

CRIMINOLOGICAL REVIEW OF THE CRIME OF DIFFERENCE IN EFFORTS TO PROTECT CHILDREN WHO ARE OBJECTED BY CRIME

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Abstract

Crime is a very anti-social act that consciously gets a reaction from the state in the form of giving suffering (punishment or action). Crime as a behavior is an act of deviance, is against the law or violates statutory regulations and is detrimental to the community in terms of decency, decency and order of community members. Crime can be defined juridically and sociologically.

Crime is part of people's lives and is an everyday event. A philosopher named Cicero said Ubi Societas, Ibi Ius, Ibi Crime which means there is a society, there is law and there is crime. The benefit of studying criminology is that criminology contributes to the formulation of new legislation (the Criminalization Process), explaining the causes of crime (Criminal Ethylogy) which in turn creates efforts to prevent crime. Another issue regulated in the child protection law is how to punish adults who commit crimes against children and also the responsibility of parents, society and the state in protecting children.

This research was conducted in North Maluku, precisely in the city of Ternate. This research will use a descriptive type of analysis with a qualitative approach. In collecting data through library research, field studies and documentation studies.

Keywords: Child, Protect, Crime, Review

I. Introduction

A. Background

Crime is a very anti-social act that consciously gets a reaction from the state in the form of giving suffering (punishment or action). Crime as a behavior is an act of deviance, is against the law or violates statutory regulations and is detrimental to the community in terms of decency, decency and order of community members. Crime can be defined juridically and sociologically. Juridically, crime is all human behavior that is against the law, can be convicted and regulated in the criminal law. Meanwhile, sociologically, crime is an anti-social act that harms members of society.

Crime is an object of criminology, where criminology is a science that seeks to explain crime, the causes of crime and how to handle crime.¹ Crime (misdriven / recht delicten) is regulated in Book II of the Criminal Code (KUHP) as an act that is contrary to justice. One form of crime is kidnapping. Kidnapping is an act of forcing someone to take away and against the law with the intention of placing that person under the power of another person.²

Crime or criminal acts is a form of deviant behavior that is always there and is inherent in every form of society. No society is devoid of crime.³ Therefore, in an effort to save the children's future, all parties must work together to prevent kidnappings from occurring. Children wherever they are, have the right to receive protection as vulnerable little human beings. To make this happen, the awareness of all parties to prevent kidnappings is very much needed. In connection with the description above, the authors are interested in conducting research with the title "Criminological Review of the Crime of Kidnapping in an Effort to Provide Protection for Children Who Become the Objects of Crime".

II. Literature Review

A. Overview of Crime

1. Definition of Crime

Crime in Dutch is called misdrijven, which means an act that is disgraceful and has a legal relationship. Crime is part of an act against the law or offense, the other part is a violation. Several legal experts define crime as follows:⁴

- a. Wirjono Projo, crime is a violation of norms as the first essential element of criminal law.
- b. Paul Mudigdo Moeliono, crime is a human act, which is a violation of norms, which is considered detrimental, annoying, so it should not be ignored.
- c. c. Richard Quinney, crime is human behavior created by authorized actors in a politically organized society, or qualifications for unlawful behavior formulated by citizens or societies who have power.⁵

Crime is part of people's lives and is an everyday event. A philosopher named Cicero said Ubi Societas, Ibi Ius, Ibi Crime which means there is a society, there is law and there is crime. Communities value each other, communicate and establish interactions, so that it often creates conflicts or bonds. One group will consider the other group to have deviant behavior if the other group's behavior is not in accordance with the group's behavior.

¹ Abintoro Prakoso. 2013. Kriminologi dan Hukum Pidana. Yogyakarta: Laksbang Grafika, hlm. 93.

² Andi Hamzah. 2007. Terminologi Hukum Pidana. Jakarta: Sinar Grafika, hlm. 37

³ Barda Nawawi Arief, Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara, CV Ananta, Yogyakarta, 1994, hlm. 11.

⁴ Moeljatno, Asas-Asas Hukum Pidana, Edisi Revisi, Jakarta, Rineka Cipta, 1993, Hal : 71

⁵ Topo Santoso dan Eva Achjani Zulfa, 2010. Kriminologi, Raja Grafindo Perkasa, Jakarta, Hal : 11.

