



Legal Protection Against Offenders in the Process of Investigation in the Resort Police of Denpasar City

Dian Martina Octavia, Simon Nahak and I Ketut Widia

Magister of Law, Universitas Warmadewa, Denpasar, Bali-Indonesia

martinaa.dian@gmail.com

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Abstract

The involvement of children in a crime is a phenomenon that is rife. As is the case in the Denpasar City Police Department, where there are children who commit sexual intercourse with friends of their age. In the investigation process, the child as the perpetrator of the crime, found a gap between the prevailing norms and practice, namely in Article 64 of Law Number 17 Year 2016 concerning Child Protection stipulates that, special protection for children facing the law, which is wrong one is getting assistance by a parent or guardian. This research was analyze the form of legal protection against the offender's offender in the investigation process and the obstacles to children as perpetrators of criminal acts in the investigation process at the Denpasar City Police Department. This research was empirical research conducted through the method of legislation and legal concepts as the basis of research. The approach in this study uses the legal concept approach, and the legal approach. Based on the results, it was found that the form of child protection as an offender in the police investigation process was divided into two, namely Preventive protection and Repressive protection. Special treatment of children as perpetrators of criminal offenses is carried out with diversion. The diversion effort is one of the Preventive efforts applied to children facing the law which is a settlement of criminal cases outside the court while the Repressive effort that can be done is to provide a quick, precise and efficient investigation process. The factors that become obstacles in the context of investigating children are the factors of underage children, which makes it difficult for the investigation process, the number of parties involved, parents and surrounding communities who are less concerned. The advice given is first, full awareness of the police is needed in the preventive and repressive stages of children facing the law so that in the future this case can be handled properly and efficiently. Second, it is necessary to familiarize parents or related parties who stumble over child problems that intersect with the law so that in the future there will be no more indifference from the parents or related parties in dealing with such crimes.

Keywords: Child Crime; Investigation; Legal Protection

INTRODUCTION

Special treatment given to children by the State is regulated in the Child Protection Act, in this law regulates the rights of each child. This law also regulates legal protection for children involved in criminal acts. Special protection for children involved in this crime is contained in Article 66 of the Law on Child Protection, this special treatment is carried out through humane treatment, namely by observing the needs according to the age of the child. provide liberation from torture, punishment or other cruel, inhuman and degrading treatment and degree. Avoiding the imposition of capital punishment or life sentence. Avoid the child from arrest, detention or prison except as a last resort and in the shortest amount of time.

The existence of special treatment for these children is a must because children are not fully able to be responsible for the actions they take. Unlike adults who are fully

responsible for their actions. This legal treatment is carried out due to the consideration that the child has not been able to fight for everything that is his right, so that the child needs to be protected legally. (Hutapea & Kadir, 2015) in their research at the North Jakarta Metro Police PPA unit found legal protection for the rights of child suspects, which can be implemented in the case investigation process, including: Child suspects can be examined immediately and examined by the Child Special Investigator; Against the child suspect the investigator conducts an investigation with a family atmosphere, the investigator conducts an investigation by not wearing official clothing; Against the child suspect the investigator requests consideration or advice from the Community Guidance (BIPAS); The child suspect received legal assistance, namely a Legal Advisor during and at each level of examination; The suspect child can provide information in a free state; The suspect child investigators provide physical and spiritual needs during the investigation process.

The involvement of children in a crime is a phenomenon that is increasingly prevalent. As happened in the environment of the Denpasar City Police where there are cases of criminal acts of intercourse with minors with suspects and victims are children. In the process of investigating children as perpetrators of sexual intercourse in the Denpasar City Police Department, the authors found a gap between the prevailing norms and the practice at the Denpasar City Police Department. This gap is contained in Article 64 of the PA Law stipulates that special protection for children facing the law is one of which is given assistance by parents or guardians, but in fact in the investigation process at Denpasar City Police Department, this child often is not accompanied by parents or guardian.

There are a lot of research on the protection of offenders crime has been done before. The results of (Suswanto, Suhartono, & Sugianto, 2018) research found that the Criminal Procedure Code has set out the provisions which are the rights of the suspect and efforts to protect the law for suspects according to human rights. However, the authority given by the Criminal Procedure Code against investigators gives authority to the Investigator, on the grounds that the action taken is an act of necessity and is still consistent with the authority as governed by the preceding formulas. in another research, (Raharjo & Angkasa, 2011) in his research at the Banyumas police chief found that the state had failed to provide legal protection for suspects as deep as the investigation process as seen from the violence committed by the police. From these two studies, it can be concluded that the protection that should have been obtained by the suspect in the investigation process as described in the Suswanto study (2018) cannot be applied based in Raharjo (2011) research. therefore, much research needs to be done to find solutions to cases like this.

