Legal Protection For Children Who Are According To And In The Criminal Action Of Terrorism Based On Law Protection Of Children

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Abstract
To protect its citizens specifically children, the government has issued Child Protection Law No. 23 of 2002 which includes article 59 of the law. The question asked is whether it is possible for children involved in criminal acts of terrorism to be convicted, as well as what forms of legal protection for children participating in acts of terrorism based on the Child Protection Act. The research method used by the author is Normative juridical, research-based on data sources consisting of applicable regulations, court decisions, journals, or articles - theories and theories as well as legal concepts and views of legal scholars' answers by analyzing each answer given other. Analysis of children participating in criminal acts uses data from the Criminal Code which is then presented by the power of thought of the author. The results of this study can be seen through children involved in criminal acts of terrorism that cannot be convicted and forms of legal protection for children who participate in acts of terrorism based on the Child Protection Act.

Keywords: Legal Protection, Child Protection, Terrorism, Participation

I. Introduction

There are various kinds of laws governing criminal acts outside the Criminal Code, one of which is Law Number 15 Year 2003 concerning the Eradication of Terrorism Criminal Acts. Terrorism is a crime against humanity and human civilization and is a serious threat to humanity and human civilization and a serious threat to the integrity and sovereignty of a country. Terrorism at this time is not only a local or national crime but it is a transnational and even international crime, causing many threats or dangers to security, peace, and very detrimental to the welfare of the people and nation.

The criminal act of terrorism is different from an ordinary crime because acts of terrorism are usually related to ideology. Acts of terrorism are thought to have been the ideology of resistance from anti-establishment groups in Indonesia. The ideology of resistance by this anti-establishment group arises because of the increasingly severe poverty rate in Indonesia. