

Children's Rights as Victims of Criminal Acts in the Perspective of Child Protection Law, Human Rights and Law

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Abstract— Children as the next generation of the nation who will continue to develop towards a better direction. Children are entrusted by Allah to parents, society, nations and countries who inherit the teachings of Islam (revelation of Allah SWT) which will later prosper the world as rahmatan lil 'ālamīn. That every child as a victim has rights regulated in the Child Protection Law, Human Rights, and Islamic Law. The rights of children as victims of criminal acts include, such as treatment, psychological rehabilitation and compensation. This research was conducted with normative legal research. Normative law research is research that lays down law as a building of a norm system, which consists of principles, norms, rules of laws and regulations, court decisions, agreements and doctrines.

Keywords— *Compensation; Children's Rights, Victims of Crime, Child Protection Law, Human Rights, Islamic Law;*

I. INTRODUCTION

As a country of law, Indonesia adheres to the system of rule of law or the rule of law, where the law has the highest power in a country, and the characteristics of the state of law can be seen in the practice of government administration, namely the existence of free and impartial judicial power and the recognition of Human Rights. Although in practice its implementation is still imperfect and there are many misappropriations of the characteristics of the legal state [1], [2]

Criminal law can be used to affirm a number of social values that are important and important to shape a person's behavior in life in society. Criminal law is only used as another way to carry out social control when it cannot be effectively overcome. In using criminal law, efforts must be made to minimize human rights and individual freedoms, of course, without compromising the protection of the broader common interests in the life of a democratic society. In essence, criminal law and human rights continue to run together in law enforcement.

The rights of children are part of human rights, which are a set of rights that are inherent in the essence and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone, for the honor and protection of human dignity and dignity.

These rights are universally recognized, because they are inherent in human beings and are declared part of humanity, regardless of their skin color, gender, age, cultural and

religious background or spiritual beliefs. It is said that these rights are inherent because they belong to anyone who is blessed by the nature of his birth as a human being and not because of the gift by any power organization, and because it is said to be "attached", basically these rights cannot be deprived or revoked for a moment [3]

The perspective of Indonesian society is diverse, with the majority of the population being Muslim, the law is a necessity that must be applied. So that for every Muslim ideally—or perhaps it can be said that it is mandatory—to understand the law and its problems, especially about Islamic law itself. Even though living in a heterogeneous society, the daily activities of a Muslim cannot be separated from the problems of Islamic law, either when performing worship to Allah or when doing muāmalāh (social relations) in the midst of society.

Islamic law – which later in the current context is better known as Islamic law – basically contains holy commandments from Allah SWT aimed to regulate aspects of every Muslim's life [4] and includes purely legal materials as well as religious spiritual materials. Therefore, Islamic law is a living law [5] and developed in the midst of society since centuries ago along with the entry of Islam in the archipelago.

II. METHODS

This research was conducted with normative legal research. Normative law research is research that lays down the law as a normative system building, which consists of principles, norms, rules of laws and regulations, court decisions, agreements and doctrines [6]. This normative legal research is carried out by reviewing and analyzing laws and regulations or other related legal materials. This study focuses on the main characteristics of examining the enforcement of a case accompanied by legal arguments/considerations made by law enforcement, as well as the interpretation behind the enforcement.

III. RESEARCH RESULT

1. Children's Rights as Victims of Criminal Acts in the Child Protection Law

The establishment of child protection laws must be based on the consideration that child protection in all aspects is part of national development activities, especially in advancing the life of the nation and state. Parents, families, and the community are responsible for safeguarding and maintaining these human rights in accordance with the obligations



imposed by law. Likewise, in the context of implementing child protection, the state and the government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development [7]

In Indonesia, the definition of a child is contained in several statutory provisions, which are as follows: In Law No. 35 of 2014 jo Law No. 23 of 2002 concerning Child Protection Article 1 number 1. A child is someone who is not yet 18 years old, including a child who is still in the womb. In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System Article 1 number 3. Children in conflict with the law are those who are 12 years old but not yet 18 years old. In addition, since the promulgation of the Law on the Juvenile Criminal Justice System, the term diversion is also known as a transition in the settlement of children's cases from the criminal justice process to a process outside the criminal justice [8]

The crime prevention policy (criminal politics) can be divided into two paths, namely the penal route (criminal law) and through the non-penal route (outside the criminal law). Countermeasures through the penal route are an effort that focuses on the repressive nature (oppression/eradication/suppression) carried out after the crime has occurred.