This deviant behavior is often seen as evil behavior. The limitation of crime from the perspective of society is any act that violates the rules that live in society.⁶ Sociologically, crime is all forms of speech, action and behavior that are economically, politically, and psychologically very detrimental to society, violate moral norms, and attack the safety of community members (both those covered by law and those that have not been listed. in the criminal law).⁷

B. Overview of Criminology

The name criminology was coined by P. Topinard (1830-1911) a French anthropologist. Criminology literally comes from the word "crimen" which means crime or criminals and "logos" which means science, so criminology can mean the science of crime and criminals. Many definitions of criminology have been put forward by scholars, each of which is influenced by the wide scope of material covered in criminology.

The benefit of studying criminology is that criminology contributes to the formulation of new legislation (the Criminalization Process), explaining the causes of crime (Criminal Ethology) which in turn creates efforts to prevent crime. As said earlier that criminology addresses the problem of crime. The question arises to what extent an action can be called a crime? In formal terms, crime is defined as an act which the state is given a penalty. The provision of punishment is intended to restore the balance which was disturbed by the act.

The disturbed balance is that public order is disturbed, society is restless as a result. This disturbance is considered by the society to be anti-social, that action is not in accordance with the demands of society. Because society is dynamic, actions must be dynamic in accordance with the rhythm of society. So there is the possibility of an action in accordance with the demands of society but at one time the action may no longer be in accordance with the demands of society due to changes in society, and vice versa. Bonger defines criminology as a science that aims to investigate the broadest possible symptoms of crime (theoretical or pure criminology) based on practical conclusions. these symptoms. As in other sciences, what matters in criminology is the collection of materials. The conditions which must be met by investigators are the same as in other sciences (honesty, impartiality, thoroughness and so on as in all matters relating to homosapien).

C. Legal Aspects of Child Protection

Child law actually has a meaning that is not limited to juvenile justice issues, but is broader than that. Law No. 23/2002 concerning child protection has helped provide an interpretation of what constitutes a part of child law in Indonesia, starting from the civil rights of children in the fields of child care, guardianship and adoption as well as regulating the exploitation of children in the economic, social and sexual fields. Another issue regulated in the child protection law is how to punish adults who commit crimes against children and also the responsibility of parents, society and the state in protecting children. Thus the scope of the law on children is very broad and cannot be simplified only in the area of violations of the law committed by children.

Because there are still many laws and regulations governing the issue of child protection and some laws still collide with other laws, it is necessary to compile these laws by the competent state agency and then conduct a study to see the harmonization between existing laws. Thus it will be possible to see the collision and legal vacuum that occurred. So the next step is to carry out legal reform so that the problem of children can be a priority carried out by the state.

Dependent children are, of course, different from adults who, in general, theoretically and practically no longer qualify as a vulnerable group. Unlike adults, in the

⁶ A.S. Alam, 2010. Pengantar Kriminologi. Penerbit Pustaka Refleksi : Makassar, hal 2.

⁷ Mulyana W, Kusumah, Kejahatan dan Penyimpangan : suatu perspektif Kriminologi; YLBHI, 1988, Hal : 40-42

real world children are often the targets and victims of violence with long and permanent consequences.

There are 4 (four) basic principles which are then formulated in full in Article 2 of Law No.23 of 2002, namely:

a. Non-discrimination

Discrimination is a form of discrimination, exclusion, restriction or preference, based on race, color, sex, language, religion. (religion), politics (political) or other opinions (other opinion), social origin or nationality, poverty (proverty), birth or other status. Discrimination is any limitation, harassment or exclusion that is directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, social status class, economic status, gender, language, belief, politics, which results in reduction, deviation or elimination, recognition, implementation or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural and other aspects of life. Every child has the right to live, grow and develop and has the right to protection from violence and discrimination.

b. Best interests of the child

This principle is placed as the main consideration in all actions for children, whether by social welfare institutions in the public or private sector, courts, administrative authorities, or legislative bodies. The state and government, as well as public and private bodies ensure the impact on children of all their actions, which ensures that the principle of the best interests of the child is taken first, gives better priority to children and builds a friendly society. Thus, the interests of children's welfare are the main objective and beneficiary of any action, policy and / or law made by the competent authority. In order to carry out the best interests of these children, that the state guarantees child protection and provides care for children. The state takes a role to enable parents to be responsible for their children, as well as other legal institutions.

