following-up and monitoring of the mental health conditions of children in conflict with the law after the rehabilitation and social reintegration process . This is done to ensure that children receive proper and continuous care so as to prevent more serious mental health problems from occurring in the future.

In the investigation and inquiry process, there are no regulations regarding child examination standards, both in terms of age and mentality. Psychological growth and development of children describes the characteristics of children who are seen as determining factors, based on their age and mentality. From a psychological perspective, is the period of development that extends from infancy to the age of five or six, this period is usually called the pre-school period, then develops on a par with the elementary school years. Even so, this term also often refers to a person's mental development, even though a person's biological and chronological age is already an adult, but if his mental development or general order then a person can be associated with the term "child".

Examples of cases of children's involvement in crimes are interesting to study, such as children's involvement in terrorist networks. Terrorist network in Tangerang, the case of Child "F" who was involved in terrorism, he was born in 2000 in one of the areas in West Java regency.¹⁵ Due to the wishes of his parents and consideration of knowledge and understanding of religion and free education "F" was better, after graduating from elementary school in 2012 "F" continued his education at Islamic boarding school "AH" in Ciwidey, South Bandung.

In this Islamic boarding school, "F" began learning to memorize the Qur'an and received education in monotheism and jihad. For 3 years, "F" received education in monotheism, jihad, idad or preparing himself from attacks by enemies of the Islamic religion, was trained to face war (war simulation), strengthened physically, learned self-defense, and learned to use air rifles. After "F" graduated, he continued his education at the Tahfidz "A" in Ciamis. With the consideration of deepening religious knowledge and free education, in addition to studying religion, they also receive education in monotheism, jihad, are trained in war simulations, make sharp weapons such as bows/arrows, small rencong, learn to assemble bombs and receive education in understanding the Islamic Daulah through screening of films, videos. According to the statement "F", there are approximately 10 to 15 students in the Islamic boarding school. Every day their activities have been scheduled, for about 2 months then "F" voluntarily declared he to join the ISIS (Islamic State in Iraq and Syria) group. Finally, with the help of his driver, he was taken back to the Islamic boarding school and after that on the way home his driver was arrested by the police.

Examples of cases of children's involvement in crimes are interesting to study, such as the involvement of children in networks of drug users and dealers. The suspect Fernando Braves Shevchenko Gagahunting, was born at Bitung, aged 16, Male, Indonesian Citizen, and Residential Area IV RT 015 RW 004 Kel. Pakadoodan Kec. Maesa Kota Bitung, Christianity, and as Student. Cases such as child terrorism, illegal drugs, and abuse are cases that often occur in children and adolescents in various countries, including Indonesia. These cases show the need to apply the principle of Best Interest Law for Children as perpetrators (criminals).

In the case of child terrorism, decisions taken must consider the best interests of the child in the context of education, rehabilitation and reintegration into society. Repressive measures alone will not bring long-term benefits to the child. On the contrary, these actions can damage the future of children and endanger the security of society. In the case of illegal drugs, decisions must take into account the health and safety of the child. Children must be given protection from the bad influence of illegal drugs and directed to make healthy and responsible decisions. In cases of abuse, the decisions taken must consider protecting the child from all forms of violence and neglect. Children must be protected from acts of violence and given access to adequate health and psychosocial services.

In all of these cases, the legal principles of best interests for child as perpetrator must be used as the main guide in decision making. Children must be considered as individuals who have equal rights and must be protected from all forms of violence, exploitation and neglect. The best interests of the child must be the top priority in any decisions relating to children.¹⁶ The legal principle of the best interest for children as actors is based on the concept that children are individuals who have special rights and needs that must be protected and fulfilled. This principle is also based on the view that children have the same rights as adults, but because of their limitations in making rational decisions and their abilities that are still developing, special protection is needed to ensure that their rights are protected and fulfilled.

This theory is also based on the recognition that children as legal subjects have interests that need to be considered in every decision relating to them. The best interests of children should be the top priority in decisions regarding their well-being. This aims to protect children from all forms of exploitation, violence and neglect and ensure that their rights are properly fulfilled. The legal principles of best interests for children as perpetrators also recognize that children are unique individuals with different special needs. Therefore, the decisions taken must take into account the needs and individual characteristics of the child. In the context of crimes committed by children, a rehabilitative approach must be applied to help children return to society and prevent future criminal acts from occurring. The legal principle of the best interests of children as perpetrators has been recognized internationally and adopted in various international legal instruments, including the Convention on the Rights of the Child which was ratified by the United Nations. This principle is also recognized in the national laws of various countries, including Indonesia.

4. IMPLICATIONS AND RECOMMENDATIONS

In the process of investigation and trial of children in conflict with the law, there is no standardization of guidance for children. In the judicial process, children should be treated as humanely as possible because they have basic rights that must be respected by anyone in this world, namely human rights. Important for it is understood that the child's mental health condition as a criminal offender, because the condition of mental health of children who commit crimes can influence their behavior and judicial process. Therefore, it is important for the justice system to understand the mental health condition of children and take this into account in court proceedings. Children as criminals who have mental health disorders need special protection so they do not become victims of violence and discrimination during the trial process. They also need access to adequate and effective mental health services. Protection of children's mental health as actors in the justice system is very important to ensure that children get protection and respect for their rights.

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Declaration of Interest

Authors declare there are no competing interests in this research and publication.

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