



Juridical Overview of the Process of Proving Crimes Committed by Children according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Case Study Decision Number: 9/Pid.Sus-Anak/2019/Pn.Slw)

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ABSTRACT

This study aims to determine the process of proving a crime if the perpetrator is a child according to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System and the obstacles faced in the process of proving criminal acts committed by children. This research was conducted in Tegal, namely the Tegal District Court, the Slawi District Attorney and the Tegal Police, the authors conducted interviews with 1 (one) prosecutor, 1 (one) judge and 1 (one) police investigator, as well as other data obtained through the relevant literature, namely literature, documents and laws and regulations relating to the problem. The data obtained were then processed and analyzed qualitatively-descriptively. Based on the results of research and discussion, the process of proving a crime in a child case is different from proving a general crime (a criminal case for adults). The process of proving a child's crime is regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System starting from the process of investigation, arrest and detention, prosecution to examination in court. In terms of evidence in proving cases of child crimes, it is not specifically regulated in the SPPA Law, therefore it still refers to the Criminal Procedure Code (KUHAP) Article 184. The absence of guidelines for the implementation of diversion practices for law enforcement officers causes the implementation diversion varies depending on the understanding of law enforcement officers and the lack of understanding in the application of the SPPA Law by law enforcement officers.

1. Introduction

Children as creatures of God Almighty and social creatures, from the time they are in the womb until they give birth have the right to live and be independent and receive good protection from their parents, family, community, nation and state.(Simanungkalit, 2017). In order for every child to be able to take on these responsibilities, they need to have the widest possible opportunity to grow and develop optimally, physically, mentally and socially. Therefore, no human being or other party can take away the right to life and freedom of children(Senjaya, 2018).

From the point of view of the life of the nation and state, children are the future of the nation and state and the successor to the ideals of the nation. As the nation's successor, children will be able to grow and develop well if the facilities and infrastructure are met (Faisal, 2019). Children must grow and develop naturally, physically, spiritually, and socially so that they will be able to carry out their responsibilities in the future. Thus, children have the right to survive, grow, develop, participate and are entitled to protection from violence. As a country that upholds human rights, the Government of the Republic of Indonesia guarantees the protection of children's rights to survival, growth and development as well as protection from violence and discrimination. (Harahap, 2016).

The fulfillment of children's rights and the process of resolving criminal cases committed by children are regulated in several regulations, such as Law no. 39 of 1999 concerning Human Rights which states that every child has the right to protection by parents, family, society and the state (Nugroho, 2017). Laws and regulations that are both national and international, also ratify the International Convention on the Rights of the Child which is implemented in Law no. 23 of 2002 concerning Child Protection as amended by Law no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning Child Protection (Menajang, 2020).

Law No. 23 of 2002 concerning Child Protection as amended by Law no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning Child Protection, there are several provisions of the article that were amended and several explanations were added in order to improve the protection of children. One of the amended provisions of the article is Article 71 which reads: "Special protection for child victims of abuse and neglect as referred to in Article 59 paragraph (2) letter m is carried out through supervision, prevention, treatment, counseling, social rehabilitation, and social assistance efforts." (Mustafa, 2019).

Furthermore, how is the criminal justice system for children which was previously regulated in Law no. 3 of 1997 which was later renewed by Law no. 11 of 2012. There have been several changes and developments, particularly in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which was recently ratified by the President together with the House of Representatives (DPR) at the end of July 2012 compared to Law no. 3 of 1997 concerning Juvenile Court (Qodir, 2018). Aiming at the more effective protection of children in the justice system and for the realization of an integrated criminal justice system ("integrated criminal justice system") and can be a regress to the values that have existed before. The Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the stage of mentoring after serving a crime. (Prasetyo, 2015).

