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Responsibility for Criminal Action of Subsidiaries Abused Under the Age due to Heavy Wound (Case Study: Decision Pn. Tangerang No. 71 / Pid-Sus-Anak / 2018 / Pn. Tng)

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This study aimed to describe the cases that had occurred also analyze from the legal side with the applicable law. Here, the name of cases is regarding the abuse carried out by minors which is the result in this case contain a serious injury No: 71/ Pid-Sus-Anak / 2018 / PN Tng. Thus, we proposed a qualitative data study using normative juridical methods. The results showed the process of handling child law prioritizes on diversion process. Here, the legal process in the diversion stage was carried out from the investigation stage, the prosecutor's office, and the court. However, the case relative fail through the trial process at Tangerang district court. Judges in deciding cases use Law regulation no. 11 of 2012 with a sentence of 10 months and training for 3 months. In the court process, there are several things and not appropriate and reduce the child's right to justice where the handling of the child is still not appropriate because the child is detained in a cell not at the Temporary Child Care Institution (LPSA) until the judge's decision read. In detention children are placed in detention (cells) so that this is not in accordance with Law No. 11 of 2012 concerning the juvenile justice system which should place children who conflict with the law placed in the Special Institution for Child Development (LPKA). This case has been done due to the facilities in the Tangerang jurisdiction do not yet have LPSA and LPKA facilities. Thus, for future research it's expected to give emphasis to the justice of children in conflict with the law in order to get their rights in accordance with Law regulation no. 11 of 2012.

Keywords: Liability for criminal acts, Maltreatment, Children, Minors, Serious injurie.

1. INTRODUCTION

In every country the application of law is very fundamental, because with justice and the application of appropriate law it will have an impact on trust both in the national and international community [1, 2, 3]. The legal process is also applied to anyone who breaks the law, including against children who commit violations [4]. In fact, in every community from the RT (Neighborhood Association) and RW (Citizens Association) levels, cases such as children perpetrating violence often occur [5]. This is influenced by several factors that cause children to do things outside their condition, such as abuse, theft, sexual violence, etc [6, 7]. Thus, the development sophisticated technology was increasingly to everyone and even minors are free with access the internet. Here, the sites are not suitable for children so that every child also takes advantage of this technology and it is very

difficult to control if their website use [8, 9]. In this condition the children do a lot of actions that imitate what they see and they themselves do not know thoroughly about the impact of the actions they do [10, 11]. Even though the actions taken by the child are considered morally inappropriate by the community. Thus, the moral values established by society as children law who commit immoral acts are children who break the law [12, 13]. Children are a gift from by god where the Almighty as a candidate for the next generation of the nation who is still in a period of physical and mental development. In addition, the influence of free technology that causes children to break the law, sometimes children experience difficult situations that make them commit illegal acts such as depression, disappointment in the family, and discriminatory treatment from the social environment [14, 15]. On the other hand, there may also be a result due to high emotional development, because in adulthood,

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triggers for opposite with sex competition are also often the cause of crime or violence [16, 17]. Even so, children who break the law are not eligible to be punished, let alone be put in prison [18]. Thus, the deviant behavior of children is often referred to as juvenile delinquency. This behavior is not in accordance with the norms that exist in society with resulting in violations which in turn tend to lead to criminal acts [19, 20]. Criminal acts committed by children or known as juvenile delinquency today are increasingly widespread and varied, both in quality and quantity. This is a concern because the delinquency committed by these children is not just ordinary delinquency, but tends to lead to criminal acts that are not in accordance with the norms prevailing in society. The problem of child crime is not a problem that occurs in a small scope, but almost occurs in both big cities and small cities [21]. In fact, every country in the world has experienced or faced crimes committed by children [22].