Based on the background above, this research is limited on the form of legal protection for child offenders in the investigation process and the factors which obstacles in the process of investigating children as criminals in the Denpasar City Police Department.

METHODS

According to (Soekanto, 2007) legal research can be divided into normative and sociological or empirical legal research. This research used empirical law method with a legal approach, and analysis of legal concepts. The data uses was collect by field data and library data. This research emphasizes legal protection against perpetrators of child crimes in the investigation process which is reviewed from the laws and regulations governing child protection.

The field data were obtained from interviews with informants at the Denpasar City Police Department and for library data obtained from three materials, namely primary legal material obtained from the 1945 Constitution, Law No. 17 of 2016 concerning Child Protection, Law No.11 of 2012 concerning Child Criminal Justice System and Criminal Code. For secondary legal material that is obtained from legal books and legal articles. After the data was collected, it continued with record the process as a method of collecting legal materials. The types of legal materials collected can be in the form of legal theory, legal journals and the views of legal experts and related laws. And for tertiary legal materials obtained from legal dictionaries and Large Indonesian Language Dictionary. After gathering all legal materials, proceed with the analysis process to obtain a truth and try to

find an understanding of the truth.

RESULT AND DISCUSSION

Forms of Legal Protection Against Children Criminals in the Process of Investigation in the Denpasar City Police Department

Many children involved in these crimes are influenced by various social pressures which all exert a forceful influence and force on the formation of bad behavior, as a result of the association, these children are in violation of regulations, social norms and formal law. Children become delinquents as a result of psychological transformation in reaction to pressing external forces and forces.

Children are very vulnerable to delinquent actions that lead to criminal acts, even though most of these children do not yet know that the actions they carry out can have fatal consequences for themselves, their families, and for the environment, so that children who carry out an action contrary to formal law has the right to obtain legal protection.

Legal protection is an action or effort to protect the public from arbitrary acts by a ruler who is not in accordance with the rule of law, this is done to create order and peace so as to enable humans to enjoy their dignity as humans. Preventive legal protection is protection provided by the government with the aim of preventing before the occurrence of violations. This is stated in the legislation with the intention to prevent the occurrence of a violation and to provide signs or limitations in carrying out an action.

Family is where a child gets an education for the first time in his life. So that the family has a very big role in the development of a child. Children are very vulnerable to actions that lead to criminal acts, especially teenagers. This is because the child does not yet know the actions he performed can have consequences for themselves, their families, and their environment, therefore a child who is faced with the law has the right to obtain special legal protection from the State.

Preventive legal protection is protection provided by the government with tuuan to prevent before the occurrence of violations. This is stated in the legislation with the intention to prevent the occurrence of a violation and to provide signs or limitations in carrying out an action.

A child who commits a crime in criminal law must still be accountable for his actions. Regarding his status as an underage child, this will result in the law enforcement process being carried out specifically in accordance with his position as a child. Giving special treatment to these children is due to the fact that children are considered incapable both physically, mentally and socially.

Handling children in the legal process requires a special approach, service, treatment, care and protection for children in an effort to provide legal protection for children who are facing the law. When there is no legal protection for these children, it can lead to various social phenomena that can disrupt law enforcement, order, security and legal development in Indonesia.

In terms of law enforcement for children involved in criminal acts, it must always be based on the position of the child with all its special characteristics and characteristics. Therefore, in carrying out law enforcement on children involved in criminal acts, it is still based on the welfare of the child and the interests of the child as a basis for the concept of child protection itself.

Protection given to children who commit this crime is given starting from the investigation process to the implementation of court decisions. During this process a child is given all the rights owned by the child protected. This is done to achieve the objectives of the existence of juvenile justice, namely to realize child welfare, legal certainty, ensure that the treatment and actions taken do not neglect the child's future and continue to uphold the authority of the law for justice.

In [Law No. 11 of 2012](#) concerning the Criminal Justice System the Child regulates the obligation of law enforcers to seek diversion, namely settlement through non-formal

channels at all stages of the legal process. Preventive legal protection against perpetrators of crimes committed by a child, in criminal acts committed by peers based on the case raised, reflected in the arrangements regarding special child investigators and diversion efforts that must be sought. With the existence of clear rules regarding specific specifications that must be possessed by a child investigator, it is a preventive step for the occurrence of legal protection for children as perpetrators of criminal acts.

Furthermore, for repressive protection, this is the final protection in the form of sanctions such as fines, imprisonment and additional penalties given if there has been a violation of law. The principle of legal protection against government actions rests on and derives from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts about the recognition and protection of human rights is directed at restrictions and laying down obligations community and government.