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c. The right to life, survival and development

This principle is embodied in the legal norms of Article 4 of Law no. 23 of 2002. In comparison, the legal norms of article 4 of Law no. 23 of 2002 refers to and is sourced from Article 28 B paragraph 1 and paragraph 2 of the 1945 Constitution. Meanwhile, other statutory provisions such as Law no. 39 of 1999 also regulates this right to life which is the basic principles in Articles 4 and 9 of Law no. 39 of 1999). This right to life in the discourse of international instruments / conventions is a universal human right, and is recognized as the main right.

d. Respect for children's opinions.

Children can and are able to form or express their opinion in their own view which is the right of free expression. The guarantee of protection for the right to express

an opinion on all of these matters must be considered according to the age and maturity of the child. In line with that, the state is obliged to ensure that children are given the opportunity to express their opinion in any judicial or administrative process that affects children's rights, either directly or indirectly. In Article 3 of Law no. 23 of 2002, the principle of respect for children's opinions is also explicitly adopted as a basic principle, along with Pancasila as a principle and the 1945 Constitution as the basis for implementing child protection.

In principle, the state makes efforts to ensure that children are under the care of their own parents, and not separated from their parents against the wishes of the child. If the child and the parent are in another country, the child has the right to be reunited (family reunification) quickly and humanely. The provisions of Article 14 of Law No.23 of 2002 which in principle contain legal norms that prohibit separation of children from their parents. It emphasizes that children have the right not to be separated from their parents against the will of the child, unless such separation has valid legal reasons and is carried out in the best interest of the child.

III. RESEARCH METHODS

A. Research Location

To obtain the data and information needed in this study, the research location was carried out in North Maluku, precisely in the city of Ternate.

B. Type, Nature and Approach of Research

To answer the problems that have been formulated in this study, the researcher will use a descriptive type of analysis by using a qualitative approach. Therefore, in this study, the object of study is efforts to protect against the crime of kidnapping children.

C. Data Collection Techniques

The data collection techniques used in this research were literature study, field study and documentation study. The three data collection studies are classified into two parts, namely primary data and secondary data, primary data is obtained through field studies, while secondary data is obtained through library research and documentation studies.

D. Data Analysis

The research procedure is carried out in stages, including the following:

1. Preparation and preparation of research instruments;
2. Identification of problems;
3. Data collection and analysis;
4. Compilation of research results; and
5. Follow-up plans for research outputs

IV. DISCUSSION

1. What factors cause child kidnapping?

Crime or criminal acts is a form of deviant behavior that is always there and is inherent in every form of society. No society is devoid of crime. Child abduction cases have become a phenomenon in society. A lot of news related to this case in print and electronic media, and even in our own lives where our family or relatives may have experienced such cases. Kidnapping is a violation of children's rights and there is no reason that can justify the crime, both from a moral, moral and religious perspective. Moreover, the defendant's actions can cause physical and psychological trauma to the victim, especially those who are children so

that it can affect the victim's self-development when he grows up.

Kidnapping cases involving children can be used as an action that can cause problems with their emotional and psychological development. Because kidnapping can cause deep trauma that carries over to the child until the next stage, namely adolescence or adulthood. Kidnapping is a violation of children's rights and there is no reason that can justify the crime, both from a moral, moral and religious perspective

In accordance with the development of human rights, kidnapping children is included in the category of acts that violate human rights. This is because child kidnapping is an act that is deliberate or unintentional, planned or not planned against the law which limits the human rights of a child to live peacefully, safely, peacefully, happily, prosperously, physically and spiritually.

The kidnapping of children in Ternate City and the motive for this kidnapping aims to be able to generate cash from the victim's parents or illegal adoption practices. As the opinion of the Chairman of the National Commission for Child Protection, Arist Merdeka Sirait, said there were four strong objectives why the perpetrator carried out the kidnapping.

a. Kidnapping aimed at illegal adoption practices.

