



Kebijakan Indonesia Dalam Melakukan Penyelamatan Lingkungan Dari Dampak Emisi Pelayaran Internasional Di Alur Laut Kepulauan Indonesia

Viani Ghefira Deflides¹, Syaifullah Yophi Ardiyanto², Tengku Arif Hidayat³

^{1,2,3}Universitas Riau

Abstract

Received: 17 Oktober 2024
Revised: 31 Oktober 2024
Accepted: 18 November 2024

Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has a weakness in that children under 12 (twelve) years of age are not included in the categorization of children in conflict with the law so they cannot be held criminally responsible and diverted. However, in many cases, children under 12 (twelve) years old can be perpetrators of criminal acts. When viewed from a humanitarian and moral perspective, it is unfair for victims who experience physical, mental suffering and/or economic loss if the perpetrator cannot be held criminally responsible, especially if the victim is also a child. Therefore, legal reform is needed in the categorization of children in conflict with the law. The aim of this research is, first, to determine and analyze the urgency of the idea of categorizing children in conflict with the law, and second, to formulate the idea of categorizing children in conflict with the law in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This research is normative legal research or also called doctrinal legal research. Research was carried out on legal theories, namely justice and legal reform, as well as a systematic approach to law. The data sources used are statutory regulations, books, journals, scientific works, dictionaries and official websites. This research also uses qualitative analysis and produces descriptive data. Based on the research conducted, there are 2 (two) conclusions obtained. First, the urgency of the idea of categorizing children in conflict with the law which includes children under 12 (twelve) years of age who have the potential to commit criminal acts due to several factors; and the absence of criminal accountability and diversion causes victims to receive different treatment. Second, the idea of categorizing a child in conflict with the law is someone who is not yet 18 (eighteen) years old who is suspected of committing a criminal act. The suggestion from the results of this research is, first, Article 1 number 3 of the Juvenile Criminal Justice System Law needs to be revised with this idea in mind. Second, there is a need for regulations that clarify the criminal procedural law for children so as not to cause confusion after the revision of the categorization of children in conflict with the law in the Juvenile Criminal Justice System Law so that the rights of children in conflict with the law remain protected, especially children in conflict with the law and the victim.

Keywords: Children, Crime, Juvenile Criminal Justice System

(*) Corresponding Author: vdeflides@gmail.com

How to Cite: Deflides, V. G., Ardiyanto, S. Y., & Hidayat, T. A. (2024). Kebijakan Indonesia Dalam Melakukan Penyelamatan Lingkungan Dari Dampak Emisi Pelayaran Internasional Di Alur Laut Kepulauan Indonesia. <https://doi.org/10.5281/zenodo.14586233>.

INTRODUCTION

Background

As children grow and develop, they experience physical, motoric, cognitive, memory, psychosocial, intelligence, creativity, language, self-understanding, relationships with family, and relationships with peers. As white

and clean paper, children are vulnerable to influences from anywhere, especially the rapid development of technology and information today, so it has a big influence on the child's growth period. Children tend to associate with people who suit their nature without long-term considerations. In this condition, children often commit acts that are not appropriate for their age, there are even deviations in their behavior and acquaintances with children (juvenile delinquency) who themselves do not fully understand the impact of the acts they commit, which are actually acts that violate the law or can be said to be criminal acts.

Moeljatno is of the opinion that a criminal act is an act that is prohibited by a legal rule which is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition. Of course, it is possible that this legal rule can be violated by anyone, including children, which means that children can also commit criminal acts or be called children in conflict with the law. Based on Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, only children who are in conflict with the law can be held criminally responsible. Children in conflict with the law are limited from 12 (twelve) years of age to under 18 (eighteen) years so that those outside of these qualifications cannot be held criminally responsible. In fact, there are many cases where children under 12 (twelve) years of age commit criminal acts, just like children in conflict with the law.

One of the reasons children under 12 (twelve) years of age are not included in the categorization of children in conflict with the law is to minimize the potential for children's growth and development to be disrupted. In fact, children who are in conflict with the law are actually processed using a different mechanism from adults, which aims to prevent children from potentially disrupting the child's growth and development. Of course, this will also apply if children under 12 (twelve) years old are included in the categorization of children in conflict with the law. According to Bagir Manan, children who are undergoing the criminal justice process are treated like small adults. It can be said that every child who commits a criminal act can actually be held criminally responsible because basically the handling mechanism is different from that of adults.

Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has a weakness in that children under 12 (twelve) years of age are not included in the categorization of children in conflict with the law so they cannot be held criminally responsible and diverted. Even though in many cases, children under 12 (twelve) years old can be perpetrators of criminal acts, but do not meet the qualifications of Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In cases where children under 12 (twelve) years of age commit serious abuse, rape, and/or even murder or criminal acts that are punishable by imprisonment for more than 7 (seven) years which, when viewed from a humanitarian and moral perspective, is unjust. For victims who experience physical, mental suffering and/or economic loss if the perpetrator cannot be held criminally responsible, especially if the victim is also a child. Therefore, legal reform is needed in the categorization of children in conflict with the law, which is the reason why the author in this research raised and initiated the title "Ideas for the Categorization of Children in Conflict with the

Law in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System".

Problem Formulation

1. What is the urgency of the idea of categorizing children in conflict with the law?
2. What is the idea of categorizing children in conflict with the law in the Juvenile Criminal Justice System Act?

Research Objectives and Uses

1. Research Objectives
 - a. To find out and analyze the urgency of the idea of categorizing children in conflict with the law.
 - b. For ideas on formulating the categorization of children in conflict with the law in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
2. Usefulness of Research

The author hopes that this research will provide benefits, both theoretically and practically, including:

- a. To increase the author's scientific insight, especially to develop the legal knowledge that the author has acquired during his studies. The author also hopes that this research will serve as a forum for critical aspirations and contributions of thought from the author for the future development of criminal law science in Indonesia. This will be in line if we relate to the legal adage, namely *lex prospicit, non respicit* (the law looks forward, not backward).
- b. To provide understanding to readers in general and writers in particular regarding the categorization of children in conflict with the law in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. It is also hoped that it can become a reference for similar research in the future.

Theoretical Framework

1. Theory of Justice

Gustaf Radbruch stated that there are 3 (three) basic legal values or 3 (three) legal objectives. The 3 (three) basic legal values consist of justice, certainty and benefit. Justice is the main thing of these three things, but this does not mean that the other 2 (two) elements can be immediately ignored. Good law is a law that is able to synergize these three elements for the welfare and prosperity of society.

Talking about justice, we will find that measures of justice are often interpreted differently. Justice essentially means treating someone according to their rights and obligations. What is the right of every person is to be recognized and treated according to the same level of dignity and worth, with the same rights and obligations, without distinction of race, rank, descent, wealth, education or religion. Justice has dimensions that touch various fields, including social, economic and legal.

John Rawls emphasizes ensuring equality, freedom and individual rights in social, economic and political life. He pays attention to the welfare of the most disadvantaged people in society and advocates saving these disadvantaged people to achieve prosperity, income and authority so that Rawls formulates the concept of justice in 2 (two) major principles. The first principle, the greatest equal principle, this principle applies broadly to all people in a democratic country

without exception. As for what is meant by equal rights, it can take the form of the right to life; freedom of association, assembly and expression of opinion; the right to personal security; the right to education; and avoid all forms of human rights violations. Justice must ensure that equal rights are realized and maintained.

Justice as conceptualized by Plato is formulated in the expression "giving each man his due", namely giving each person what is his right. For this reason, the law needs to be enforced and legislation needs to be created. When related to law, the material object is the issue of the value of justice as the core of the principle of legal protection, while the formal object is a normative juridical point of view with the aim of finding basic principles that can be applied to resolve problems that arise in the use of the justice values in question. The value of justice in question is primarily related to its object, namely the rights that must be given to society. Usually this right is assessed and treated from various aspects of political and cultural considerations, but the essence remains unchanged, namely *ius suum cuique tribuere* (give justice to everyone who has the right).

2. Legal Reform Theory

Renewal is a translation of the Arabic "tajdid" or "modernization" in English. Etymologically, renewal is the process of making something old new. Hotmartua Nasution believes that renewal is an effort to create something new, previously unknown, with more rational indications, so that it is more effective in meeting the needs of human life, either by converting the old to be actualized or by pure creation which is completely new in nature. Meanwhile, Hans Kelsen defines law as a rule, as a system of rules regarding human behavior. Legal reform is defined as a process of testing various formulations of applicable legal provisions and statutory regulations and implementing a number of changes to achieve efficiency, fairness and opportunities to obtain justice according to applicable law.

Barda Nawawi Arief stated that there are several essences of criminal law reform, namely that it is part of a policy (national effort) to update legal substance in order to make law enforcement more effective; is part of the policy (national effort) to eradicate or overcome crime in the context of protecting society; is part of the policy (national effort) to overcome social problems and humanitarian problems in order to achieve or support national goals (namely social defense and social welfare); is an effort to review and reassess the main points of thought, basic ideas, or socio-political, socio-philosophical and socio-cultural values that underlie criminal law so far.