Substantive due process of law is a juridical requirement which states that the making of a legal regulation may not contain rights that can result in unfair, illogical and arbitrary human treatment. Not a person who is above the law and law must be applied to anyone; This principle gets an exception for law enforcement against children who commit a criminal act. This special treatment is allowed with special reasons, for example children who are under 17 years old have different rights with children over 17 years. This difference has a rational reason so that the difference is allowed; In [Law No. 11 of 2012](#) concerning the Child Criminal Justice System and [Law Number 17 Year 2016](#) concerning Child Protection, there is a difference in the treatment and protection of the implementation of the rights and obligations of children, especially children as suspects in the criminal justice process. This protection covers all procedures starting from investigations, investigations and ending in the implementation of the criminal. During this trial process, the rights and obligations of the child must be protected by applicable law and therefore must be carried out consequently by the parties concerned.

Factors That Are Obstacles In The Process Of Investigating Children As Actors In Criminal Offices In Denpasar City Police

The process of investigating children as criminals is different from investigations of crimes committed by adults. This is related to efforts to realize justice for the community. Children receive special attention and protection, due to their duties as the nation's next generation. Legal protection for children in the judicial process is carried out starting from the level of investigation, investigation, prosecution, examination at the court until the implementation of the court's decision.

The person conducting the investigation is an investigator where in the provisions of [Law Number 2 of 2002](#) challenging the National Police of the Republic of Indonesia it is explained that the investigator is an official of the National Police of the Republic of Indonesia who is authorized by the Act to carry out investigations, while those entitled to be investigators are Officials Certain National Police of the Republic of Indonesia which have at least the rank of Inspector Two Police and have the lowest level of undergraduate or equivalent education.

In [Law Number 2 of 2002](#) concerning the National Police of the Republic of Indonesia to ease the burden of investigators, it has also been regulated that there are auxiliary investigators. Auxiliary investigators are Indonesian National Police officers appointed by the Head of the National Police of the Republic of Indonesia based on the rank requirements given certain authority in carrying out investigative duties as stipulated in the law.

In the investigation process, an investigator who conducts an investigation of a child must have the requirements to become a child investigator, so that not all police investigators have the authority to conduct investigations on a child. Requirements to become a child investigator are: A police officer must be experienced as an investigator; A police officer has interest, attention, dedication and understanding of children's problems; Has attended technical training on juvenile justice

The provisions in Article 18 of Law Number 11 of 2012 concerning the Child Criminal Justice System have reflected the existence of legal protection for children, and if the investigator is conducted an examination in a family atmosphere, then no sanctions can be imposed on the child. then the investigator must keep secret from the investigator's actions in the form of arrest, detention and other actions carried out from the investigation stage to the investigation, must be carried out in secret. The provision of special treatment for children as perpetrators of this crime and rapid and effective investigation is a form of repressive legal protection.

The obstacles experienced by investigators in carrying out the investigation process against the child of the perpetrator of this crime are two inhibiting factors. The first is from internal factors. Investigation is a series of investigator actions in terms of and according to the method stipulated in the law to search for and collect evidence that with evidence that makes the crime clear.

In a study conducted by the author at the Denpasar City Police, where the investigators had attended technical training on juvenile justice, so that cases involving children, whether children who were victims or suspected of criminal acts, Denpasar resort police had been able to carry out investigations in accordance with the law. So that it can be said that the Human Resources owned by the Denpasar City Police Department are adequate.

Internal barriers here come from the victims who are still underage status, where investigators find it difficult to obtain victims' information because the victims are still traumatized, this has an impact on the time of investigation that cannot be determined precisely because they have to wait for the victims to improve. Furthermore, the obstacles are evidence of post mortem examination, where this is constrained by permission from parents and not prepared by the victim.

For external factors which become obstacles in the investigation process here, namely in the diversion effort sought by the investigator, the victim did not respond well, where the victim did not want to be diversified because he wanted to give a deterrent effect to the suspect. awareness in making this diversion effort is still lacking because it is considered not able to provide lessons or deterrent effects on criminal offenders.

Diversion as an alternative solution to a child criminal case must be more socialized by the government and the police. In addition, not all parents of children involved in the crime are present in the process of investigating their children. Parents are expected to accompany their children in the investigation process because children are considered unable to defend their rights fully, and have not been able to express their events as well as possible. The presence of parents who do not want to accompany their children who are involved in criminal acts and those who do not approve of the diversion process is an external obstacle in the investigation process.

CONCLUSIONS

The conclusions obtained from the above writing include: The form of child protection as an offender in the police investigation process is divided into two namely Preventive protection and Repressive protection. Special treatment of children as perpetrators of criminal offenses is carried out with diversion. The diversion effort is one of the Preventive efforts applied to children who are dealing with the law in the form of settling criminal cases outside the court, while the Repressive effort that can be taken is to provide a quick, precise and efficient investigation process. Factors that become obstacles in the framework of investigating children are: Factors of children who are underage make it difficult for the investigation process, Number of parties involved, Parents and surrounding communities who care less.

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