The process of proving a crime if it is committed by a non-child (adult) is slightly different from the process of proving a crime committed by a child. There are times when children are in the status of witnesses and/or victims which have been regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (Mujiaka, 2020). Crimes committed by children whether in practice the evidence now still refers to the Criminal Procedure Code (KUHAP), how is the process of proving criminal acts committed by children and how is the juvenile justice system according to Law No. 11 of 2012 concerning The Juvenile Criminal Justice System, which until now most people still do not understand and what obstacles are often faced by Judges, Prosecutors and Police Investigators in the process of proving crimes committed by children (Faith, 2018).

2. Method

This type of research combines normative research and empirical legal research, because in addition to reviewing the laws and regulations regarding criminal procedural law, the author also sees the lack of socialization and understanding of the juvenile justice system. (JASMINE,

2019). The type of research that will be carried out is descriptive qualitative which is used to examine the condition of natural objects, as opposed to experimental. The researcher is the key instrument, the data source sampling is done purposively. The collection technique is triangulation (combined), data analysis is inductive/qualitative, and qualitative research results emphasize meaning rather than generalization(Anggito & Setiawan, 2018).

This research is descriptive using qualitative methods. Whereas qualitative methodology is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior(Abrori, Raharjo, & Lailiy, 2019).

Based on the problems and objectives of this study, in this study used a qualitative descriptive approach. Qualitative research is research that intends to understand the phenomenon of what is experienced by the subject. Qualitative research such as behavior, perception, motivation, action, etc. holistically, and by way of description in the form of words and language, in a special context that is natural and by utilizing various natural methods(Dewatara & Agustin, 2019).

Qualitative descriptive research is intended to describe, narrate and describe data systematically on the phenomena studied based on the data obtained written in words and written in verbal sentences. These data are data obtained from research results and from accurate sources.

2.1. Data collection technique

Data collection methods are carried out in two ways, namely:

a. Interview Research

This research will use interview technique. An interview is a conversation with a specific purpose. This conversation is carried out by two parties. Namely the interviewer (interviewer) who asks questions and the interviewee (interviewee) who provides answers to the questions. Researchers in conducting interviews need to listen carefully and record what was stated by the informant.

b. Literature Study

This research activity also studies various legal materials contained in books, papers, laws and regulations, other documents that are related to this research activity.

3. Analysis and Results

3.1 Implementation of the Criminal Evidence Process carried out by Children according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

In criminal procedural law, evidence is a central point in the examination of cases in court. This is because through this stage of evidence there is a process, method, act of proving to show the right or wrong of the defendant against a criminal case in a court session.

The definition of proof in general is the provisions that contain outlines and guidelines on the ways that are justified by law in proving the guilt that has been charged against the defendant. Proof is also a provision that regulates the evidence justified by law that may be used by judges to prove the guilt of the accused. Evidence is provisions that contain guidelines and guidelines on ways that are justified by law to prove the guilt that has been charged to the defendant. Proof is also a provision that regulates the evidence that is justified by law that may be used by judges to prove the guilt of the accused.

Regarding funds for clients who cannot afford, there is a legal aid budget from the government through the regional office of the Ministry of Law and Human Rights with several requirements that must be met, such as an ID card, family card, certificate of incapacity, and a letter of request for legal assistance from the client.

Proof is an activity to prove, where to prove means to show existing evidence, to do something as the truth, to carry out, to signify, to witness and to convince.

The Evidence System regulated in the Criminal Procedure Code is contained in Article 183 whose formulation is as follows: A judge may not impose a sentence on a person unless at least two pieces of evidence are valid, he is convinced that a criminal act has actually occurred and that the defendant is guilty. do it. From the formulation of Article 183, it appears that evidence must be based on at least two valid pieces of evidence, accompanied by the judge's conviction obtained from these evidences. This means that the availability of a minimum of two pieces of evidence is not enough to impose a sentence on the defendant. On the other hand, even though the judge is convinced of the defendant's guilt, if a minimum of two pieces of evidence are not available, the judge cannot impose a sentence on the defendant.

