

portrait of the protection of children's right in Fakfak

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Portrait of the Protection of Children's Rights in Fakfak Penal Institutions, West Papua

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Abstract

Highlighting cases of protection of children's rights in Indonesia, it is necessary to conduct continuous studies to be able to provide solutions, considering that children's problems are very diverse. One of them is a portrait of the protection of children's rights in conflict with law, especially those in correctional institutions. This article aims to examine and analyze the basis of the judge's considerations in the decision of the Fakfak District Court Number 1/pid.Sus-Anak/2022/PNFfk on the case of child and the protection of children's rights as criminal offenders who have been decided and placed in Fakfak Prison. The research method used is a mixed method, namely normative legal research because it examines the basis of judges' considerations on cases of children as criminal offenders and empirically because they conduct interviews with correctional officers to determine the conditions of the application of children's rights. The results show the basis for the judge's consideration in the decision of the Judge of the Fakfak District Court Number 1/pid.Sus-Anak/2022/PNFfk that the aggravating circumstances for his actions were disturbing the community and causing material losses for the victim young and has never been punished. The judge sentenced him to prison for 8 (eight) months and considered the rights of the child. There are 3 children detained in prison, 2 cases of theft, and 1 child due to underage intercourse. While the portrait of the condition of protecting the rights of children as perpetrators of criminal acts has not been carried out properly, because children who are criminals are placed in adult prisons. The right to education is not obtained.

Keywords: Basic considerations of judges and children's rights in prisons

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1. Introduction

One of the problems of children in Indonesia that needs attention and improvement is the status of children as perpetrators of criminal acts. A report from the Indonesian Child Protection Commission (KPAI) noted that there were 123 cases of children in conflict with the law (ABH) as perpetrators as of August 2020. The most crimes were physical violence as many as 30 cases and sexual violence 28 cases. In addition, children as perpetrators of traffic accidents and thefts followed with 13 and 12 cases, respectively. According to Law Number 11 of 2021 concerning the Juvenile Criminal Justice System, what is meant by children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts (<https://databoks.katadata.co.id/datapublish/2021/04/12/case-criminality-child-dominated-physical-violence>. Accessed on October 22, 2022).

The data shows that the number of perpetrators of child crimes in Indonesia is as follows: male perpetrators amounted to 6379 children and female perpetrators amounted to 130 children while the number of child criminal cases that were resolved by diversion were: 437 boys and 15 girls. (<https://www.kemennppa.go.id/lib/uploads/list/27279-laporan-perlaksanaan-sppa-tahun-2020.pdf>. page 29).

Furthermore, the data handled by the National Police according to the Unit in the Settlement of Cases for the 2020 Period, that the number of Children in Conflict with the Law. In the West Papua Regional Police, there are 144 prison prisons, 12 victims, 49 perpetrators, 27 cases in P21, 17 SP3 cases and 15 diversions

(Bareskrim 2020 in the Implementation of Juvenile Criminal Justice System. Report 2022, page 29; <https://www.kemenpppa.go.id/lib/uploads/list/27279-laporan-penlaksanaan-sppa-tahun-2020.pdf>).

It is known that children's rights are fundamental rights that have been guaranteed by international law and national law. In the context of international law, one of the fulfillments of children's rights refers to the Convention on the Rights of the Child which provides recognition, protection and fulfillment of children's rights without distinction of race, color, gender, language, religion, political distinction, national or social origin, property, birth or other status. This convention also obliges member states to respect and guarantee the rights of children in their jurisdiction, as well as implement various efforts in providing protection to children from all forms of discrimination and punishment based on their status, activities carried out, opinions, and religion adopted by the child's parents, legal guardians, or family members of the child.

Furthermore, for the case of children as perpetrators of criminal acts, the use of the concept of restorative justice is an option so that the psychological impact in the future can be minimized (Marlina, 2008). Besides that, in handling children starting from the investigation process to the trial, the child should be accompanied by a lawyer because it is the right of the convict. (Dailey & Rosenbury, 2018). When you are in prison, you still need counseling assistance from a psychologist, the process must be carried out on an ongoing basis. (Tsai, 2013). The mental psychic aspect of a child is sometimes ignored for several reasons, even though it is a right for the growth and development of a child (Tekin, 2015).

Actually, efforts to improve children in conflict with the law have been carried out from the policy aspect, namely in Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, as amended by Government Regulation in Lieu of Law Number 1 of 2016 concerning the second Amendment to Law Number 23 of 2002 concerning Child Protection. The Supreme Court Regulation (PERMA) No. 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. Diversion Deliberation is a deliberation between parties involving children and their parents/guardians, victims and/or their parents/guardians, community counselors, professional social workers, representatives and other involved parties to reach a diversion agreement through a restorative justice approach; This concept is important to apply considering that the Indonesian people have the value of local wisdom by using the deliberation process to reach consensus. Of course, there must be acknowledgment and agreement from the parties and there should be no coercion. It is intended that the concept of deliberation in resolving children's cases can be used. But there are still judges' decisions against children giving decisions without paying attention to existing regulations and policies.