In the case of children handling cases who commit crimes, efforts that involve many institutions are required [23]. Efforts to foster, develop and protect children require community participation, including child protection institutions, religious institutions, non-governmental organizations, community organizations, social organizations, business world, mass media or educational institutions. A child commits an error and a criminal act, then the child should receive special protection and treatment in terms of the judicial process as regulated by Law Number 11 of 2012 concerning the Criminal Justice System for Children [24, 25]. The social problem of children's delinquency so far as mentioned above does not only occur in developing countries, but also occurs in developed countries such as the United States. Robert Mevercic Iver in his book "The Prevention and Control of Delivery" states that based on statistical data, child delinquency increases every year, it is also stated that the increase is quite alarming and if the child delinquency is allowed then it will increase to become child crime or Adult Criminality [26, 27, 28]. This provides an overview and lessons that the factors that cause crimes committed by children need to be seriously addressed. The Ministry of Women's Empowerment and Child Protection in Indonesia (Kemen PPPA) launched the results of the 2018 National Life Experience Survey for Children and Adolescents (SNPHAR 2018). The results of the 2018 SNPHAR show that children are not only victims of violence but also perpetrators of violence [29, 30]. In fact, 3 out of 4 children report that the perpetrators of emotional and physical abuse are friends or peers with, the most reported perpetrators of sexual violence, contact or non-contact, were friends or peers (47% -73%) and around 12% -29% of their girlfriends became perpetrators of sexual violence [29, 30].

Basically, a child does not be able to take responsibility for all his mistakes because the surrounding environment also provides an opportunity to commit violations of the law. Thus, the judicial process also has differences with justice in general due to avoid

psychological pressure on children who have violated applicable norms or laws as stated in Law Number 11 of 2012 concerning the Criminal Justice System for Children as mentioned above [31, 32]. If we look at Article 351 of the Criminal Code, the threat of punishment for maltreatment is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs. If the act results in serious injury, the guilty party is punishable by a maximum imprisonment of five years. While maltreatment has resulted in death, the maximum imprisonment is seven years. Various cases of abuse committed by a child as a perpetrator of a crime resulting in a death victim can be seen in various media, of course, there must be legal responsibility for the child's actions. Although in practice, the application of the law against perpetrators of criminal acts against minors is different from those for perpetrators of criminal acts by adults [33, 34]. Here, tend to lead of criminal acts committed by the child in the form of a crime are classified as delinquency [35]. Based on previous study above, it provides an illustration that violence by children is interesting to discuss because both from the aspect of criminal law and judges' considerations to convict cases that occur to children are still very rare [36, 37]. The social phenomenon that occurs is that crimes committed by children (juvenile delinquency) today also occur in various regions [38]. An interesting incident to discuss is the incident that occurred in Ciledug District with a legal facts that occurred in violent crimes that caused serious injuries in the Tangerang District Court Decision Number: 71 / Pid.Sus • Anak12018 / PN Tng, committed by 16-year-old Dhifa Aldhoni Irmansyah Bin Suherman have been proven to have committed violence [39, 40]. In the judge's decision, the child Dhifa Aldhoni Irmansyah Bin Suherman was proven legally and convincingly guilty of committing a criminal act of violence against a child which resulted in serious injury [40, 41].

The summary of the event is on Monday, August 27, 2018 at around 12.35 WIB on Jl. Dr. Ciptomangun Kusumo Home Matrial Alam Indah Kel. Paninggilan Utara Kec. Ciledug Tangerang City. The victim named Thoriq Hartawa Salim Bin Dedy Hartono, who was trying to enter the An-Nurmaniyah Vocational School, was suddenly confronted by Difa perpetrator Aldhoni Irmansyah Bin Suherman who attended Fatahilah High School, while the perpetrator of Difa Aldhoni Irmansyah Bin Suherman committed torture by approaching a victim himself, then Difa actor Aldhoni Irmansyah Bin Suherman who at that time was carrying 1 (one) sickle (DPB) in 1 (one) black blue backpack, his converse all star brand issued 1 (one) sickle (DPB) [41, 42]. From inside his bag, then the perpetrator slashed the victim using 1 (one) sickle (DPB) which was held using his right hand 1 (one) time towards the victim's back which resulted in the victim suffering a torn wound on the upper left side of the back, and at that time the victim was treated (Opname) at the Sari Asih Ciledug Hospital,