In the fact-disclosure section, the evidence is brought before the court by the Public Prosecutor and Legal Counsel or at the discretion of the panel of judges to be verified. The process of proving the first part will end when the chairman of the assembly verbally pronounces that the examination of the case is declared complete (Article 182 paragraph (1) letter a of the Criminal Procedure Code). After the fact-disclosure part of the activity has been completed, the Public Prosecutor, Legal Advisor, and the panel of judges conduct a fact analysis as well as a legal analysis. By the Public Prosecutor, the proof in the second sense is done in his letter of demand (requisitoir). For legal advisers, the evidence is carried out in a memorandum of defense (pleadoo), and will be discussed by the panel of judges in their final decision (vonnis).

This evidence becomes important when a criminal case has entered the stage of prosecution before a court session. The purpose of this evidence is to prove whether the defendant is really guilty of the crime he is accused of. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System clearly states that the procedural provisions in the Criminal Procedure Code also apply to juvenile criminal justice proceedings, unless otherwise stipulated in this Law. This means that all the procedural provisions in the Criminal Procedure Code apply also to juvenile justice procedures which slightly distinguish only special treatment given to children, whether they are children as perpetrators of crimes or children as victims of criminal acts. This difference is based on the age factor of the child, where the age of the child in question is one who is not yet 18 (eighteen) years old. The difference between children and adults is very clear, children's mental and psychic are far less than adults.

Other provisions in proceedings regulated in the Juvenile Criminal Justice System Law which are different from the Criminal Procedure Code, namely in the process of investigation, arrest and detention, prosecution, and in the trial process. In the process of investigation, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System is regulated in the second part of Articles 26 to 29 where it is explained that investigations of children's cases must be carried out by child investigators who are determined based on a decision by the Head of the Indonesian National Police or other officials appointed by the Head of the Indonesian National Police.

The motivation and purpose of the investigation is a demand for responsibility to the investigating officers, not to take law enforcement actions that degrade human dignity. Before proceeding to carry out an investigative examination such as an arrest or detention, one must first try to collect facts and evidence, as the basis for a follow-up investigation.

In contrast to criminal acts committed by children, in the investigation process, Law no. 11 Regarding the Juvenile Criminal Justice System, it has been regulated in Articles 26 to 29 of the SPPA Law.

Article 26 of the SPPA Law regulates investigators who can carry out investigations into juvenile crimes, where the investigation is carried out by investigators who are determined based on a Decree of the Head of the State Police of the Republic of Indonesia or other officials appointed by the Head of the State Police of the Republic of Indonesia. Child criminal

investigators are also required to fulfill several requirements, namely having experience as an investigator, having interest, attention, dedication, and understanding of children's problems and having attended technical training on juvenile justice. However, Article 26 of the SPPA Law also explains that if there are no investigators who meet the requirements in question, the investigative task is carried out by investigators who carry out the task of investigating criminal acts committed by adults.

Investigations carried out in criminal acts of children, investigators are required to ask for consideration or advice from community advisors, experts, education, psychologists, psychiatrists, religious leaders, professional social workers or social welfare workers, and other experts. This is intended so that the investigation process goes well by prioritizing the interests of the child. The whole process of proving a child's crime in the SPPA Law must seek diversion.

3.2 Implementation of the Prosecution Process at the Prosecutor's Office According to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.

The Prosecutor's Office is one element of the Criminal Justice System. The definition of a prosecutor based on Article 1 point 1 of the Prosecution Law is a functional official who is authorized by law to act as a public prosecutor and court executor who has obtained permanent legal force and other powers based on the law.

The definition of a prosecutor based on Article 1 point 6 a of the Criminal Procedure Code is an official who is authorized by law to act as a public prosecutor and carry out court decisions that have permanent legal force. The definition of a public prosecutor as above, based on Article 1 point 2 of the Prosecutor's Law and the Criminal Procedure Code is a prosecutor who is authorized by law to carry out prosecutions and carry out judges' decisions.