For example, research in LPKA Blitar, East Java, on a child who was in LPKA Blitar for abusing the child was made a child of the state. In a more detailed context, a study conducted at LPKA Blitar City shows that LPKA already has policies and programs to provide children's rights. However, the policy still needs to be re-evaluated in relation to its implementation. While the programs in each LPKA in handling and fostering children have not been maximized, especially for human resources (officers), the lack of available facilities and infrastructure to carry out programs, and the condition of children in LPKA where the characteristics and backgrounds of children are different, there is variety. The results of similar research have also been carried out by Nasution (2008) and Enggarsasi (2013); where the conclusion of the study shows that it is necessary to increase the capacity of officers by providing skills training so that they will be able to explore the potential or talents of children while in LPKA. Furthermore, Saifullah et al. (2019), added that aspects of the curriculum at LPKA Blitar must be addressed by using a religious approach. LPKAs located in the province of East Java alone still need improvements, how about LPKAs in areas that are very far from the capital city.

Based on the description above, this article examines the basic considerations of the judges of the Fakfak District Court Number 1/pid.Sus-Anak/2022/PNFfk regarding the case of children and the portrait of the protection of children's rights while in the Correctional Institution.

2. Methods

The method used in this research is a mix of methodologies, namely the normative and empirical legal research method because it examines the basis of judges' legal considerations and portraits of the reality of fulfilling children's rights while in prison. The interview method using questionnaires was used to obtain data. The theory used to analyze legal issues is the Theory of Legal Protection and Theory of Human Rights.

3. Results

Basic for Judges' Consideration in the Decision of the Judge of the Fakfak State Court Number 1/pid.Su-11/Anak/2022/PNFfk

In the decision of the Judge of the Fakfak District Court Number 1/pid.Sus-Anak/2022/PN Ffk, it was explained that there had been a case of motorcycle theft committed by a child where the primary indictment was the child's actions as regulated and threatened in Article 363 (1) to - 4 Juncto's Criminal Code Article 65 of the Criminal Code whose elements consist of: 1) Whoever's element, 2) The element of taking something, 3) Elements that are wholly or partly owned by another person, 4) Elements that are illegally owned, 5) Elements committed by 2 or more people in partnership.

There are several considerations that the judge considers in the above case that the primary charge has been proven so that the subsidiary charges do not need to be considered again; impose a punishment for conducting a fair assessment with the aim of making the child a deterrent; imprisonment is not solely to punish children but to fulfill the principles of justice, benefit and legal certainty for children; Therefore, the panel of judges must reject the application of the child's legal counsel who wants the child to be sentenced to a warning and a recommendation from the Community Counselor from the Class II Fakfak Penitentiary which recommends "Criminalization with conditions in the form of supervision". Whereas the Panel of Judges also seriously considers the education of children in schools so that children can prepare for their education so that the panel of judges considers determining the length of imprisonment for children.

In addition, the consideration given by the judge in the above case is that in order to impose a sentence on a child, it is necessary to first consider the aggravating and mitigating circumstances for the child.

Aggravating circumstances: (1) The children's actions disturbed the people of Fakfak Regency, which was previously known as a safe area; (2) The child's actions resulted in material losses for the victim in the form of not being able to work the motorcycle taxi driver and the child and his partner had changed the condition of the motorbike that was stolen, which could reduce the economic value of the motorbike.

While mitigating circumstances: (1) The child admits frankly his actions; (2) The child regrets his actions and promises not to repeat his actions again; (3) The child has never been punished.

Then the panel of judges tried: (1) To declare the child legally and convincingly proven guilty of committing the crime of theft under aggravating circumstances which was carried out several times as charged in the primary indictment of the Public Prosecutor; (2) Sentencing the child therefore with imprisonment for 8 (eight) months; (3) Determine the period of arrest and detention that the child has served is completely deducted from the sentence imposed; (4) Arrange for the child to be detained; (5) Determine the seized evidence to be destroyed.

