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Detention of children in conflict with the law in the child criminal justice system

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Abstract--The present study aims at; first, reviewing and Analyzing the terms of detention of children in conflict with the law are in balance with the best interests of children according to the Juvenile Criminal Justice System; second, reviewing and analyzing the considerations of law enforcement officers in detaining children in conflict with the law in the Juvenile Criminal Justice System. The research was conducted using an empirical normative research method using a statutory approach, a case approach and an analytical approach by connecting problems related to issues and strengthened by data / information on field facts so that answers to the problems being studied are obtained. The results of the research that has been carried out, the concluded: (1) The terms of detention in the criminal justice system for adults are the same as the detention conditions set by the juvenile criminal justice system. However, the implementation of child detention is always focused on the best interests of the child and the balance of interests so that the child will not be harmed in the applicable law. (2) Law enforcement officers such as police, prosecutors and judges, detain children because they have juridical considerations and sociological considerations including (1) Juridical considerations include (a) facilitating the investigation/prosecution/trial process, (b) The existence of legal certainty and a brief detention process in the interest of best for children, (2) Sociological considerations, including (a) children who are detained mostly do not have a place to live so that the best place for children in the judicial process is to be detained, (b) reduce interactions between children and the environment that can disrupt the child's psychology and avoid any revenge attempt.

Keywords---detention, children, conflict law, criminal justice, criminal justice system.

Introduction

A child in conflict with the law, hereinafter referred to as a child, is a person who is 12 (twelve) years old but not yet 18 (eighteen) years old who is accused of committing a crime (Law Number 11 of 2012 concerning the Criminal Justice System). Child). The problem of child crime is a problem that is so very complex in its handling that over time it increases every year. The involvement of children in a crime is one thing that is so concerning where the child has been in conflict with the law and is classified as having committed a narcotic crime. However, the ability of children who are still limited and not as perfect as adults should be more attention by law enforcement officers in implementing punishment for children who commit crimes.

Juvenile justice involves a child in the legal process as the subject of a criminal act by not neglecting the future of the child and upholding the authority of the law as a protector, protector and creating an orderly climate to obtain justice. The treatment that must be applied by law enforcement officers, which in fact is biologically, psychologically and sociologically, as well as the physical, mental and social conditions of the child places the child in a special position (Maya Shafira et al., 2021).

The criminal justice system is essentially a criminal law enforcement process which is therefore very closely related to the criminal legislation itself, both substantive criminal law and criminal procedural law because criminal law legislation is basically law enforcement "in abstracto" which will be realized. in law enforcement "in concreto" (Muladi & Arief, 1998). Therefore, the enforcement of criminal law on children is expected to prioritize and emphasize the best interests of child protection and for the welfare of children by observing and adjusting the social, cultural and political conditions adopted by the community (Muladi & Arief, 1998; Romlah et al., 2020).

Article 24 of Law Number 11 of 2012 concerning the Criminal Justice System for children has given alternative legal sanctions for children, namely returning to parents, guardians, or foster parents submitting to the state for education, coaching and job training or submitting to the Ministry of Social Affairs, or Community Social Organizations engaged in education, coaching, and job training. This is what is mandated by law before imposing criminal detention or imprisonment on children in conflict with the law.

Detention according to the Criminal Procedure Code Article 1 point 21 that detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with his determination in matters and according to the method regulated in this law. Detention can be said as a form of deprivation of one's right to freedom. In the Juvenile Criminal Justice System, the implementation of detention of children is used as the last alternative after diversion and guarantees from parents are held. However, in practice there are

still many children in conflict with the law who are detained both in the process of investigation, prosecution and trial in court (Eagly et al., 2018; Gibbs et al., 2018).

