

Utilization of Criminological Studies in the Process Juvenile Criminal Justice

Supriyanta

Faculty of Law, Slamet Riyadi University, Surakarta, Indonesia

Abstract: The criminal justice system must reflect a fair legal process for all parties to the system. The implementation of the criminal justice system must reflect fair legal principles. The principle of fair law is known as due process of law. This principle must become the spirit of law enforcement at every stage of the criminal justice process.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is a special legal basis for the juvenile criminal justice process. Based on this law, the juvenile criminal justice process is oriented towards the best interests of the child. The best interests of children can be achieved if the child criminal justice process uses an integrative approach, namely integrating the normative fulfillment of children's rights in the criminal justice process and utilizing the results of criminological studies on the causes of children committing criminal acts. In this way, children will receive fair treatment because they receive decisions with comprehensive consideration.

Keywords: Criminological Studies, Juvenile Criminal Justice Process

I. Introduction

The reality shows that every day there is always data about children who are involved in a crime and are forced to enter the criminal justice process. According to data from the Indonesian Child Protection Commission, the increasing cases of legal violations committed by children must receive attention. According to data from the Directorate General of Corrections, Ministry of Law and Human Rights, cases of children in conflict with the law show an increasing trend in the period 2020 to 2023. As of August 26 2023, there were nearly 2,000 children in conflict with the law, 1,467 of whom were in custody and still undergoing the judicial process, while 526 children are serving sentences as prisoners (<https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kas-anak-berkonflik-Hukum-alarm-bagi-community-dan-country>, Accessed Tuesday 5 December 2023).

The conditions above show that many children have to face the justice process. At the international level, the PPB General Assembly has called on national governments to recognize and fight for the implementation of children's rights through laws and other regulations that are in accordance with the principles of protecting children's rights (Wagiati Soetedjo, 2010: 77).

In essence, children cannot protect themselves from various kinds of actions that cause mental, physical and social harm. Children must be assisted by other people in protecting themselves considering their situation and conditions, especially in the implementation of juvenile criminal justice. Children need to receive protection from errors in the application of laws and regulations that apply to them which cause mental, physical and social harm. This child protection is called legal/juridical protection (Maidin Gultom, 2008: 2). Legal protection in practice still requires studies originating from factual scientific disciplines so that the implementation of the law is truly in accordance with the intent of establishing a legal regulation. One of the scientific disciplines that is very helpful in the implementation of juvenile criminal justice is criminology. Criminology is an auxiliary

science for criminal procedural law in order to achieve true justice. In the context of the juvenile criminal justice process, criminology can be empowered to achieve the best interests of children in conflict with the law.

II. Study Method

This research uses a juridical approach with legal materials: Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, relevant criminological theories, doctrine or opinions of legal experts regarding the juvenile criminal justice system. The analysis was carried out in a qualitative descriptive manner.

III. Discussion

3.1 Juvenile Criminal Justice Process in Indonesia

Normatively, the criminal justice process for children who commit criminal acts is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Children in conflict with the law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime. The justice stage begins with an investigation process which requires various requirements such as a child investigator, then requires a children's public prosecutor and a children's judge. In examinations at the investigative level there is a mandatory requirement to ask for consideration or advice from the Community Counselor after a criminal act has been reported or complained about. Community Counselors are functional law enforcement officials who carry out community research, guidance, supervision and assistance to children inside and outside the criminal justice process.

Other special requirements relate to inspection procedures, such as officers not wearing togas or other official attributes. Must be provided with legal assistance and accompanied by a Community Counselor or other companion in accordance with the provisions of the laws and regulations. Arrest of children is carried out for investigation purposes for a maximum of 24 (twenty four) hours. Children who are arrested must be placed in a special children's service room. The arrest of children must be carried out humanely, taking into account their needs according to their age. In carrying out an investigation, the Investigator coordinates with the Public Prosecutor within a maximum period of 1 x 24 (one time twenty four) hours from the start of the investigation.

Detention of children may not be carried out if the child has guarantees from parents/guardians and/or institutions that the child will not run away, will not lose or destroy evidence, and/or will not repeat criminal acts. Detention of children can only be carried out on the condition that the child is 14 (fourteen) years old or more and is suspected of committing a criminal offense that carries a prison sentence of 7 (seven) years or more. While the child is being detained, the child's physical, spiritual and social needs must continue to be met. The place of detention is in a Temporary Child Placement Institution, if there is none, it is placed in a Special Children's Development Institution. Detention can only be carried out by investigators for 7 days and can be extended to 8 days with the permission of the Public Prosecutor. Detention is carried out for the purposes of prosecution, the Public Prosecutor can carry out detention for a maximum of 5 (five) days and can be extended for 5 days with permission from the District Court Judge.

A district court judge may detain him for the purposes of examination at a court hearing, for a maximum of 10 (ten) days which can be extended with permission from the Chairman of the District Court for 15 days. Furthermore, regarding the confiscation of evidence, it is stipulated in Article 36 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that a court decision regarding the confiscation of evidence in children's cases must be made no later than 2 (two) days.

Diversion

Diversion is the transfer of resolution of children's cases from the criminal justice process to a process outside of criminal justice. Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that Diversion aims to: a. achieve peace between the victim and the child; b. resolve children's cases outside the judicial process; c. prevent children from deprivation of liberty; d. encourage the public to

participate; and e. instill a sense of responsibility in children. At the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted. The conditions for implementing Diversion are if the criminal act committed: a. threatened with imprisonment for less than 7 (seven) years; and b. is not a repetition of a criminal act. The Diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or their parents/guardians, community counselors, and professional social workers based on the Restorative Justice approach. Restorative Justice is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to the original condition, and not retaliation. Deliberation in diversion can involve Social Welfare Workers, and/or the community.