Tangerang City, finally the incident was reported by the victim to the Ciledug Gun Police. a further investigation. Therefore, the researcher is interested in examining the case to analyze the criminal responsibility that has been decided by the Tangerang district court with the title "Liability for criminal acts of abuse committed by minors that have resulted in serious injuries" (Case Study: PNTangerang Decision Number: 71 / Pid-Sus-Anak / 2018 / PN Tng).

2. METHODOLOGY

In order to achieve the result, we use principles and procedures for solving a problem while research is a careful diligent and thorough examination of a symptom to increase human knowledge, so research methods can be interpreted as a process of principles and procedures for solving problems that occur. faced in doing research. Furthermore, research is a principal means of developing science and technology which aims to reveal the truth systematically, methodologically, and consistently. Through the research process, it is necessary to conduct analysis and construction of the data that has been collected and processed. In research, to obtain answers about the truth of a problem, a research activity is needed in order to find scientific data as evidence in order to find scientific truth.

A. Research Type

The normative juridical research carried out by doctrinal legal research, library research or document study, examining the rules and / or norms, rules relating to the issues to be discussed also performed in this study. Thus, the purpose of this study is analyzing a problem approach to collect various kinds of laws and regulations related theories and literatures that are very closely related to the problems to be discussed. Here, the normative approach emphasizes the synchronization of several doctrines adopted in law. The normative approach is carried out through library research by studying theoretical matters concerning legal principles, conceptions, views, legal regulations and laws relating to the problems in research. This research also examines the events that occur in society regarding law violations committed by children so the empirical legal research method can be said to be sociological legal research. It can be said that legal research is drawn from the facts that exist in a society, legal entity or government agency. The main problem in this study is about the criminal responsibility of children as perpetrators of criminal abuse that caused serious injuries in Decision Number: 71 / Pid-Sus-Anak / 2018 / PN Tng).

B. Types and Sources of Data

In this study we use primary data taken from field research. In the context of field research, especially concerning the main problem of this research, namely about cases of abuse committed by minors while the secondary data taken from several literatures, official documents, laws and regulations, and other supporting literature sources. Here, the data collection techniques to support this study are carried out in the following ways such as Library Research Sources and Field Study (Field Research)

C. Data analysis

In this study, the data identification which is looking for the data obtained to suit the discussion that will be carried out, namely by reviewing the rules, books or articles related to the title to be discussed. While the data classification, namely the results of data identification which are further classified or grouped in order to obtain truly objective data. Furthermore, the data systematization was used to arrange data according to the systematics that have been determined in the study to make it easier for researchers to interpret the data.

3. RESULT AND DISCUSSION

Legal protection of children's rights as perpetrators of criminal acts of persecution. Here, the thought of juvenile court and efforts towards juvenile justice institutions began around 1958 with the holding of juvenile court hearings that were different from those that applied to adults. Furthermore, the Criminal Justice System is regulated and the enactment of Law No. 3/1997 on juvenile justice. This effort recognizes that children who commit delinquency must be subject to different legal actions from adults who commit criminal acts. The distinction between juvenile trial and trial for adults is a policy deliberated among agencies involved in dealing with juvenile delinquency, namely, the judiciary, the prosecutor's office, the police and social institutions. The child protection in Indonesia refers to the international concept, which is based on the Child Protection Law which is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity and receive protection from violence and discrimination. Subsequent juvenile court hearings are regulated in several provisions, as follows:

- a) The provisions of Article 153 paragraph (3) of the Criminal Procedure Code, which in essence stipulate that if the defendant is committed with the door closed and if it is not done this will result in the nullification of the verdict by law.