Article 30 of the Prosecutor's Law can be concluded that in addition to the prosecutor being given the authority to act as a public prosecutor and implementing court decisions that have permanent legal force, they are also given other powers.

Other powers granted to prosecutors in the field of crime are:

- a. Supervise the implementation of conditional criminal decisions, supervision criminal decisions and conditional release decisions.
- b. Conduct investigations into certain criminal acts based on the law.
- c. To complete certain case files and to be able to carry out additional examinations before being transferred to the court, which in its implementation is coordinated with investigators.

Based on the above understanding can distinguish between prosecutors and public prosecutors. The definition of a prosecutor relates to aspects of office, namely as a functional official, while the notion of a public prosecutor relates to aspects of function, namely carrying out prosecutions and carrying out judges' decisions and decisions. Thus, in the process of examining criminal cases, the function and authority of the prosecutor in his function as a public prosecutor include several things as stipulated in Article 14 of the Criminal Procedure Code, namely:

- a. Receive and examine investigation case files from investigators.
- b. Conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4) of Article 85 of the Criminal Procedure Code, namely by providing instructions in the context of completing the investigation of the investigator.
- c. Provide an extension of further detention and or change the status of the detainee after the case has been transferred to the court.
- d. Make an indictment.
- e. Delegating the case to court.

- f. Delivering notification to the defendant regarding the provisions on the day and time the case will be heard accompanied by a summons, both to the defendant and to witnesses to come at the specified trial.
- g. Do prosecution.
- h. Closing the case for legal purposes
- i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this Law.
- j. Carry out the judge's determination.

The existence of prosecutors in criminal justice in law enforcement efforts in Indonesia has an important position and cannot be ignored. This is because normatively this institution has been regulated in legislation, namely to carry out tasks, especially in the field of prosecution.

Prosecution in the process at the Prosecutor's Office is regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System in the fourth part of Article 41 which explains that the prosecution of children is carried out by the public prosecutor based on the decision of the Attorney General or other officials appointed by the Attorney General.

The appointed Public Prosecutor must meet several requirements, namely having experience as a public prosecutor, having interest, attention, dedication, and understanding of children's problems and having attended technical training on juvenile justice. It is intended that the appointed Public Prosecutor at least understand the problem of the Child. If there is no public prosecutor who meets the requirements, the task of prosecution is carried out by the public prosecutor who carries out the task of prosecuting criminal acts committed by adults.

In the prosecution process, the Public Prosecutor is obliged to seek Diversion no later than 7 (seven) days after receiving the case file from the Investigator. Diversion is carried out no later than 30 (thirty) days. If the Diversion process is successful in reaching an agreement, the Public Prosecutor submits the Diversion report along with the Diversion agreement to the head of the district court for a decision to be made, even if the Diversion agreement is not reached, the Public Prosecutor must submit the Diversion Report and delegate the case to the court by attaching a report on the results of the community research. .

Based on the results of the author's research interview with the Prosecutor Mrs. Ni Luh Made Ardianingsih at the Slawi District Attorney, the prosecution process carried out in the case of children still pays attention to the existing evidence. Existing evidence still refers to the KUHAP (Book of the Criminal Procedure Code) and in the process of proving it refers to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, but the evidentiary process which is not regulated in the SPPA Law refers back to the Criminal Procedure Code.

Detention carried out must meet the requirements, namely, the child is 14 (fourteen) years old or more and is suspected of committing a crime with a threat of imprisonment for 7 (seven) years or more. Detention under the Criminal Procedure Code is different from detention in the SPPA Law. Criminal acts committed under the threat of under 7 (seven) years in the Criminal Procedure Code will still be subject to detention. It is different in the SPPA Law, if a criminal act is committed with a threat of under 7 (seven) years, detention cannot be carried out. Likewise, if a criminal act is committed with a threat of more than 7 (seven) years but is not yet 14 (fourteen) years old or more, detention cannot be carried out because the SPPA Law has regulated the conditions and must meet the requirements of the detention process.