The Diversion process must pay attention to: a. interests of victims; b. Children's welfare and responsibilities; c. avoidance of negative stigma; d. avoidance of retaliation; e. social harmony; and f. propriety, decency and public order. Investigators, Public Prosecutors and Judges in carrying out Diversion must consider: a. criminal offense category; b. Child's age; c. results of societal research from Bapas; and D. family and community environmental support.

The Diversion Agreement must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family, except for: a. criminal acts in the form of violations; b. minor criminal offenses; c. victimless crime; or d. the value of the victim's losses is no more than the minimum wage of the local province. d. the value of the victim's losses is no more than the minimum wage of the local province. Diversion agreements to resolve criminal acts in the form of violations, minor crimes, crimes without victims, or the value of the victim's losses is not more than the minimum wage value of the local province can be carried out by investigators together with the perpetrator and/or his family, Community Counselors, and can involve community leaders.

The Diversion Agreement carried out by the Investigator on the recommendation of the Community Advisor can take the form of: a. refund of losses in the event of a casualty; b. medical and psychosocial rehabilitation; c. handing it back to parents/guardians; d. participation in education or training at an educational institution or Social Welfare Implementation Institution for a maximum of 3 (three) months; or e. community service for a maximum of 3 (three) months. The results of the Diversion agreement can take the form of, among others: a. peace with or without compensation; b. handing it back to parents/guardians; c. participation in education or training at an educational institution or special children's development institution for a maximum of 3 (three) months; or d. society service. The results of the agreement are made in the form of a Diversion agreement. The results of the Diversion agreement are submitted by the direct superior of the official responsible at each level of examination to the district court in accordance with their jurisdiction within a maximum of 3 (three) days after the agreement is reached to obtain the determination. The determination is made within a maximum of 3 (three) days from the receipt of the Diversion agreement. This determination is submitted to the Community Counselor, Investigator, Public Prosecutor, or Judge within a maximum of 3 (three) days from the time it is determined. After receiving the decision, the Investigator issues a decision to stop the investigation or the Public Prosecutor issues a decision to stop the prosecution.

IV. Utilization of Criminology studies in resolving juvenile crimes

Criminology is an auxiliary science for criminal procedural law. The results of criminological studies can be used to help uncover the causes of criminal acts. In the context of juvenile crimes, the benefits of the results of criminological studies are very necessary so that treatment of children who commit criminal acts can be carried out fairly because law enforcement officers obtain adequate information about the reasons why children commit criminal acts. An example is the differential association theory, by E. Sutherland. The postulates of this theory state firstly that criminal behavior is negatively learned behavior, this means that criminal behavior is not inherited. Second, if criminal behavior is studied, what is studied includes: (a) techniques for committing crimes; (b) direction, motive, encouragement, justification and attitudes. Third, a person becomes a law violator because he understands definitions that support law violations compared to definitions that do not support law violations.

The postulates in this theory can explain the reasons why children violate the law. Another example is the Anomie Theory. This theory was put forward by the French sociologist, Emile Durkheim (1858-1917). Durkheim described the concept of anomie as a condition in society where there is an absence of norms. Anomie is also a result of rapid societal change. Anomie exists in every society in the form of crime. All of this happens because there are no social norms, and no social supervision that can control deviant behavior. (Widodo, 2013:66). Emile Durkheim explains a condition where existing rules in society are not followed, and members of society do not know what other people expect. This situation is considered to be the cause of deviant behavior. Another figure in the theory of anomie is Robert Merton who stated that deviant behavior is considered abnormal behavior because this behavior originates in the individual. (Atmasasmita, 1992:25-26).

In the context of the juvenile criminal justice process, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, only requires community research to be carried out by Community Counselors. The contents of the report include information about the child such as family background, educational history and so on. Ideally, the results of social research are studied from a criminological perspective so that conclusions can be drawn about the results compiled in the social research. In practice, what criminological theory is used really depends on case by case. The role of a criminologist is to study and make conclusions about the relatively certain reasons why children commit law violations. By knowing the exact reasons why a child violates the law, the sanctions that can be imposed on the child can be in accordance with a sense of justice.

V. Conclusion

The use of criminological studies in the juvenile criminal justice process is very beneficial for the interests of children in obtaining justice. The justice that children hope for is not just legal justice, but substantial justice that comes from the use of the discipline of criminology as an auxiliary science for criminal procedural law.

Reference

[1.] Undang- Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

Books :

[2.] Atmasasmita, Romli. 1992, *Teori dan KapitaSelektaKriminologi*. Bandung: RosdaKarya

[3.] MaidinGultom, 2008, *Perlindungan Hukum Terhadap Anak DalamSistemPeradilan Anak di Indonesia*. Bandung: RefikaAditama.

[4.] Wagiati, Soetedjo. 2010. *Hukum Pidana Anak*. Bandung: Refika Aditama.

[5.] Widodo. 2013. *Memerangi Cyber Crime, KarakteristikMotivasi, dan Strategi PenanganannyadalamPerspektifKriminologi*. Yogyakarta: AswajaPressindo

Journal:

[6.] Erinda Dhayana Putri Pertiwi, SafikFaozi. 2018. *Kajian KriminologiTerhadapPenelantaran Anak Sebagai Jenis Kekerasan Dalam Rumah Tangga*. *Dinamika Hukum*.(20).1. halaman 49-51.

[7.] Hardianto Djanggihdan Nurul Qamar. 2018. *PenerapanTeori-Teori Kriminologidalam Penanggulangan KejahatanSiber (Cyber Crime)*.Pandecta (20).1.

Internet:

[8.] <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>, accessed onDecember 5th 2023