- b) Referring to the Minister of Justice Regulation No. M.06-UM.01.06, namely:
- i. Trial Procedures and Session Spatial Planning which in essence stipulate that a juvenile trial shall be conducted with a single judge except in certain cases conducted with a panel judge;
 - ii. The trial was held with the door closed;
 - iii. The verdict was pronounced in a court open to the public;
 - iv. Then the public prosecutor, the legal counsel met without a leg;
 - v. The children's trial is expected to have the presence of their parents or guardians or foster parents as well as the existence of a social report for the child concerned.

The regulation of Justice Minister Republic of Indonesia No. M.06-UM.01.06. Furthermore, the public practice over provisions of Article 12 paragraph (2) of the Minister of Justice Regulation Number M.06-UM.0106 in 1983 were later amended by the Regulation of the Minister of Justice of the Republic of Indonesia Number. M.03-UM.01.03 1991. Furthermore, the promulgation of Law Number 3 of 1997 concerning juvenile court based on the provisions of Article 67 of the law, the provisions of Articles 45, 46 and 47 of the Criminal Code are explicitly declared invalid. However, from an analogical point of view, other regulations still apply in the practice of juvenile court handling in Indonesia as long as they do not conflict with Law Number 3 of 1997. The regulations governing juvenile justice processes are regulated in a Supreme Court Circular, Court Instructions, and The Minister of Justice Regulation has been accommodated in it. As for the matters contained in Law no. 3 of 1997 as follows:

- a) Trials for children who are in conflict with the law shall be carried out in closed trials,
- b) Legal advisors and public prosecutors are not allowed to wear a toga.
- c) The arrest of children shall be carried out for the purpose of examination at the latest one day.
- d) Detention of a child can be carried out for a maximum of ten days.
- e) For further examination, at the request of the investigator it can be extended by the competent public prosecutor for a maximum of ten days.
- f) Within thirty days the investigator must submit the case files concerned to the public prosecutor.

Furthermore, a children's Justice Rights as Perpetrators of the Crime of Torture in the Legislation in Indonesia. Here, Children's rights are efforts to synchronize children's rights and freedoms which are recognized as basic and natural in nature, and which are inherent from birth as part of human rights. The rights of the child are recognized and protected, universally for all nations in the world, as well as recognition and protection according to the national law of a country. Legal recognition and protection of various rights and freedom of children (fundamental rights and freedom of children) is intended to fulfill various interests related to the welfare and future of children. The placement of children's rights based on the rights granted by the state, namely by prioritizing the mediation process is applied through a diversion process where child judges conduct diversions before conducting examinations of cases of juvenile cases. This diversion is carried out like a mediation process in civil cases. Child judges are given the opportunity for 7 (seven) days, are required to involve related parties in a deliberation in accordance with the terms and conditions of the Law on Juvenile Criminal Justice System in Courts closed to the public in a special room, with due observance of the principles of settlement of juvenile criminal cases. Here, does not to have special room, it is proper to use the mediation room in every District Court. It was taking a room and exclusive treatment respects the rights of children. The rights of children in the arrest process includes:

- a) The arrest of a child is carried out for the purpose of investigation for a maximum of 24 (twenty-four) hours.
- b) Children who are arrested must be placed in a special service room for children.
- c) In the event that the special service room for children is not yet in the area concerned, the child is entrusted to the LPKS.
- d) The arrest of children must be carried out humanely with due observance of the needs according to their age.

In order to protect the interests of children, the Criminal Justice System for Children is implemented based on the principles (UU SPPA No.11 of 2012), as follows:

- a) Protection and Justice; Non-discrimination;
- b) The best interests of the child; Respect for children's opinions; The survival and development of children;
- c) Development and guidance of children; Proportional; Deprivation of liberty and punishment as a last resort; Retaliation avoidance.