Detention in the Criminal Procedure Code (KUHAP) is different from detention in the settlement of child cases regulated in the SPPA Law. Detention as regulated in the Criminal Procedure Code is explained in Articles 24 to 28 of the Criminal Procedure Code that the detention order given by the investigator is only valid for a maximum of 20 (twenty) days, if necessary for the purpose of an unfinished examination, it can be extended by the competent public prosecutor for a maximum of 20 (twenty) days. 40 (forty) days. After the 60 (sixty) days are over, the investigator must have released the suspect from detention for the sake of law.

The detention by the public prosecutor is 20 (twenty) days and can be extended for the purpose of examination by the head of the competent district court for a maximum of 30 (thirty) days.

The judge of the district court who hears the case for the purpose of examination is authorized to issue a detention order for a maximum of 30 (thirty) days and if it is still needed for the purpose of an unfinished examination, it can be extended by the chairman of the district court concerned for a maximum of 60 (sixty) days. day.

Detention for the purpose of appeal, the High Court Judge has the authority to issue a detention order for a maximum of 30 (thirty) days and can be extended by the head of the high court for 60 (sixty) days if the purpose of the examination has not been completed.

Detention for the purpose of cassation, the Judge of the Supreme Court has the authority to issue a detention order for a maximum of 50 (fifty) days and can be extended by the Chief Justice of the Supreme Court if the purpose of the examination has not been completed.

Detention under Law no. 11 of 2012 concerning the Juvenile Justice System (SPPA Law) is regulated in Article 33 to 38. Detention for the purposes of investigation in the SPPA Law is carried out for a maximum of 7 (seven) days and can be extended by the Public Prosecutor at the request of the investigator for a maximum of 8 (eight) days. day.

Detention for the purpose of prosecution, the Public Prosecutor may hold detention for a maximum of 5 (five) days and may be extended by a District Court Judge at the request of the Public Prosecutor for a maximum of 5 (five) days.

Detention for the purpose of examination in a court session, a Judge may make a detention for a maximum of 10 (ten) days and can be extended by the chairman of the district court at the request of the Judge for a maximum of 15 (fifteen) days. Detention for the purpose of examination at the appeals level, the Appeals Judge may hold detention for a maximum of 10 (ten) days and may be extended by the head of the high court at the request of the Appealing Judge for a maximum of 15 (fifteen) days. Meanwhile, detention for the purpose of examination at the cassation level, a Judge of the Supreme Court may make a detention for a maximum of 15 (fifteen) days and may be extended by the Chief Justice of the Supreme Court at the request of a Judge of the Supreme Court for a maximum of 20 (twenty) days.

3.3 Implementation of the Examination Process in Court Sessions According to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.

The Examination Process at the Court Session on cases of child crimes is regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System in the sixth section of Article 52 to Article 62 which explains that the head of the court is obliged to appoint a judge or panel of judges to handle children's cases no later than 3 (three) days after receiving the case file from the Public Prosecutor.

Examination at the Court Session must be attempted for diversion by the Judge no later than 7 (seven) days after being appointed by the head of the district court as a Judge. Diversion is carried out no later than 30 (thirty) days and can be carried out in the mediation room of the district court. If the Diversion process reaches an agreement, the Judge then conveys the Diversion report along with the Diversion agreement to the head of the district court to make a determination and if the Diversion is not successful, the case will proceed to the trial stage.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that children are tried in a special court room for children and the waiting room for children's courts is separated from the waiting room for adults. The trial time for the juvenile case takes precedence over the time for the adult trial. The examination of children's cases must be carried out behind closed doors in a special court room for children. However, the judge may determine that the examination of the case is carried out openly, without prejudice to the rights of the child if deemed necessary by looking at the nature and circumstances of the case whether it must be carried out openly or not. The nature of the case is examined openly, for example in cases of

traffic violations, and from the circumstances of the case, for example, examination of cases at the crime scene (TKP).

