Review of Islamic Law and Positive Law Regarding Legal Protection for Children as Offenders of Crime: Case Studies in West Java

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Abstract

This study aims to reveal the development of children as perpetrators of crimes in the West Java region, and also to analyze the legal protection for children who are involved in criminal acts, both from the perspective of Islamic law and positive law. In addition, this study identifies obstacles in educating children who are involved in criminal behavior. In this study, a combined approach method of normative and empirical research was used. The normative approach is carried out by investigating data and facts through literature studies and comparisons of legal literature, including derivative legal products, as well as analysis of the relevance of legal views to the object of research. On the other hand, the empirical approach involves public testing and direct data search (field research) from related parties, including Center for Integrated Service for the Empowerment of Women and Children "Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak" (P2TP2A) and Legal Aid Institutions. The results of the research show that in the case of children as perpetrators of criminal acts, the restorative justice approach is a relevant concept. Limitations of thinking and careful consideration in children are the main factors that support the choice of this approach. Thus, in providing criminal responsibility for children, it is important to consider their development and best interests for their future. Incorrect handling can have a damaging impact on future generations. This is because children are assets as well as successors to the nation and the ideals of the state. Meanwhile, the obstacles faced in educating children who commit criminal acts include, first, sometimes the perpetrator's parents completely surrender to the Social Service, so this is what then becomes an obstacle in providing assistance. The second is the budgetary aspect, in some cases such as harassment, regarding the post-mortem fee, parents sometimes hand it over in full, not to mention if there are additional costs, the Social Service will automatically bear it. The third obstacle is the cooperation that is established with Legal Aid Institutions "*Lembaga Bantuan Hukum*" (LBH) which demand payment, while social services are government agencies whose allocation has been determined.

Keywords: *Islamic Law; Positive Law; Legal protection; Criminal Act.*

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A. INTRODUCTION

Protection of children's rights is an important phenomenon to study. The elucidation notes that the right to protection, as defined in Islamic Law and Law Number 23 of 2002, cannot be considered as a rule based solely on legal aspects. When it comes to child protection, both in Islamic law and positive law, both aim to provide the best protection for children with the aim of preventing violence, discrimination and exploitation. In addition, in everyday life, children's behavior that violates the law is often encountered, and this can be caused by a lack of attention from the internal and external environment, both physically, mentally and

socially (Mumtahanah, 2015).

A child cannot protect themselves from all actions that have an impact on physical, mental and social harm (Ariani, 2014). Based on this, protection must be given to children who are criminals. Apart from being something foreign, legal protection for them must also be properly realized as regulated in the law (Gultom, 2008). As in the examination stage, a child who commits a crime has the right to get justice with correction and rehabilitation, so that when finished carrying out the responsibility the child who committed the crime is ready to return to society (Widowati, 1984). This also has an impact on the psychological side which helps in instilling good values for the child, so that the physical and psychological aspects are well maintained.

Meanwhile, in the existence of Islamic law, the plurality of national laws in Indonesia is a legacy of the main consequences of the national law itself. Thus, it is very important to carry out reforms with schools of thought selectively by choosing sources that are in accordance with historical developments and methodology of Islamic law. In addition, there is also a need for a reorientation towards positive law reform by adhering to the central values of the Indonesian people as the basis for social policies, criminal policies, and law enforcement policies based on the legal system applied (Itmam, 2013) that (Aditya, 2019) also holds the same opinion.

The purpose of this study covers three main aspects, namely the development of children as perpetrators of crime, legal protection for children who are involved in crime from the perspective of Islamic law and positive law, as well as obstacles encountered in educating children as perpetrators of crime in West Java.