Conceptual Framework

1. An idea is something that results from thoughts, suggestions, desires and hopes which are then conveyed.
2. Categorization is the process by which ideas and objects are recognized, differentiated, and understood. Categorization is arrangement based on categories; classification; the process and results of grouping elements of language and parts of human experience described into categories; a way to express meaning with the various potentials that exist in language.
3. A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

4. Laws are statutory regulations established by the House of Representatives with the joint approval of the President.
5. The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving the sentence.

Research Methods

Type of Research

The type of research used by the author in this research is normative legal research or also known as doctrinal legal research. Normative legal research is legal research carried out by examining library materials or secondary data. In this normative research, the author conducted research on legal theories, namely justice and legal reform, as well as a systematic approach to law.

Data Collection Techniques

Based on the source of legal materials used by the author, whether in the form of primary, secondary and tertiary legal materials, the data collection technique used by the author is by literature study and analyzing existing library materials, as well as through searching internet materials by obtaining data, both literature and internet access, articles and other literature related to this research.

Data Analysis

The analytical method used by the author is normative and qualitative. Qualitative analysis, which requires thorough and accurate description of data using orderly, logical, non-overlapping sentences, facilitates understanding and interpretation of data. This study arrived at its conclusion through deductive reasoning, namely by reasoning from general to specific. To reach a conclusion, it will start by examining real factors and end by drawing conclusions based on facts where these two facts are related to existing theories.

LITERATURE REVIEW

General Overview of Child Categorization

The certainty of the definition and legal age limits of children will be related to the rights and obligations of children in the field of criminal law, for example regarding criminal responsibility, rights in the juvenile criminal justice system, sanctions and the implementation of punishment. Children are based on certain legal definitions and age limits, however, the meaning and age limits of children in one legal regulation and another are sometimes inconsistent, not the same, or can be said to be different. The differences in understanding and age limits for children are influenced by the different interests in each field of science as well as the laws and regulations themselves and the social environment so that determining the meaning and age limits for children will also vary. Talking about the definition and age limits of children, it can be found in several international regulations and laws and regulations in Indonesia.

Convention on the Rights of the Child (KHA) or better known as UN-CRC (United Nations Convention on the Rights of the Child), Resolution Number 109 of 1990, Article 1 expressly states "for the purposes of the convention, a child means every human being below the eighteen years unless under the law applicable to the child, majority is attained earlier "The United Nations Standard Minimum Rules Concerning the Administration of Juvenile Justice (The Beijing

Rules or Standard Minimum Rules for the Administration of Juvenile Justice), Resolution Number 40/33 of 1985, also states that a child is a person or teenagers who according to their respective legal systems can be treated as perpetrators of an offense in a different way from an adult. In the Commentary it is explained that in this case it should be noted that the categorization of children will depend greatly on the legal system of the member country, as well as economic, social and political conditions, and the culture of the people. This means that each country can determine the meaning and age limits of children based on their country's legal system which is based on the economic, social, political and cultural conditions of their society.

From the uncertainty of the definition and age limits of children above, it can be concluded that a child is someone who is not yet 18 (eighteen) years old, not yet 19 (nineteen) years old, not yet 21 (twenty one) years old, has never been married (married), have not worked independently, have not been able to do the things required by society, and have not been able to manage their assets independently. In fact, in general, the definition and age limits of children from a legal perspective in Indonesia are essentially the same where a child is considered someone who is not yet legally competent. Even though there are differences in the meaning and age limits for categorization of children in Indonesian laws and regulations, in this research the author agrees with the categorization of children where a child is someone who is not yet 18 (eighteen) years old.

Overview of the Juvenile Criminal Justice System

Juvenile Justice

In English, justice is called "judiciary", in Dutch it is called "rechspraak", in Arabic it is a translation of "qadha" which means to decide, implement and resolve. Etymologically, justice is everything regarding court cases, while a court is a council or panel that hears cases, a trial process, a judge's decision, or a building where cases are heard. Terminologically, justice is defined as an effort to seek justice or resolve legal disputes carried out according to certain regulations and institutions in court. According to Sudikno Mertokusumo as quoted by Romli Atmasasmita, justice is an implementation of the law in concrete cases of rights claims, the function of which is carried out by an independent body held by the state, and free from influence from anything and anyone by giving decisions that are binding and binding. aims to prevent thuggery (eigenrichting).

It can be said that the judiciary is an institution to carry out the process of resolving cases which is carried out based on applicable laws and regulations in the name of law for the sake of upholding law and justice. The judicial process is based on the rules of the game, which in this case is none other than criminal procedural law. Criminal procedural law (formal law) is the law that maintains criminal law (material law). Formal criminal law provides guidelines in the judicial process on how justice should be carried out by law enforcement officials starting from the police, prosecutors and judges, as well as legal advisors and correctional institution officers, including justice seekers, namely defendants and victims, as well as the community.