In accordance with data from the Ministry of Law and Human Rights of the Republic of Indonesia in 2020, it can be seen that in the span of 2015 to 2019 the number of children in conflict with the law nationally was 26,722, 38.37% of the total 26,722 as many as 10,253 children through imprisonment and conditional criminal justice (Nur & Bakhtiar, 2020). Strengthened by research conducted by ICJR in 2020, it was found that the detention and imprisonment of children was still very high, namely 93.75% of children within a span of 5 years. One example of a case in the city of Makassar, there are cases of children including ordinary theft, abuse, to narcotics crimes committed by children in conflict with the law, the detention process is still carried out from the investigator level to the court with a note that the diversion process carried out by investigators is not successful. prosecutors and judges. We must know that the Convention on the Rights of the Child in Article 37 letter b affirms that no child will lose his or her freedom unlawfully and arbitrarily. The arrest, detention or sentencing of a child will be in accordance with the Act and will be used as a last resort and for the shortest and most appropriate period.

Whereas Indonesia as a country that ratified the Convention on the Rights of the Child (Convention on the Rights of the Child) which regulates the principle of legal protection for children has an obligation to provide special protection for children in conflict with the law. It is realized that although child delinquency is an antisocial act that can disturb the community, it is recognized as a general phenomenon that must be accepted as a social fact. Therefore, the treatment of criminal acts of children should be different from the treatment of criminal acts in general committed by adults. An act that is qualified as a juvenile crime is every act, whether in the form of a crime or a violation as regulated in criminal law legislation, even based on the Juvenile Criminal Justice System Act, it is expanded again, not only acts prohibited by criminal law legislation, but also acts that are prohibited by criminal law. including acts that are prohibited according to other legal regulations that live and develop in the community.

The presence of the settlement of these words can be related to the nature of criminal law according to Van Bemmele that criminal law is an ultimum remedium which should be an effort to restore the situation and there should be restrictions, meaning that if other parts of the law are not sufficient to confirm the norms recognized by law, then the criminal law is applied. Criminal threats must remain a last resort. This does not mean that the criminal threat will be abolished but must always consider the pros and cons of the criminal threat, and must ensure that the drug given is not worse than the disease (Hamzah, 2008). Because we know that the discussion about children and the protection of them will never stop throughout the history of life because children are the next generation of the nation and the successor of development, namely the next generation that is prepared as the subject of implementing sustainable development.

Regarding cases of child detention in conflict with the law, the author would like to study further. Are the terms of detention of children in conflict with the law in committing a crime are appropriate and balanced with the implementation of the Juvenile Criminal Justice System in Indonesia which can provide a sense of security for perpetrators, victims and the community who are disturbed by the existence of the child's crime.

Methods

This research is a type of empirical normative research with a statutory approach, a case approach, and an analytical approach. The data collection techniques are using resumes of police investigators, demands of public prosecutors, judges' decisions, interviews and documentation studies that are equipped with primary, secondary and tertiary data sources.

Results and Discussion

The terms of detention of children in conflict with the law are balanced with the best interests of the child in accordance with the juvenile criminal justice system

Detention is the placement of a suspect or defendant to a certain place by child investigators/public prosecutors/children's judges with a determination in matters as well as regulated by law. Detention can also be interpreted as the process of placing a suspect/accused in a detention house, branch of a state detention center or other places regulated by law. Investigators are authorized to detain children who are strongly suspected of committing a crime based on sufficient preliminary evidence. For the process of examining children, it is mandatory to always prioritize a family atmosphere, where at the time of investigation the suspect does not wear uniforms and uses an effective, affective and sympathetic approach.

Therefore, seeing the explanation above, the detention of children is carried out with conditions. If these conditions are not met, the child may not be detained. The terms of the crime can be divided into four parts, namely the subjective conditions of the crime, the objective conditions of the crime, the best interests of the child and the balance of interests. Subjective requirements are everything that is attached to a person who relates to each other with the perpetrator of the crime. Objective conditions are everything related to the conditions or actions that the perpetrator does. The best interests of children are all actions that refer to the protection of children, and the balance of interests is a balance that leads to the fulfillment of all rights and obligations between policy implementers and interest actors. Therefore, to clarify the *syara* will be explained, namely:

Objective Requirements of Criminal Acts

1. Threat of criminal offenses over 7 years
2. Criminal acts in accordance with the law

According to Article 32 paragraph 2 huruf a and b of law number 11 of 2012 it is stated that detention can be carried out by law enforcement officers if the child commits a crime who is 14 years old and over and is threatened with imprisonment of 7 years and above which has been determined by the law. Constitution. This is different from the detention of adults which requires the threat of a criminal offense of more than 5 years. In this case, the law really considers the best interests of the child so that no detention is carried out to protect the child's physical and psychological well-being. There is a word problem with the determination of "can be detained" in the phrase statutory regulations, because can be detained interprets that every child is not obliged to be detained by him so that it is expected that the competent law enforcement officers will carefully take detention decisions by prioritizing the best interests of the child and child protection.