B. METHOD

This study uses a combined method of normative and empirical research. The normative approach is carried out by collecting data and facts through literature studies and comparisons of legal literature with its derivative legal products, as well as analyzing the relevance of legal views to the object of research. In addition, the empirical approach involves public testing and direct data tracing (field research) to parties related to research, such as P2TP2A and LBH. After obtaining data and facts as research findings, the next step is to classify the data and look for patterns that connect research findings based on the two methods used. The data is then processed and analyzed. Data analysis was carried out after obtaining comprehensive data or research findings. The purpose of data analysis is to ensure answers to research results as an illustration of the research problem formulation that has been determined. The analytical method used by the researcher is deductive reasoning (logic), namely applying general principles that apply to specific situations (Djojosuroto et al., 2023). Particularly in this study, researchers used three main theories (Grand, Middle, Applicate) as tools to analyze the results of the research that had been conducted.

C. RESULT AND DISCUSSION

1. Development of Crimes Committed by Children in West Java

Based on the results of interviews conducted at P2TP2A Bale Titirah Purwakarta, the development of criminal acts committed by children, especially in the Purwakarta area, can be said to be quite high. This is marked by various cases which have recently been the center of public attention, especially the P2TP2A social services. This was added by Nur Aisyah Jamil as the Head of the Bale Titirah P2TP2A Purwakarta Social Service that "There are many factors for a child to commit a crime, including economic needs, then the child of the perpetrator of the crime joins a certain gang, as is the case in our case that there is a child aged 15 years, but has committed theft of 15 motorbikes with a sentence of 5 years in prison. Meanwhile, another child case that we handled involved a child who had sodomized 7 underage victims, and one of the victims was a 5 year old child. After we explored it, the factor behind this child committing a crime was that the child initially watched pornographic videos on his parents' cellphone, whose profession is a junk seller. Therefore, the gadget factor becomes one of the bridges in this case. This is because definitively children are under 18 years old, therefore they must also be extra supervised, this is because patterns of thinking that are not yet stable and mature can provoke a child to do things under the supervision of parents or the environment around them to do something " as stated by (Sarutomo, 2021).

If viewed from a broad perspective, the development of criminal acts committed by children so far is very troubling for parents and society (Sambas, 2010). This was also added by Nur Aisyah Jamil that "Apart from handling various cases of criminal acts committed by children in West Java, especially the Purwakarta area, our task actually does not stop there, but to protect them so that they are willing and able to return to live side by side with society, and well received by society. Therefore, our task is also as a means of social rehabilitation, in accompanying and growing the confidence of children who commit crimes so that they always become better individuals, without discrimination from society or the scope in which the child lives.

2. Legal protection for children who commit crimes in a positive legal review and Islamic law

Basically, legal protection for children is an effort to protect the law against various violence and children's rights from all efforts related to child welfare (Arif, 1996). In addition, child protection is also a form of effort in creating conditions that allow the exercise of rights and obligations (Gosita, 1993). For this reason, every child must be upheld in ensuring the survival of his life as specifically regulated regarding Juvenile Justice in Law Number 11 of 2021.

As in Islam, punishment is a mechanism for imposing criminal responsibility intended to maintain public order (Astuti et al., 2020). Thus, the amount of punishment must be adjusted according to the needs of society. Based on this, parents and families have a very central role in educating and controlling children's

relationships. Children with less harmonious family backgrounds are usually vulnerable and have the potential to do various things that violate the laws that exist in society (Syahraeni, 2021).

As according to Nadya Yulianti as a psychologist at the P2TP2A Bale Titirah social service institution which states that "In dealing with cases of children as perpetrators of criminal acts, the role of parents is very dominant, besides helping to provide a support system to the child, the function of parents who fully support is wrong. one reason for the child in doing self-recovery is to return to improve himself to be better. As a result, children who are not labeled 'criminals' will more quickly adapt to their environment with the encouragement and motivation given by their parents," this is in line with the opinion of (Rizqian, 2021).