While the non-penal pathway focuses on pre-emptive and preventive properties (prevention/deterrence/control) [9].

Narcotics are substances or drugs whose use is widely used by medical personnel for use in treatment and research has several classifications. In Article and explanation of Article 6 paragraph 1 of Law 35 of 2009 concerning Narcotics, it is explained about, narcotics which are classified into 3 (three) groups [10], [11]

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, and develop and participate optimally in accordance with the dignity and dignity of humanity, as well as receive protection from violence and discrimination as stated in Law number 35 of 2014 on the Amendment of Law Number 23 of 2002 concerning Child Protection Article 1.

Children are the sprouts, potentials, and the younger generation of the successors of the nation's ideals of struggle have a strategic role, characteristics, and special characteristics so that they must be protected from all forms of inhumane treatment that result in human rights violations. The protection of children who experience violence aims to ensure the fulfillment of children's rights so that they can grow, develop, and participate optimally in accordance with the dignity and dignity of humanity, as well as receive protection from violence and discrimination, for the realization of quality, noble character, and prosperous Indonesian children. Legal aid is a right of the poor that can be obtained without payment (*pro bono publico*) as an elaboration of equality of rights before the law [12]

The Crime of Child Abuse has been regulated in Law Number 35 of 2014 concerning Child Protection. Based on Article 76c of Law Number 35 of 2014 concerning Child Protection, namely: "Everyone is prohibited from placed, allowing, doing, ordering to do, or participating in violence against children.

Article 76C of the Child Protection Law states that "Everyone is prohibited from placed, allowed, committed,

ordered to commit, or participate in violence against children." It is clear that everyone in Indonesia, both Indonesian citizens and foreign citizens, is prohibited from allowing violence against children, committing violence against children, and ordering violence against children. Then regarding the regulation of criminal sanctions regulated in Article 80 paragraph (2) of the Child Protection Law, it is explained that every person who violates the provisions of Article 76C of the Child Protection Law which causes serious injury, the perpetrator is threatened with imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah).

Special protection efforts that can be made for children who are included in the children who are entitled to special protection are contained in Article 59A of the Child Protection Law, namely

1. Rapid treatment, including physical, psychological and social treatment and/or rehabilitation, as well as prevention of diseases and other health problems;
2. Psychosocial assistance during treatment until recovery;
3. Providing social assistance for children from underprivileged families; and
4. Providing protection and assistance in every judicial process.

The rights of children who are victims of serious abuse are also mentioned in Article 71D paragraph (1) of the Child Protection Law which reads "Every child who is a victim as referred to in Article 59 paragraph (2) letters b, d, f, i, and j has the right to apply to the court in the form of the right to restitution for which the perpetrator of the crime is responsible." Explanation of Article 71D paragraph (1) of the Child Protection Law, namely children who receive special protection, in this case children who are in conflict with the law, children who are exploited economically and/or sexually, children who are victims of pornography, children who are victims of physical and/or psychological violence, and children who are victims of sexual abuse are entitled to compensation for the losses suffered which are the responsibility of the perpetrators of crimes submitted to the court. This right is called the right to restitution.

1. Children's Rights in the Perspective of Human Rights

Human rights encompass all that is needed for the development of the whole human being through a continuous evolutionary process caused by human self-awareness, which is more important than the process itself as there are individuals and communities. Children in their growth and development need special attention and protection from parents, family, society, nation and state. For this reason, it is not enough to be given the same rights and freedoms as adults, because children in many parts of the world are critical as a result of inadequate social conditions, natural disasters, arms disputes, exploitation, illiteracy, hunger and neglect.