Detention cannot be carried out if the initial evidence is not sufficient and the two pieces of evidence do not meet the detention requirements, because in the process of determining a suspect to be detained, the principle of presumption of innocence must be prioritized. The detention of children cannot be guessed at in establishing preliminary evidence because it will cause the detention process to be illegal and can be detrimental to the survival of the child, such as the child's psychology being disturbed and can be traumatized by the processes that go through in the case the child is facing.

Subjective Terms of Crime

- ✓ There are fears that the suspect will run away
- ✓ There is concern that the suspect will damage the evidence
- ✓ There is concern that the suspect will repeat the crime

The detention of children is carried out by the police, prosecutors and judges because of subjective conditions. Law enforcement officers detain children because the detention time of children in law number 11 of 2012 concerning the criminal justice system is very short, which is only 7 days, so detention is the best way to speed up the process of criminal cases against children. Broadly speaking, the number of crimes committed by children still requires the existence of these subjective conditions. We must know that the subjective requirements by children are the same as those for adult criminal acts, but what makes the difference is the length of treatment and the way in which it is handled. Judging from his position, a child legally has not been burdened with obligations compared to adults because as long as a person is still called a child, during that time he is not burdened with responsibility, if a problem arises with the child, how his rights are protected by law (Mulyana, 1986).

Facing and dealing with juvenile justice processes involved in criminal acts, the first thing that should not be forgotten is to see his position as a child with all its special characteristics and characteristics, thus the orientation is based on the concept of protecting children in the handling process so that this will be based on the concept of child welfare and the interests of the child.

If the interests of the child require detention, the child who commits a crime can be detained. However, if the interests of the child do not require the detention of the child, even though the child commits a crime punishable by imprisonment of 5 (seven) years and above, then the child cannot be detained. The interest of the child referred to in this case is the consideration of the effect of detention on the physical, mental and social development of the child, so child detention is not carried out. Detention is carried out as the last resort and for a short period of time in accordance with the provisions of the Juvenile Criminal Justice System Act.

To consider the interests of children, law enforcement officers should and should always involve correctional institutions (Bapas) that conduct community research on delinquent children. On the other hand, it can involve experts such as criminologists, psychologists, religious leaders and other experts related to child development.

Detention of children who commit criminal acts is carried out in a special place for children, namely the temporary child placement agency (LPAS) or the social welfare organization (LPKS) if there is no LPAS. Places of detention for children must be different and must be separated from places of detention for adults. During the detention process, the child's physical, spiritual and social needs must be met and guaranteed. Because this is motivated by psychological considerations of children, so that it can avoid negative consequences because children who are detained are not necessarily proven to have committed violations and delinquency. If the child associates with adult inmates, it is feared that the child will be able to transmit the experiences of adults to the child and can affect the mental and development of the child during the detention period from beginning to end.

For Children's Interest

Children have limitations on criminal liability where this understanding states that children are under the age of 8 years, including if the child commits a crime. It is different from the case that a naughty child has reached the age of 8 years and has not yet reached 18 years, in this case, the child is given responsibility according to the rules set by him.

Indicators that indicate that the best interests of children must be a priority, such as the fulfillment of children's rights. Therefore, there should be no action by adults that robs children of their rights. Child protection and access to justice for children are part of implementing human rights values based on the principle of non-discrimination, sustainable growth and development and respect for children's opinions (Hadi, 2010).

Based on the Juvenile Criminal Justice System Act, detention of children is not mandatory if there is a guarantee from the parent/guardian/institution that the child will not run away, destroy evidence and repeat the crime. Regarding this matter, the Makassar polrestabas, Kanit PPA AKP Muhammmad Rivai, SH that:

If during the detention process there is a guarantee from the family or guardian, then the child will not be issued a detention order, but in

reality there is a lack of guarantees obtained from parents or guardians so that the best way to facilitate and speed up the investigation process is by holding detention (AKP Muh . Rivai, 2021).