An environment that has a positive influence is certainly able to help solve the child's problems and bring it in a positive direction and vice versa (Gunadi, 2017), this is in line with (Rasyid et al, 2020)'s opinion. Nadya Yulianti further explained that "Besides the role of parents, the community also plays an important role, although what is more dominant is the parenting style of the parents themselves, who give freedom to their children such as playing in internet cafes or just letting them go without monitor the child's association, so that the child meets predators and then exploited. This is what parents and even the community should pay attention to to continue filtering children even if it is necessary to do a gadget diet pattern so that children's interactions can be monitored properly" (Subianto, 2013) also thinks so.

Nur Aisah Jamil also explained the obstacles faced in providing legal protection to children as perpetrators of criminal acts, that "Almost every protection agency or social institution has problems related to finances. This is because the government is very limited in allocating funds and this is not proportional to the number of cases it faces. Apart from that, other obstacles are the number of personnel who are still lacking compared to the number of cases that have occurred, and there are still disciplinary limitations" this is in line with the opinion (Utaminingsih et al, 2021).

A number of articles, both in the form of journals and articles, have discussed legal protection for children. For example, Emi Puasa Handayani and Widodo Hariawan have written a journal entitled "Legal Protection for Children of Criminal Offenders." They state that there are internal and external factors that play a role in causing children to commit crimes:

a. Internal factors involve factors that come from within the child itself, such as improper parenting or wrong upbringing from parents, which can cause children to become spoiled or vice versa and have mental instability. In addition, another factor is association with friends which may influence children's behavior.
b. External factors involve the role of the family, school environment, and social environment outside the home which can also influence children's behavior.

These writings provide insight into legal protection efforts for children in the context of crimes that involve them as perpetrators of crimes (Handayani, & Hariwan, 2019).

The article in question, written by I Made Saepud (2013) with the title "Legal Protection of Offenders Through Diversion in the Juvenile Criminal Justice System in Indonesia," emphasizes the importance of legal protection for juvenile offenders through a diversion mechanism in the juvenile justice system. in Indonesia. An analysis of the issues raised reveals several important points: First, in providing legal protection for juvenile offenders, a diversion approach is applied in the juvenile justice system in Indonesia. This approach includes three aspects, namely the child's material legal system, the child's formal legal system, and the legal system for implementing juvenile criminal sanctions (Saepud, 2013).

A journal article written by Mahendra Ridwanul Ghoni (2020) entitled "Legal Protection of Children in Conflict with the Law Through the Implementation of Diversion in Indonesia." This article concludes that the role of diversion as an effort to protect children's rights is expected to overcome the problems of children in conflict with the law. When a child faces a formal criminal justice process, it is certain that they will lose their freedom. However, by using diversion, children's freedom is guaranteed, and the risk of being deprived of their independence can be avoided. Therefore, diversion is a very significant step in providing protection for children who are in conflict with the law, so that their basic rights can be fulfilled.

3. Obstacles Faced in Educating Children as Offenders of Crime in West Java

Child delinquency or Juvenile Deliquecy, according to Kartini Kartono (1992) states that such things are evil, immoral, juvenile delinquency, symptoms of illness or social pathology, as well as a form of social neglect of adolescents to develop deviant behavior where (Suryandari, 2020) said the same thing. Then, Romli Atmasasmita (1993) explains that delinquency in children refers to all behavior carried out by someone under the age of 18 and is not married, and is a violation of applicable legal norms with the impact of endangering the child's personal development.

As stated by Nur Aisah Jamil that "Regarding the obstacles encountered in educating children who commit crimes, among others, first, sometimes the parents of the perpetrators fully surrender to the Social Service, so this is what then becomes our obstacle in providing assistance. The second is the budgetary aspect, in some cases, for example harassment, regarding post-mortem fees and so on, sometimes the parents hand it over completely, not to mention if there are additional costs, then we will automatically bear it. Then the third obstacle is the cooperation that is established with the Legal Aid Institute (LBH) which asks for payment, while social services are government agencies whose allocation has been determined. This is what then becomes the main obstacle in the goal of resolving cases, but it collides with budget polarization".