The use of the word child in juvenile justice terminology indicates the upper limit of the cases handled, namely only juvenile cases. The scope of juvenile justice includes all examination activities, formulation of criminal cases,

and matters concerning the interests of children. Juvenile justice is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which is referred to as the juvenile criminal justice system. Article 1 number 1 states that "the juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving the sentence".

Categorization of Children in Conflict with the Law

Children in conflict with the law are often equated with children in conflict with the law. In fact, children in conflict with the law and children in conflict with the law have different meanings even though they are related. Children in conflict with the law consist of 3 (three) classifications as stated in Article 1 point 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely children in conflict with the law or also known as children, children who are victims of criminal acts or so-called also as child victims, and children who are witnesses to criminal acts or also known as child witnesses. Children who are in conflict with the law are part of the children who are in conflict with the law.

Children in conflict with the law are children who are suspected or accused of violating criminal law. Apong Herlina believes that children who are in conflict with the law can be said to be children who are forced to conflict with the criminal justice system. According to Apong Herlina, this is caused by 3 (three) things. First, because they are suspected, charged, or found guilty of violating the law. Second, because he has become a victim as a result of legal violations committed against him by people, groups of people, institutions and/or the state. Third, because they have seen, heard, felt, and/or known about an incident of violation of the law.

The categorization of children in conflict with the law can be found in Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, where "children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but is not yet 18 (eighteen) years old and is suspected of committing a criminal act." This categorization also determines the age limit for children who can be submitted to a juvenile court, namely children who are at least 12 (twelve) years old, but have not reached the age of 18 (eighteen) years.

Diversion

Bearing in mind that children as perpetrators of criminal acts also need to have their rights protected, the cases of children in conflict with the law must be carried out in a different way to those of adults. Starting from the investigation stage to the guidance stage after serving the sentence. All processes must be carried out by special officials who understand children's problems. Apart from that, so that their rights are protected for children in conflict with the law, children in conflict with the law need to be diverted or placed out of formal justice or need to be resolved using a restorative justice approach known as restorative justice. Although not all cases of children in conflict with the law can be resolved with restorative justice.

Resolving cases of children in conflict with the law should use a restorative justice approach, not conventional criminal justice. This is to avoid the negative impact of the criminal justice process on children. The United Nations

Standard Minimum Rules Concerning the Administration of Juvenile Justice (The Beijing Rules or Standard Minimum Rules for the Administration of Juvenile Justice), Resolution Number 40/33 of 1985, in Rules 11.1, 11.2, and 17.4 have provided guidelines as efforts to avoid these negative impacts by giving authority to law enforcement officials to take policy actions in dealing with the problem of child violations without taking formal action. This action is called restorative justice, which in the juvenile criminal justice system is called diversion.

Criminal Responsibility for Children

Criminal liability in English is called liability or responsibility. Liability is a broad legal term referring to almost any character of risk or responsibility, certain, contingent, or impossible. Covers all characteristics of actual or potential rights and obligations, such as losses, crimes, costs, or conditions that create a duty to implement statutory regulations. Responsibility means things that can be held accountable for an obligation, including decisions, skills, abilities and abilities, including obligations of responsibility for the laws and regulations implemented. In practical terms and use, the term liability refers to legal responsibility, namely responsibility for errors committed by legal subjects, while the term responsibility refers to political responsibility.

The term criminal responsibility itself has differences among criminal law experts. Roeslan Saleh refers to criminal responsibility by using the term criminal liability. Sianturi and Sudarto, followed by Barda Nawawi Arief and Muladi, tend to use the term criminal responsibility. Moeljatno mentioned criminal responsibility by using the term liability in criminal law. Although there are differences in the term criminal responsibility among criminal law experts, in this research the author chose to use the term criminal responsibility

Treatment of Children Under 12 (Twelve) Years of Age

In contrast to children in conflict with the law, handling children who are not yet 12 (twelve) years old has its own procedures which can be found in Article 67 to Article 85 of Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children Who Are Not Yet 12 (Twelve) years. In the event that a child under 12 (twelve) years of age commits or is suspected of committing a criminal act, investigators, community counselors and professional social workers make a decision to hand him or her back to their parents or guardians; or involve them in the education, coaching and mentoring process in government agencies or LPKS in agencies that handle the field of social welfare, both at the central and regional levels, for a maximum period of 6 (six) months. This means that the most severe sanction given to children under 12 (twelve) years of age who commit criminal acts is to involve them in the education, coaching and mentoring process in government agencies or LPKS in agencies that handle the social welfare sector.