Children in this condition are unable to fight or change the situation effectively for the better. The international community therefore urges all countries/governments to ratify and enact legislation that recognizes the special needs and positions of children and that creates additional protection frameworks that are conducive to their well-being [13]

Based on the Convention on the Rights of the Child, children's rights can generally be grouped into 4 (four) categories of children's rights, including: a) The right to survival, namely the right to preserve and maintain life and the right to obtain the highest standards of health and the best care. b) The right to protection, which is the right in the Convention on the Rights of the Child which includes the right to protection from discrimination, acts of violence and violence for children who do not have families for refugee children. c) The right to growth and development, namely the right of the child in the Convention on the Rights of the Child which includes all forms of education (formal and informal), and the right to achieve a decent standard of living for the physical, mental, spiritual, moral and social development of children. d) The right to participate, namely the rights of children which include the right to express opinions on all matters that affect children. The right to participate is also the child's right regarding the child's fundamental cultural identity, childhood and the development of his or her involvement in society at large [14]

1. Children's Rights in the Perspective of Islamic Law

In the course of his journey, during the interaction with social life, there is a tug-of-war between reality and idealism in the legal community. In this position, Islamic law has a perfect and universal nature. Islamic law is also valid throughout the ages (likulli zamân), which encompasses all of humanity without limits—not limited to any particular country, continent, land, or sea—and governs not only the legal aspects of society but also the interests of ukhrawî [15] provide valuable insights in analyzing the situation of children in conflict with the law, in the context of positive Indonesian law and the perspective of Islamic law [16], [17]

Man is a noble creature: "And indeed We have glorified the sons of Adam, We have transported them on the land and in the sea, We have given them sustenance from the good, and We have endowed them with a perfect advantage over most of the creatures We have created.". (Q.S. Al-Isra, [17]:70).

As a trust, children must be guarded and protected in all their interests, physical, psychological, intellectual, rights, dignity and dignity. Protecting children is not only the obligation of biological parents, but it is the obligation of all of us. As a religion that is loaded with the content of affection (rahmatan lil alamin), Islam pays special and serious attention to children, from the time the child is still in the mother's womb to the child is about to become an adult. The obligation to breastfeed (radha'ah), nurture (hadhanah), the ability of the mother not to fast during pregnancy and breastfeeding, The obligation to provide a halal and nutritious livelihood, be fair in giving, give a good name, give a good name, give a blessing, circumcision, educate, are a manifestation of this affection [18].

The human rights of human children in the Islamic dimension have a very wide scope, ranging from personal rights to social life teachings. Therefore, in the context of a very diverse and multicultural Indonesian society, the position of protection for children's rights as potential successors has not been completely "touched" by the family, society, nation and state. In fact, if children's rights are considered and protected by both Islamic law and positive law, it will have an influence on this nation. Responding to this, Abdur Rozak Hussein stated, if the seeds of children in the community are

good, then it is certain that the community will be formed into a good society as well. In addition, in Islam it is also stated that children are seeds that will grow to form society in the future [19], [20].

Oleh sebab itu, orang tua, masyarakat, bangsa dan negara memiliki kewajiban untuk menunaikan hak-hak anak. Namun demikian, dalam skala yang lebih kecil-orangtua sebagai elemen utama sebagai pelindung anak-anaknya-memiliki kewajiban dan tanggung jawab dalam menunaikan perlindungan terhadap hak-hak anak. Selanjutnya, agar supaya anak-anak tidak terperosok kedalam jurang kedzaliman, karena telah melalaikan dan mengesampingkan hak-hak anak, maka orang tua sebagai benteng utama perlindungan bagi anak mestinya berkewajiban memperhatikan hak-hak anak sebelum lahir dan setelah lahir [21].

IV. CONCLUSION

Children as the next generation of the nation who will continue to develop towards a better direction. Children are entrusted by Allah to parents, society, nations and countries who inherit the teachings of Islam (revelation of Allah SWT) which will later prosper the world as rahmatan lil 'âlamîn. That every child as a victim has rights regulated in the Child Protection Law, Human Rights, and Islamic Law.

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