In order to obtain the stages in the implementation of the juvenile justice system according to Law no. 11 of 2012, we described in Figure I, as follows:

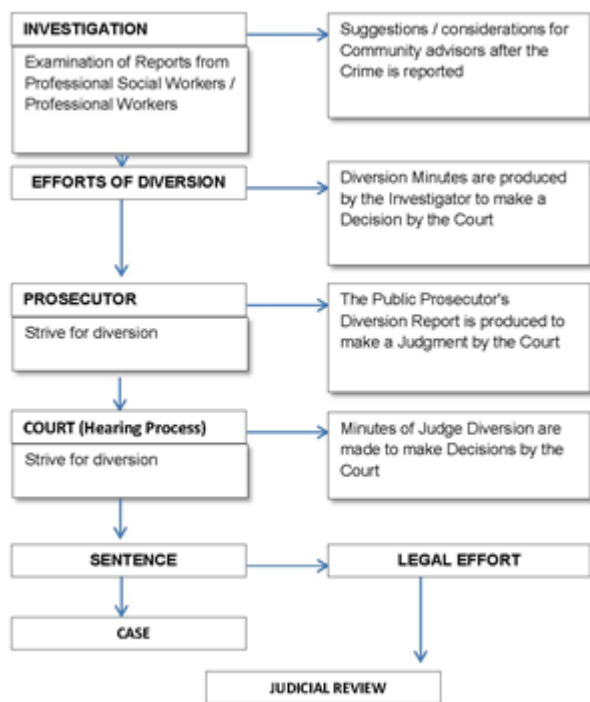


Figure I. Stages in the Juvenile Criminal Justice System according to Law no. 11 of 2012

A. Analysis of the Fulfillment of the Rights of Children of Persecutors in the Criminal Justice System

Criminal justice aims to provide a judge's decision whether a person who is a criminal offender is found guilty or not (guilty or not guilty). The criminal justice process is carried out in a procedural manner subject to strict rules of proof both from the beginning of the investigation process, in which there are all constitutional boundaries as stipulated in the 1945 Constitution until the process for imposing punishment as the final part of the judicial process, namely in the court. The regulation of the rights of perpetrators of criminal acts in the criminal justice system is closely related to state recognition of human rights as stipulated in the constitution the criminal justice system is expected to be a means of fulfilling the need for justice. In the process of seeking justice, the legal process is the main means. As expressed by Thomas E. Davitt, an instrument to direct people in things that can meet their common and common needs. Criminal Code does not provide a definition of criminal procedural law, but parts such as investigation, prosecution, trial, pretrial, court decision, legal remedies, confiscation, searches, arrests, detention and others. Thus, criminal justice is a very structured and systemic process.

B. Analysis of Decision Number: 71 / Pid-Sus-Anak / 2018 / PN Tng

Countries that already have adequate legal systems, such as the Netherlands and Japan, place great importance on efforts not to impose (conventional) crimes against children. Avoiding children from the criminal process is a way to restore children's rights. In the opinion of the author, the criminal law system in Indonesia still has not fulfilled the rights of children not to be convicted conventionally. This can be seen in the court ruling, namely Decision Number: 71 / Pid-Sus-Anak / 2018 / PN Tng from the torture case which sentenced the defendant to imprisonment for 10 (ten) months and the Work Training Criminal for 3 (three) months. Furthermore, in the case in Decision Number: 71 / Pid-Sus-Anak / 2018 / PN Tng, the author is input as an attachment to this research to find out what is the basis for the judge's consideration in imposing criminal decisions against the child, the author needs to describe the case position. in Decision Number: 171 / Pid-Sus-Anak / 2018 / PN Tng from the child abuse. Looking at the cases, we processed on handling cases from the investigation process to the court decision, there are a number of things that have not been implemented optimally. In this process of mediation or diversion so that the case can be resolved outside the court has not yet produced results. The possibility of the deliberation approach process of the several elements involved has not been maximized and what is more important is that both the victim's parents and the perpetrator have interests that are difficult to reconcile. Thus, the diversion process and several agencies involved in the diversion process (see Figure II).