When facing and handling the juvenile justice process involved in a crime, it is important not to forget his position as a child with all the special characteristics and characteristics. Therefore, the orientation in handling it must be based on the concept of protecting children, so that it is based on the principles of the welfare and interests of the child (Harahap, I.S, 2016). In the legal process, a special approach, treatment and protection is needed, with the aim of continuing to legally protect the interests of children who are still minors, even though they are perpetrators of crimes (Purnomo et al, 2018).

As according to Nur Aisah Jamil that "In dealing with children who commit criminal acts, certain efforts are needed that gently invite the child, and not judge the child, for example the case of children with special needs "Anak Berkebutuhan Khusus" (ABK) who were raped until they gave birth, after we traced it turned out that the perpetrator is also a teenager who is still underage. At first the perpetrator denied raping him, but after we approached him, and finally wanted to do a DNA test at Hasan Sadikin Hospital, it turned out that the results of the DNA test matched 99.9%. This proves, in uncovering a crime, especially crimes committed by children, you don't have to use violence.".

As for dealing with various obstacles to child crime cases in West Java, the Bale Titirah P2TP2A Social Service has formed several strategies, as according to Nur Aisah Jamil that "To deal with child crime cases, we form a task force "Satuan Tugas" SATGAS team which has the function of educating, facilitating, assisting, and providing understanding to the community that women and children must always be protected, so that they do not become targets of predators. Apart from that, the strategy for forming the SATGAS team is also useful in coordinating".

The same thing was also stated by Via Nur Destikawati as the head of the Subang P2TP2A field that "We as P2TP2A have an obligation to protect children who commit crimes. It is inconceivable if we do not assist a child who commits a crime, his psychological condition will be down, causing prolonged trauma in his life in the future. The child will have difficulties if one day plunges back into the midst of society".

In addition, Hera as a psychologist at TP2TPA Subang also added: "The problem in Subang is not only the problem of children as perpetrators of crimes, but cases such as human trafficking are also central to the city of Subang. There are many tasks that we have to fix, starting from mentoring, educating, we even have to be able to face various obstacles such as a relatively minimal budget and other constraints on our external side".

As for the motives of a child committing a crime, Ade Fajar Sidik, as a Lawyer at the Baihaqi Legal Aid Institute, Subang City, explained in more detail. He explained that "The motive for a child to commit a crime cannot be generalized. This is usually caused by a lack of education given by parents to children. Besides that, economic factors can also be one of the triggers for a child to commit a crime. The pattern of education given by parents is a means of supporting a child to grow to be a good human being, even if, say, the economic potential of a family is very low, if

parenting values and moral education are applied as well as possible, then it is very unlikely that a child will commit a crime".

D. CONCLUSION

The development of criminal acts committed by children is still quite high. This is marked by various cases which have recently been the focus of public attention, especially the P2TP2A social service with various motives such as economic needs, then the joining of children of criminal offenders with a certain gang. In the context of legal protection for children who are involved as perpetrators of criminal acts, it is important to apply the concept of restorative justice. This is caused by the limited ability of children to think carefully about their actions. In providing criminal responsibility for children, it is necessary to consider their development and best interests for the future. Errors in handling can have an impact on the destruction of future generations, bearing in mind that children are assets and successors to the nation and the ideals of the state.

Meanwhile, the obstacles faced in educating children who commit criminal acts include, first, sometimes the perpetrator's parents completely surrender to the Social Service, so this is what then becomes an obstacle in providing assistance. The second is the budgetary aspect, in some cases, such as harassment, regarding the post-mortem fee, sometimes the parents hand it over in full, not to mention if there are additional costs, then the Social Service will automatically bear it. Then the third obstacle is the cooperation that is established with the Legal Aid Institute (LBH) which asks for payment, while social services are government agencies whose allocation has been determined. This is what then becomes the main obstacle in the goal of resolving cases, but is collided with budget polarization.

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