DISCUSSION

The Urgency of the Idea of Categorizing Children in Conflict with the Law

1. Children under 12 (twelve) years of age have the potential to commit criminal acts

Various reports about the occurrence of criminal acts are widely published by the mass media, both print and electronic media. From the many reports about

the occurrence of these criminal acts, it can be seen that it is not only adults who can commit criminal acts, but children can also commit them. This is proven by the increase in cases of children in conflict with the law in the period 2020 to 2023 based on data from the Directorate General of Corrections, Ministry of Law and Human Rights of the Republic of Indonesia, which states that as of August 26 2023, there were nearly 2,000 (two thousand) children in conflict with the law. . Children who commit crimes vary in age, whether under or over 12 (twelve) years old, for example a 12 (twelve) year old child killed a 13 (thirteen) year old child in Garut because the perpetrator did not accept being hit. a volleyball hit the victim in the face during a volleyball match, while in Pekanbaru, a 5 (five) year old child was molested by his peers.

Children committing criminal acts can be caused by various factors. Socio-cultural influences play a large role in the formation or conditioning of children's behavior. What children in the current generation face is much more complex compared to what children from previous generations faced. The development of technology and information that is easily accessible to various groups also has a negative impact which can be seen from the large number of delinquencies and deviations that arise in everyday life in the form of violations of norms that apply in society by various groups, including children. Syahrul Akmal Latif and M. Zulherawan also share the same opinion that "current technological developments have had a lot of bad influences on children, causing child delinquency." In addition, if the child experiences a transition (adolescence) and experiences changes, both emotionally, physically (body), interests, behavior patterns, and is also full of problems.

2. The absence of criminal accountability and diversion causes victims to receive different treatment

Criminal accountability for children in conflict with the law can be carried out using 2 (two) mechanisms, namely within criminal justice and/or outside criminal justice through diversion. Meanwhile, children under 12 (twelve) years of age do not receive a solution like children in conflict with the law. Children under 12 (twelve) years old have their own solution where there is no diversion. In fact, Article 5 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that "the juvenile criminal justice system must prioritize a restorative justice approach" through diversion.

Diversion only applies to children who are in conflict with the law who commit a crime which is punishable by imprisonment for under 7 (seven) years and is not a repetition of the crime, while diversion is for children under 12 (twelve) years of age who are suspected of committing a crime as Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Article 3 paragraph (2) of Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children Who Are Not Yet 12 (Twelve) Years Old do not apply . This means that even if children under 12 (twelve) years of age who are suspected of committing a crime meet the qualifications for diversion, like children in conflict with the law, they still cannot carry out diversion. This is because children under 12 (twelve) years of age are not included in the categorization of children in conflict with the law.

Settlement of criminal cases committed by children should reflect the best interests of the child. The child in question should not only be intended for children who have committed or are suspected of committing a criminal act, but also children who are victims of criminal acts or are called child victims. Neglecting the rights and interests of victims of criminal acts at the normative level in turn has the consequence of ignoring the rights and interests of victims in the process of resolving criminal cases through the mechanisms of the juvenile criminal justice system. The position of victims of perpetrators under 12 (twelve) years of age is taken over by the state based on applicable laws and regulations, while the needs (rights) of victims are ignored as if justice has been obtained by both parties.

Justice as conceptualized by Plato is formulated in the expression "giving each man his due", namely giving each person what is his right. This means that the state can provide victims with their rights. In the absence of criminal accountability and diversion, these problems require regulation with statutory regulations which must reflect a sense of justice because statutory regulations are not merely to maintain order and maintain state stability, but most importantly to guide society to achieve excellence. so that they are worthy of being citizens of an ideal country. Plato views the ideal state as one full of virtue and justice. Justice occurs when the highest virtues are upheld, when a person's rights are respected, their identity and human nature are respected, and the differences inherent in each person are not questioned.

Ideas for Categorizing Children in Conflict with the Law

The 1945 Constitution of the Republic of Indonesia after being amended firmly states in Article 28B paragraph (2) that "every child has the right to survival, growth and development and the right to protection from violence and discrimination", but it must be realized that growth and development Children do not always have a positive impact, but can also have a negative impact. Various factors cause children to commit acts that violate the norms that exist and apply in society. Endogenous and exogenous factors, including child delinquency which is often considered normal by parents and society, parents' limited time in educating and providing attention to children, children being used to commit criminal acts, economic factors (poverty), lifestyle and the environment are vulnerable to leading children into committing acts that are not in accordance with the norms that apply in society. This can be detrimental to yourself, your family and society. In reality, a child is generally a human being who can do things like humans (adults) in general, including actions that are contrary to applicable law. Muncie explained that handling children in conflict with the law is always filled with confusion, ambiguity and unexpected consequences. This confusion, ambiguity, and unforeseen consequences are also caused by the injustice done to the victim. On the one hand, children under 12 (twelve) years old as perpetrators are still included in the categorization of children, but are not included in the categorization of children in conflict with the law, so they cannot be held criminally responsible or diverted. Meanwhile, on the other hand, there are consequences of the actions he commits, namely causing loss and suffering to other people, namely the victim. These losses can take the form of physical, mental and/or economic losses, but victims do not receive the same treatment as

victims of children in conflict with the law. This is the basis for why it is necessary to update the law on the categorization of children in conflict with the law.