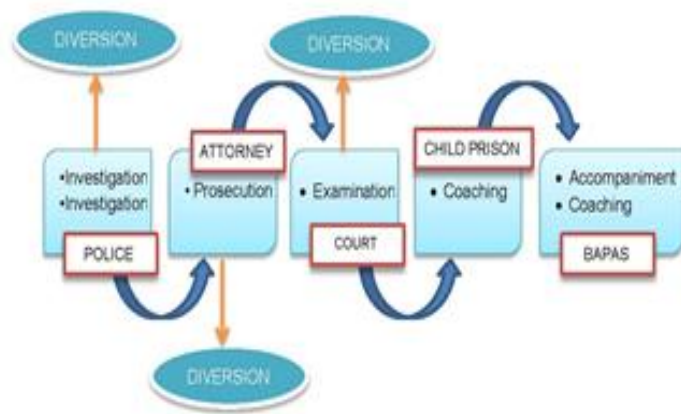


Figure II. The diversion process over several agencies in Indonesia

4. CONCLUSION

This study was successful to obtain the result. Here, the form of fulfilling children's rights as perpetrators of a criminal act of maltreatment with serious injuries has been diversified both at the police and prosecutors' level and at the court level. The process of diversion was carried out with related parties such as the parents of the victim and the suspect, community leaders, the police, prosecutors, BAPAS. but it did not work so that it continued to the trial process in court. Therefore, it means that the state has not been able to prevent children from punishment that is criminal in nature.

Furthermore, the court verdict stipulates 10 (ten) months imprisonment and 3 (three) months job training for the child perpetrator of the crime. This application is in accordance with Law No.35 of 2014 concerning Amendments to Law No.23 of 2002 concerning Child Protection, but during the legal process at the police level and at the prosecutor's office it turns out that children are not placed in RPKA (Special Service Room for Children) or LPKS (Institution). Implementation of Social Welfare) as well as in Temporary Child Placement Institutions (LPAS) during the judicial process, but the fact is that children are placed in detention centers managed by the Director General of Prisons and detention centers managed by POLRI in adult detention centers even though the places are separated, Violation of this clearly contradicts the orders of Law No.11 of 2012 concerning the Criminal Justice System for Children and violations of children's rights. Based on the result, we suggest many aspects in this study such as children conflict with the law still prioritize diversion or restorative justice, so that children can be kept away from punishment. It is hoped that in resolving criminal cases committed by children, judges should pay more attention and prioritize the principle of legal protection against children, because the purpose of criminalizing children itself is expected to be a positive educational tool, not to become an arena for revenge for children, even though it is convicted but the punishment is imposed. not to give a sorrow that suffers and humiliates the child's own dignity. By carrying out a sentence that exceeds the imprisonment, it can actually make the child's rights not fulfilled. The reform process in providing protection for children who commit crimes, namely that the state must strive to protect children's rights so that they are no longer subject to crimes as is currently the case. Imposing punishment against a child is a legal remedy that is *Ultimum Remedium* in nature.

Furthermore, the state condition should be immediately maximizing the function of new institutions as a substitute for places for arrest and detention of children, such as the Special Service Room for Children (RPKA), Social Welfare Organizing Institutions (LPKS), Temporary Placement Institutions for Children (LPAS) and Special Guidance Institutions for Children (LPKA),

as an appropriate department. Here, the mechanism of Law No.11 of 2012 concerning the Juvenile Criminal Justice System. By maximizing this institution, the rights of children in undergoing the legal process from the start to the verdict will get proper treatment and get justice according to their age. Because there are 3 (three) important things that must be prepared by the government regarding the form of protection for children in conflict with the law, namely: preparing the knowledge of law enforcement officials in the field of juvenile justice, improving facilities and infrastructure for fostering children, supporting legal products, preparing the role of the apparatus law enforcement, preparation of places of detention and prisons for children. This aims at creating restorative justice for children which is the right solution for solving criminal cases committed by children, and does not neglect the child's own rights so that they can return to the social environment naturally.

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