With the statement above, that the detention of children should not be carried out but the lack of guarantee participation by the family/guardian so that the best way is detention so that the suspect does not escape in the process of handling criminal acts and the process of handling children can be carried out quickly in accordance with the provisions of the Law. juvenile criminal justice system.

Balance of Interests

The balance of interests is a condition that provides an equal portion of individual interests/needs with the public/society interests so that individual interests and public interests can achieve a balanced state. The balance of interests as explained above can be concluded that the balance of interests is to protect, harmonize and balance the interests between the best interests of children, the interests of the community and the interests of law enforcement officers as implementers of legal regulations. These two interests certainly provide a reciprocal relationship to the interests of carrying out a detention of children in the juvenile criminal justice system.

The following are some examples of the application of the balance of interests in the Juvenile Criminal Justice System Act against the best interests of children, the interests of the community and the interests of law enforcement officials as implementers of legal regulations, including:

Article 32 paragraph (4)

"As long as the child is detained, the physical, spiritual and social needs of the child must be met."

Article 32 paragraph (4) of the Juvenile Criminal Justice System Law provides a balance between the best interests of children, the interests of the community and the interests of law enforcement officers as implementers of legal regulations. Where in this case it explains that law enforcement officers have the right to meet the needs of children so that children in detention still feel safe and do not experience discrimination.

In Article 33 paragraph (1)

"Detention as referred to in Article 32 for the purpose of investigation is carried out for a maximum of 7 (Seven) days."

Article 33 paragraph (1) of the Juvenile Criminal Justice System Act provides a balance between the best interests of children, the interests of the community and the interests of law enforcement officers as implementers of legal regulations. Where in the detention process, the child is only given 7 days so that the balance of interests is maintained. If the detention time of a child is carried out like an

adult's, it will lead to a long process and the child will have a negative effect in the detention process so that the interests of the child are not achieved.

Community/public interest

The process of detention by children is carried out not only for the sake of investigation, prosecution and trial, but from a social perspective and community psychology. Based on an interview with the Makassar District Court Juvenile Judge, Rusdianto Loleh, SH.,MH stated that

The detention of children will make the community safe and peaceful. With the detention, children who commit criminal acts will avoid the treatment of revenge of the surrounding community. Although in its application is very difficult, but it must be considered with the help of community supervisors, psychologists, to experts who are competent in children's cases. (Rusdianto Loleh, 2021).

Based on the results of the author's interview with the juvenile judge, the author argues that detention can be carried out if the rights and guarantees for the child have been fulfilled fairly. If the balance of interests between the best interests of children, the interests of the community and the interests of law enforcement officers as the implementers of legal regulations is harmonized in the process of detaining children, it will have a positive impact on the growth and development of child criminals.

Considerations of Law Enforcement Officials in Detention of Children in Conflict with the Law in the Juvenile Criminal Justice System

Juridical Considerations

Police Investigator

When looking at the inquisitoir system, a suspect can be placed in an examination as an object that may be subjected to arbitrary treatment by investigators so that since the first examination before the investigator, the suspect is considered a guilty person. Even though we know that the Criminal Procedure Code has placed the suspect no longer as an object of examination, but the suspect is placed as a subject who has dignity and status before the law in a fair and legal manner (Jumadi, 2018).

Investigators who carry out acts of detention must first carefully consider the consequences of acts of detention, in terms of the interests of the child, such as the growth and development of the child, physically, mentally and socially. In addition, the interests of the community must be carefully considered, for example by detaining suspects, the community will be safe and peaceful. This is difficult in its application, because in considering the interests that are protected by holding detention, it is not easy and makes it difficult for investigators who carry out detention actions. In the act of detention, investigators should involve competent parties, such as community counselors, psychologists, criminologists, and other necessary experts so that child investigators do not make the wrong decisions in making detentions.