In the Children's Session, the Judge is obliged to order the parents/guardians or companions, advocates or other legal aid providers, and Community Counselors to accompany the Child even though in principle the crime is the responsibility of the Child himself, but because the defendant is a Child, the Child cannot be separated by the presence of the Child. parent/guardian. If the parent/guardian and/or guardian is not present, the child's trial will continue to be accompanied by an advocate or other lawgiver and/or community advisor. If the judge does not carry out the trial, the child's trial is null and void by law.

The SPPA Law also explains that after the judge opens the trial and declares the trial closed to the public, the child is called in along with his parents/guardians, advocates or other legal aid providers, and community advisors. After the indictment is read, the Judge orders the Community Counselor to read the report on the results of the community research regarding the child in question without the presence of the child, unless the judge has a different opinion. The provision without the presence of children is intended to avoid things that affect the soul of the victim and/or witness.

The intended report is regulated in the SPPA Law Article 57 paragraph (2) which reads: (2) The report as referred to in paragraph (1) contains: a. personal data of Children, family, education, and social life; b. the background of the crime being committed; c. the condition of the victim in the event that there is a victim in a crime against the body or life; d. other things deemed necessary; e. diversion report; and f. conclusions and recommendations from the Community Advisor.

When examining the victim's child and/or the witness's child, the judge may order that the child be taken out of the courtroom, but the parents/guardian, advocate or other legal aid provider, and community advisor are still present. If the Child Victim and/or Child Witness is unable to attend to give testimony before the court session, the Judge may order the Child Victim and/or Child Witness to be heard outside the court session through electronic recording carried out by the Community Guidance in the local legal area in the presence of Investigators. or Public Prosecutors and Advocates or other legal aid providers or through direct remote examination using audiovisual communication tools accompanied by parents/guardians, Community Counselors or other companions.

The Children's Trial is then continued after the Child is notified of the information given by the Child Victim and/or Child Witness when the Child is out of court. Before making a decision, the Judge provides the opportunity for parents/guardians and/or companions to present things that are beneficial to the child. In certain cases, the victim's child is also given the opportunity by the judge to express his opinion on the case in question. The judge is obliged to consider the community research report from the Community Counselor before making a case decision, if the judge's decision does not consider the research report, the decision is null and void. Canceled by law in the provision is without being asked to be canceled and the decision has no binding legal force.

The reading of the court's decision is carried out in a trial which is open to the public and may not be attended by the child. The identity of the Child, Child Victim, and/or Child Witness must still be kept confidential by the mass media using only initials without pictures. The Court is obliged to provide an excerpt of the decision on the day the decision is pronounced to the Child or an Advocate or other legal aid provider, Community Counselor, and Public Prosecutor and must provide a copy of the decision no later than 5 (five) days after the decision is pronounced.

Based on research at the Tegal District Court by analyzing the decision Number: 8/Pid.Sus-Anak/2019/PN.Slw and interviews with Judge Mrs. Indirawati, SH, MH who was appointed in the case of the decision, regarding the case of abuse of Narcotics for oneself which

was carried out by The child is 16 (sixteen) years old. Where based on the decision, the judge concerned has followed and carried out the procedures and processes in accordance with the provisions of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System and implementing provisions in the Criminal Procedure Code (KUHAP) which are not regulated in the SPPA Law. The judge appointed to handle the case must still pay attention to and prioritize the rights of the child in accordance with what is stipulated in the SPPA Law.

4. Conclusion

Based on the results of research and discussion, the process of proving a crime in a child case is indeed different from proving a general crime (in adult criminal cases). The process of proving a child's crime is regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System starting from the process of investigation, arrest and detention, prosecution to examination in court. In terms of evidence in proving a child criminal case, it is not specifically regulated in the SPPA Law, therefore it still refers to the Criminal Procedure Code (KUHAP) Article 184. Each stage of the proof process as regulated in the SPPA Law is obliged to seek Diversion although problems often arise with the Diversion process. Children as perpetrators feel that they can be freed from legal or criminal bondage.

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