In cases of illegal adoption, the kidnapping of babies usually takes place in clinics, maternity hospitals or community health centers. The perpetrator can be someone else who is not a hospital worker who pretends to be a health worker at the hospital, but does not rule out the possibility that the perpetrator can be an employee of the hospital or an informant, even the executor of the kidnapping of this baby is a paramedic such as a midwife on duty at the clinic.

b. Background for the ransom.

For kidnapping in this case, the target is the child who is already able to talk. Generally aged two, seven, to ten years, this purpose, the perpetrator will not kidnap if the child cannot communicate, the reason is to be able to reveal the child's family and then ask for a ransom from the child's parents.

c. High economic inequality and economic exploitation.

Lifestyle imbalances and inequalities have begun to appear in the current era. The difference in the level of wealth or position a person has is a trigger for social and economic disparities. Children are kidnapped for deliberate employment, for example, like beggars for street children, usually children who are kidnapped are children aged ten years and under.

d. Used as a child commercial sex worker.

In this case, the target of children aged fourteen, victims of kidnapping of this age were employed as prostitutes in the country and some were sent outside Indonesia.

2. The Role of Government in Overcoming Child Abduction

Children are a very large asset as an invaluable human resource potential, as the younger generation who will accept the relay of national and state development, both on a regional and international scale. It is very sinful for the leaders of this nation when neglecting Indonesian children, who end up becoming street children, even street thugs. The state should have ensured the existence of Indonesian children in their social, mental, and growth needs or physical development.

Currently, there is a complete legal framework to provide protection for children's rights. The most important development in the field of law is the issuance of the Child Protection Law in 2002. This Child Protection Law is a powerful tool in implementing the Convention on the Rights of the Child (KHA) in Indonesia. This law is based on the four principles of the Convention on the Rights of the Child: non-discrimination, the best interest of the child, the right to live, survive and develop and the right to participate. It includes the basic rights of children to obtain identity, freedom, education, health services, entertainment and protection.

As with laws in general, the Law on Child Protection is needed to provide legal guarantees or certainty in protecting children's rights, bearing in mind:

- a. Children are a mandate and a gift from God Almighty, which is inherent in their dignity as a whole human being.
- b. Children are the successor to the ideals of the nation's struggle that have a strategic role, and have special characteristics and characteristics that are expected to ensure the continuity of the existence of the nation and state in the future.
- c. Children need to have the widest possible opportunity to grow and develop optimally, physically, mentally, and socially and have noble morals.
- d. In fact, there are still many children who:
 - a. Not yet protected from various forms of violence and exploitation
 - b. Still living neglected and do not have the opportunity to get a proper education, let alone adequate.

V. CONCLUSION

A. CLOSING

Children are entrusted by God that we must protect in order to achieve a period of growth and development into adult human beings as a continuation of the future of the nation. The child is not a small adult, but a human who grows and develops to reach maturity until he is 18 years old, including the child in the womb. They have a strategic position because they make up 38 percent of the total population of Indonesia. The main key to making children the potential of the State in the context of sustaining the life and glory of the nation is how the government's commitment to make children a top priority in development. The real effort is to create an environment that prioritizes child protection, lives up to values and traditions that promote children's dignity, explores and mobilizes resources to support the implementation of child protection. However, it all depends on how this country finds leadership that cares about children.

By understanding child protection, the main issue of improving the quality of life of Indonesian people will be clearer about the situation and conditions. Thus, solutions to overcome these problems can become the forma object of human science research, then the recommendations from the research results can be applied to science in the form of arguments and theories which of course will be useful for science such as humanities which in turn can develop the repertoire of human science.

B. ADVICE

Child protection can be done directly or indirectly. Directly, it means that the activity is aimed directly at children who are the target of direct handling. Activities like this, among others, can be in the form of ways to protect children from various threats both from outside and from within, educating, fostering, accompanying children in various ways, preventing hunger and seeking their health in various ways, as well as by providing self-development for children. Meanwhile, what is meant by child protection indirectly is an activity that is not directly aimed at children, but other people who are involved or carry out activities in the effort to protect the child.

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