Article 32 paragraph (3) of Law Number 11 of 2012 stipulates that the reasons for detention as referred to in paragraph (1) must be stated explicitly in the detention order. Violations or omissions of Article 32 paragraph (3) of Law Number 11 of 2012, are not strictly regulated by law, so that they can harm children. The detention of children is based on considerations of the interests of the child and the interests of the community which must be stated explicitly in the detention order. This requirement has no legal consequences, when the authorized official makes a detention.

The sanctions that can be given to child investigators are not regulated or the legal consequences of the detention action are not clear. The development of the law in the field of juvenile court is increasingly showing the weakness of the Criminal Procedure Code, especially regarding pre-trial. In practice, the basis for considering child detention has not been properly understood by the police. Considering that the rationale for detaining a child is because the child has committed a crime which is punishable by imprisonment of 7 (seven) years or more, is feared to run away, destroy evidence or repeat the crime.

Public Prosecutor

At the prosecution level, detention is carried out for the sake of the prosecution and is a maximum of five days. The very short detention period makes the public prosecutor to make detention to children. Both the police and the prosecutor's office are coordinating with each other regarding the place of detention. However, if the detention conditions are not met, the prosecutor's office has no right to detain the child.

Seeing from the high number of child detentions carried out by the Makassar District Attorney against child criminals, from the interview there are other reasons for the detention of children carried out by the Makassar State Service including:

When viewed from the point of view of victimology, detention of children can prevent children from taking revenge that could have been done by the victim. By detaining children of perpetrators, law enforcers are bound by a very minimal detention period so that the judicial process will be carried out to the maximum extent possible so as to produce a fast judicial process and legal certainty (Indah Putri Jayanti, 2022)

In the best interests of the child, the public prosecutor continues to apply the principles of fast, simple and low-cost justice. Because if the case is not handled quickly and passes the time limit for the detention of the child, then the child can be expelled and free by law. This is where the role of the public prosecutor accelerates the process of child cases by means of detention.

However, it must be noted that with the detention of children, of course, limits the freedom and independence of children for a certain period of time. When it comes to children, there are many aspects that must be considered, such as the best interests of the child, the interests of the environment, to the interests of

witnesses and victims. Although good efforts have been made to reduce the negative impact of detention, it cannot be denied that the psychology of children will change because of this.

Child Judge

The punishment of a child is not a recompense for his actions. If the child has to be responsible for his actions that harm others, then it must be emphasized to him that the form of punishment is not a death price or retaliation for his actions. This will create more justice.

Seeing the practice, if a child accused is legally proven to have committed a crime, the juvenile judge always detains the child. It was explained in an interview with a child judge of the Makassar District Court, Rusdianto Loleh, SH., MH. Which says that:

If the family of the perpetrator of a child crime can cooperate, the child will be returned to the family. However, there are still many parents who are uncooperative, so to avoid children feeling the negative stigma of society, therefore juvenile judges always make arrests so that the child's trial process can be based on the principles of fast, simple and low-cost justice and children can get legal certainty more quickly of the case (Rusdianto Loleh, 2021)

Seeing from the results of interviews with judges, the authors can conclude that the role of the family is very important in the criminal justice process. If the child does not want to be detained by him, then the parents must provide guarantees for this. In Indonesia, the imposition of appropriate sanctions in the best interests of children is carried out through rehabilitation efforts. Children in conflict with the law are the responsibility of the government and society.

With the high rate of detention of children, it should be an important task for the community, government and law enforcement officials in minimizing this because if a child is still in a period of growth and development, a child commits injury or destruction, it will affect the child's survival rights and This will have serious and fatal consequences for the child's right to life. This tendency will bring children into the juvenile justice machine, so children will always be the target of criminalization.

This of course not only affects the child physically, but also psychologically. Fulfillment of the constitutional rights of children is in fact still disturbed and violated by criminalizing children at an early age, or placing state children (who are not criminal children) with the same treatment as criminal children in detention homes. This situation becomes relevant and has causality that criminalization of children results in a violation of the constitutional rights of children as stated in Article 28B Paragraph 2 of the 1945 Constitution of the Republic of Indonesia.

Sociological Considerations

Police Investigator

Investigators' considerations in carrying out detention must of course look at it sociologically. As we know that the low level of legal awareness of the community is the main task of the police officers to provide the best education about law in the social life of the community.