From the decision given for 8 months in the above case, when compared with the maximum threat as regulated in Article 362 of the Criminal Code: "Whoever takes an item, which completely or partially belongs to another person, with the intention of possessing the item against the right, sentenced, for theft, to a maximum imprisonment of five years or a maximum fine of Rp. 900,.". It seems that the judge gave consideration that imprisonment would have a deterrent effect and hoped that children's rights could be obtained and felt during their detention period, especially the right to education. So, the verdict given by the judge according to the author already reflects the principles of legal certainty, justice and benefits. As stated by Gustav Rudbrach, there are three basic ideas of law, which are legal theorists and legal philosophers identified as three legal objectives, namely justice, expediency and legal certainty (Ali 2013). The fulfillment of the principle of legal certainty has referred to article 362 of the Criminal Code, related to the principle of justice, where the judge's decision has fulfilled the sense of justice for the perpetrators, especially children and the application of the benefit principle has also been fulfilled. The opinion of the author, the decision given by the judge in his consideration has provided protection for the rights of children in conflict with the law which are also human rights. Like the Legal Protection Theory stated by Prof. Hadjon regulations, policies are made to provide protection for the rights of citizens.

Protection of children's rights while in Correctional Institution in Fakfak West Papua

Based on the results of interviews using questionnaires, it turns out that in Fakfak West Papua there is no LPKA or there is no LPKA specifically for Children (LPKA), only LP for adults. Currently, there are 3 children in prison, all of whom are male. Then, in terms of age, the youngest is 16 years old and the oldest is 17 years old. They were placed in an Adults Prison. Because there is no LPKA, there is some information about the portrait of the prison in Fakfak West Papua as follows: The facilities currently owned are in the form of: (1) House of worship (X); (2) Library Room (X); (3) Classroom; (4) Space for activities (X); (4) Sports venues; (5) Other facilities, please specify if any (-).

It turns out that there are no classrooms so that children in adult prisons cannot exercise their right to education. According to the results of interviews with prison officials, it was stated that after being dismissed by the court, the child was often or immediately expelled from school. There is no cooperation with external parties such as NGOs and related agencies yet.

Further information was obtained that in assisting children during the trial process, there were obstacles in the communication of PK (Social Counsel) for children with social workers (Social Workers) so that information and data about the condition of the victims were sometimes not detailed and in accordance with the actual situation.

What is needed in the future to increase the capacity of prison officers is knowledge of the SPPA (Child Criminal Justice System) and the management of child supervision. Cooperation with schools and educators is needed so that while in prison the rights of children to obtain education are still felt. Furthermore, related to improving Human Resources, training is needed in the field of guidance, especially child counseling.

Listening to the description or description of children whose status as convicts in the Fakfak area, West Papua needs serious attention from various relevant agencies, to improve the condition of children who are in detention. At least the right to education is still obtained during detention, given that the right to education is a basic human right. Where the State, in this case the local government, needs to be present to provide the rights of children, especially those in prison.

As stated by Satjipto Rahardjo in the concept of legal protection theory, it is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. The definition of children can be seen from various kinds of laws and regulations as follows: 1. The Civil Code (KUHPerdota) According to the Civil Code, the limit of child maturity is regulated in Book I in Article 330 of the Civil Code which states that minors are those who have not reached the age of maturity twenty-one years, and have not been married before. 2. The Criminal Code Article 45 of the Criminal Code states that in prosecuting a minor for committing an act before the age of sixteen, the judge may decide as follows: a. Ordering that the guilty be returned to their parents, guardians or guardians, without any punishment. b. Ordered that the guilty be handed over to the government, without any punishment. Furthermore, the absence of LPKA in the Fakfak area of West Papua shows that the policy regarding LPKA has not been realized in the territory of Indonesia. At least the child prisoners have a separate building from the adult inmates.

4. Conclusions

Based on the description in the discussion, it can be concluded as follows: related to the consideration of the Judge of the Fakfak District Court Number 1/pid.Sus-anak/2022/PNFFk, where the judge gave an 8-month prison sentence with several considerations, namely that the prison sentence would have a deterrent effect and expect also so that children's rights can be obtained and felt during detention, especially the right to obtain education. So, the verdict given by the judge according to the author already reflects the principles of legal certainty, justice and benefits. The fulfillment of the principle of legal certainty has referred to article 362 of the Criminal Code, the Principle of Justice, where the judge's decision has fulfilled the sense of justice for the perpetrators, especially children. Regarding the application of the principle of benefit, it has also been fulfilled.

Furthermore, the child while in prison whose status is a convict in the Fakfak area, West Papua. Currently, there are 3 children in prison, all of whom are male. Then, in terms of age, the youngest is 16 years old and the oldest is 17 years old. They were placed in an Adults Prison. What needs serious attention from various relevant agencies, is to improve the conditions of children who are in detention. At least the right to education is still obtained during detention, given that the right to education is a basic human right. Where the State, in this case the local government, needs to be present to provide children's rights, especially those in prison. The absence of LPKA in the Fakfak area, West Papua shows that the policy regarding LPKA has not been realized in the territory of Indonesia. So that in the future at least the child prisoners will have a separate building from the adult inmates.

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