When Law Number 11 of 2012 concerning the Juvenile Criminal Justice System came into force, the categorization of children in conflict with the law changed from 8 (eight) years old to 12 (twelve) years old. In contrast to Law Number 3 of 1997 concerning Juvenile Justice which can equally impose criminal penalties or actions on children who are in conflict with the law, Article 69 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that children who are not yet 14 years old (fourteen) years can only be subject to action. This means that the basic education of children in conflict with the law who are under 14 (fourteen) years of age will not be disrupted. Even though only children aged 14 (fourteen) years and over can be sentenced to crime or action, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also still cares about basic education for children in conflict with the law.

With the legal reform in the categorization of children in conflict with the law where children under 18 (eighteen) years of age can be held criminally responsible, victims will get justice (rights) because there is criminal responsibility and diversion with the same provisions as victims from children who are in conflict with the law in Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Apart from that, every parent also has great pressure to protect and teach their children from an early age so that they do not commit acts that violate the norms that apply in society. It doesn't have to be about acts that are criminal acts, but can start from small things, for example you are not allowed to steal, you have to be honest, have good manners, and so on. Aninda, an early childhood psychology practitioner, believes that basically there is no reasonable limit to children's delinquency. If it has led to violence, then no party has the right to justify it. In the end, law enforcement will consider all aspects of children in conflict with the law based on this new idea which can be proven with valid evidence. In essence, the perpetrator can be held criminally responsible.

CLOSING

Conclusion

1. There are 2 (two) urgencies for the idea of categorizing children who are in conflict with the law. First, children under 12 (twelve) years of age have the potential to commit criminal acts. This is caused by endogenous and exogenous factors, violations of norms that apply in society are the beginning of children committing criminal acts, child delinquency which is often considered normal by parents and society, parents' limited time in educating and providing attention to children, children vulnerable to being exploited to commit criminal acts, and children are vulnerable to committing criminal acts due to economic factors (poverty) and lifestyle. Second, the absence of criminal accountability and diversion causes victims to receive different treatment. Settlement of cases involving children in conflict with the law will not be obtained by victims of children under 12 (twelve) years of age because there is a separate solution which, when viewed from the victim's perspective, is not beneficial. Victims

and/or families of children under 12 (twelve) years of age do not receive consultations that require the presence of victims and/or their families in resolving cases as diversion for children in conflict with the law with exceptions as in Article 9 paragraph (2) and Article 10 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, case settlement cannot proceed to the trial stage, and offers cannot be obtained as a result of the diversion agreement and are limited to 2 (two) options as stated in Article 67 of Government Regulation Number 65 of 2015 concerning Guidelines Implementation of Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old.

2. The idea of categorizing a child in conflict with the law is someone who is not yet 18 (eighteen) years old who is suspected of committing a criminal act. This age limit is the same as the categorization of children who are witnesses to criminal acts (child witnesses) as stated in Article 1 number 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Children under 12 (twelve) years old are relatively often considered to not have stable emotional, mental and intellectual intelligence, which is the reason why they cannot be held criminally responsible, which is violated by Article 38 and Article 39 of Law Number 1 of 2023 concerning the Book of Criminal Law Law under which people with mental disabilities and/or intellectual disabilities can be held criminally liable. Apart from that, children under 12 (twelve) years of age cannot be held criminally responsible because they are often considered not to have maturity in thinking so they are less aware of the actions they have committed which are prohibited by Article 330 of the Civil Code where someone under the age of 21 (twenty one) years old is said to be not legally competent, but children over 12 (twelve) years old can still be held criminally responsible. There are 3 (three) erroneous reasons why children under 12 (twelve) years of age cannot be held criminally responsible, namely to protect children's constitutional rights, especially the right to protection and the right to growth and development; to avoid stigmatization of children who commit criminal acts; and to change the paradigm of child punishment in Indonesia.

Suggestions

1. There needs to be legal reform in the categorization of children in conflict with the law as stated in Article 1 point 3 of the Juvenile Criminal Justice System Law so that legislators need to immediately revise the Juvenile Criminal Justice System Law with the idea conveyed by the author, namely someone who not yet 18 (eighteen) years old who is suspected of committing a criminal act.
2. There needs to be regulations that clarify the criminal procedural law for children so as not to cause confusion after the revision of the categorization of children in conflict with the law in the Juvenile Criminal Justice System Law so that the rights of children in conflict with the law remain protected, especially children in conflict with the law. as well as victims.