Based on an interview with the Head of PPA Polrestabes Makassar, AKP Muhammad Rivai, SH. States that:

Children who commit criminal acts sometimes come from broken home families and very vulnerable environments and often occur sociological eating crimes, child detention is carried out with consideration of detention, children can avoid repeating criminal acts again where the child's environment can affect again if the child is not done (AKP Muh. Rivai, 2021).

Therefore, based on the information above, in the best interest of the child and the interests of the community, children are detained in order to avoid negative stigma from society towards child perpetrators who commit crimes and to avoid labeling what children do. The community can certainly take part in the process of cases of children dealing with the law so that they can avoid criminal acts committed by children.

Public Prosecutor

Society is a real condition in society regarding the level of acceptance or the level of rejection of a statutory regulation. Criminal acts committed by children, either directly or indirectly, are a result of actions and actions taken by adults in contact with children or are part of the process of interacting with children in their environment, where children are not yet able to respond maturely. This paradigm must be instilled in the community and law enforcement officials in dealing with children suspected of committing criminal acts.

Based on an interview with the head of the prosecution for the Makassar District Attorney, Indah Putri Jayanti, SH. States that :

Detention of children is always carried out because if the child is not detained, the child can be bullied by the surrounding environment. Most child offenders in the city of Makassar are in an environment that often commits criminal acts. This is what you want to avoid. With detention, the child can be processed quickly and reduce the mental disorder of the child from the environment (Wiryawan Batara Kencana, 2022).

Based on the information above, the author can explain that the social environment greatly affects the process of child development. all parties who have responsibility or interest in children's problems which include the government

and local governments, legislative, judicial and state institutions as well as other state commissions, the business world, professional organizations, educational institutions, NGOs, social organizations, religious organizations, mass media, colleges, parents, and children. So if all these aspects do not synergize with each other, it can create a bad social environment for children, which can make children do bad deeds too. Many child perpetrators are in places where crime often occurs. Even though children should still be protected and the social environment is one of the best ways to provide a positive understanding of an action.

Child Judge

Factors that cause child criminal acts are socio-economic conditions that are less conducive, the influence of globalization in the fields of communication and information, entertainment, development of science and lifestyle. In addition, this problem is also caused by internal family factors such as lack of attention, affection and supervision from parents, guardians or foster parents towards children so that they are easily influenced by negative associations in the community.

Fundamental social changes in people's lives that greatly affect the values and behavior of children. In addition, children who lack or do not receive love, care, guidance and coaching in the development of attitudes, behavior, self-adjustment, and supervision from parents, guardians, or foster parents will be easily dragged into the flow of social interactions in society and their environment that are less healthy and detrimental to personal development. Although children can determine their own actions based on their thoughts, feelings, and desires, the surrounding circumstances can influence their behavior. Therefore, in dealing with the problem of naughty children, parents and the surrounding community should be more responsible for the guidance, education, and development of the child's behavior.

Thus, there is a need for extra handling in dealing with children in conflict with the law, among others based on the roles and duties of the community, government, and other state institutions that are responsible for improving the welfare of children and providing special protection to children in conflict with the law. respect, guarantee, and protection of children's rights in question is the realization of the state's obligations, as well as the fulfillment of citizenship rights as a conferment of social rights to its people.

Conclusion

The conditions for detention in the criminal justice system are the same as the conditions for detention set by the juvenile criminal justice system. However, for the terms of detention of children, leeway is always given so that the detention process does not occur even though in reality the number of child detentions is still high. Although the conditions for the application of detention of children who commit criminal acts are in accordance with the procedures stipulated in the Law on the Juvenile Criminal Justice System, detention of children must be avoided in accordance with the principle of last resort providing detention against children.

The considerations of law enforcement officers in detaining children who commit criminal acts include; (1) Juridical Considerations; (a) Facilitate the process of investigation/prosecution/trial; (b) The existence of legal certainty and a brief detention process in the best interests of the child (2) Sociological considerations; (a) Most children who are detained do not have a place to live so that the best place for children in the judicial process is to carry out detention; (b) Reducing the interaction of children with the community so as to reduce repeated criminal acts.

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