REFERENCES

- Agung Wahyono dan Siti Rahayu, *Tinjauan Tentang Peradilan Anak di Indonesia*, Sinar Grafika, Jakarta, 2003, hlm. 84.

- Ahmad Asif Sardari, Ja'far Shodiq, *Peradilan dan Pengadilan dalam Konsep Dasar, Perbedaan, dan Dasar Hukum*, *Journal of Islamic Family Law (JIGLAW)*, Vol. 1 No. 1, 2022, hlm. 15.
- Andreas Doweng Bolo, dkk, "Implementasi Pandangan Plato Tentang Negara Ideal dalam Toleransi Umat Beragama di Indonesia", *Focus*, Vol. 3, No. 2, 2022, hlm. 63-70.
- Apong Herlina dkk, *Perlindungan Terhadap Anak yang Berhadapan dengan Hukum, Buku Saku Untuk Polisi*, Unicef, Jakarta, 2014, hlm. 17.
- Asri Lestari Rahmat, Nurini Aprilianda, dan Faizin Sulistio, "Batas Usia Pertanggungjawaban Pidana Anak dalam Hukum Pidana di Indonesia", *Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya*, Vol. 1 No. 1, April 2014, hlm. 11.
- Bahder Johan Nasutio, "Kajian Filosofis tentang Konsep Keadilan Dari Pemikiran Klasik Sampai Pemikiran Modern", *Yustisia*, Vol. 3, No. 2, Agustus 2014, hlm. 120.
- Bambang Waluyo, *Pidana dan Pembinaan*, Sinar Grafika, Jakarta, 2004, hlm. 1.
- Barda Nawawi Arief, *Pembaruan Hukum Pidana (Dalam Perspektif Kajian Perbandingan)*, Citra Aditya Bandung, 2005, hlm. 3.
- Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 2001, hlm. 1123.
- Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 2008.
- Desmita, *Psikologi Perkembangan*, PT Remaja Rosdakarya, Bandung, 2005, hlm. 13.
- Elizabeth B. Hurlock, *Psikologi Perkembangan: Suatu Pendekatan Sepanjang Rentang Kehidupan*, Edisi Kelima, Cetakan Enam, Erlangga, Jakarta, 2011.
- Erdianto Effendi, *Hukum Pidana Indonesia Suatu Pengantar*, Refika Aditama, Bandung, 2011, hlm. 114.
- Fauzie Kamal Ismail, "Hukum Yang Jelas Atas Akta Notaris yang Berkaitan dengan Pertahanan", *Tesis*, Program Pascasarjana Fakultas Hukum Universitas Indonesia, Depok, 2011, hlm. 42.
- Fitri Nuryanti Sahlan, Budhi Wibhawa, dan Maulana Irfan, "Bimbingan Anak Berkonflik dengan Hukum Oleh Balai Pemasarakatan Bandung di Tinjau Dari Relasi Pertolongan", *Prosiding KS: Riset dan PKM*, Vol. 3, No. 3, 2016, hlm. 311.
- Gatot Supramono, *Hukum Acara Pengadilan Anak*, Djambatan, Jakarta, 2000, hlm. 9.
- Halimah Nurmawanti, "Sanksi Pidana Bagi Anak yang Melakukan Tindak Pidana Pencurian: Analisis Putusan Nomor 14/Pid.Sus.Anak/2015/PN.Bks", *Skripsi*, Program Sarjana Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah, Jakarta, 2019, hlm 5.
- Henri Cohen dan Claire Lefebvre Elsevier, *Handbook of Categorization in Cognitive Science, First Edition*, Elsevier, Berkeley, 2005.
- Hotmartua Nasution, "Pembaharuan Hukum Keluarga Islam Tentang Usia Perkawinan di Indonesia (Studi Atas Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang

- Perkawinan”, *Skripsi*, Program Sarjana Fakultas Syari’ah dan Hukum Universitas Islam Negeri Sumatera Utara, Medan, 2019, hlm. 40.
<https://kbbi.kemdikbud.go.id/>, diakses tanggal 15 Desember 2023.
<https://www.detik.com/sumut/hukum-dan-kriminal/d-7137655/waduh-bocah-tk-di-pekanbaru-dicabuli-teman-di-sekolah-ortu-lapor-polisi>, diakses tanggal 22 Januari 2024.
<https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>, diakses tanggal 15 Desember 2023.
<https://www.kompas.tv/regional/458679/sakit-hati-saat-main-voli-siswa-smp-di-garut-bunuh-teman-sendiri-bawa-cutter-saat-berenang>, diakses tanggal 15 Desember 2023.
- I Dewa Made Suartha, dkk, *Laporan Akhir Pengkajian Hukum Lembaga Penempatan Anak Sementara*, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, Jakarta, 2013, hlm. 2.
- I Gede Suranaya Pandit, “Konsep Keadilan dalam Persepsi Bioetika Administrasi Publik”, *Jurnal Administrasi Publik*, Vol. 1, No. 1, Desember 2016, hlm. 14
- I Ketut Tjukup, dkk, “Penguatan Karakter Sebagai Upaya Penanggulangan Kenakalan Remaja (Juvenile Delinquency)”, *Kertha Wicaksana: Sarana Komunikasi Dosen dan Mahasiswa*, Vol. 14, No. 1, 2020, hlm. 30
- Jimly Asshidiqie dan Ali Safa’at, *Teori Hans Kelsen Tentang Hukum*, Konstitusi Press, Jakarta, 2006, hlm. 13.
- John Rawls, *Theory of Justice*, (Revised Edition), The Belknap Press of Harvard University Press, Cambridge, 1999.
- John Santrock, *Life- Span Development. Perkembangan Masa Hidup*, Edisi Kelima, Jilid 2, (Terjemahan J. Damanik dan A. Chusairi), Erlangga, Jakarta, 2003.
- Kadri Husin dan Budi Rizki Husin, *Sistem Peradilan Pidana di Indonesia*, Sinar Grafika, Jakarta, 2016, hlm 3.
- Komaruddin Jafar, “Restorative Justice Atas Diversi Dalam Penanganan Juvenile Delinquency (Anak Berkonflik Hukum)”, *Jurnal Al-‘Adl*, Vol. 3, No. 2, 2015, hlm. 82.
- Liza Agnesta Krisna, *Hukum Perlindungan Anak: Panduan Memahami Anak yang Berkonflik dengan Hukum*, Deepublish, Yogyakarta, 2018, hlm. 13.
- Naskah Akademik Rancangan Undang-Undang Sistem Peradilan Pidana Anak, hlm. 55.
- Pasal 1 angka 1 Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.
- Pasal 1 angka 1 Undang-Undang Nomor 17 Tahun 2016 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.
- Pasal 1 angka 3 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
- Randy Pradityo, “Restorative Justice dalam Sistem Peradilan Pidana Anak”, *Jurnal Hukum dan Peradilan*, Vol. 5 No. 3, November 2016, hlm. 321.

- Repita Dwi Utari, “Faktor-Faktor yang Mempengaruhi Tingkah Laku Salah Suai Pada Anak (Studi Kasus di Desa Sido Sari, Kecamatan Sukaraja, Kabupaten Seluma, Provinsi Bengkulu)”, *Skripsi*, Program Sarjana Fakultas Ushuludin, Adab, dan Dakwah Institut Agama Islam Negeri Bengkulu, Bengkulu, 2020, hlm 3.
- Ridwan H.R., *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta, 2006, hlm. 335-337.
- Romli Atmasasmita, *Peradilan Anak di Indonesia*, Mandar Maju, Bandung, hlm. 51.
- Sayyid Sabiq, *Fiqhu As-Sunnah*, Daru Al-Fikr, Beirut, 2006, hlm. 942
- Siti Halilah dan Muhammad Fakhurrahman Arif, “Asas Kepastian Hukum Menurut Para Ahli”, *Jurnal Hukum Tata Negara*, Vol. 4, No. 2, Desember 2021, hlm. 60.
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Grafindo Persada, Jakarta, 2010, hlm. 13-14.
- Syahrul Akmal Latif dan M. Zulherawan, “Upaya Teoritis Penanggulangan Kenakalan Anak (Juvenile Delinquency)”, *Jurnal Sisi Lain Realita*, Vol. 5, No. 1, 2020, hlm. 36.
- Teguh Prasetyo, “Penerapan Diversi Terhadap Tindak Pidana Anak dalam Sistem Peradilan Pidana Anak”, *Jurnal Refleksi Hukum*, Vol. 9, No. 1, 2015, hlm. 3.
- Teguh Prasetyo, *Pembaruan Hukum Teori Keadilan Bermartabat*, Setara Press, Malang, 2017, hlm. 6.
- The Liang Gie, *Teori-Teori Keadilan*, Sumber Sukses, Yogyakarta, 2002, hlm. 22.
- Topo Santoso, *Membumikan Hukum Pidana Islam*, Gema Insani, Jakarta, 2003, hlm. 47.
- Yoachim Agus Tridiatno, *Keadilan Restoratif*, Cahaya Atma Pustaka, Yogyakarta, 2015, hlm. 35.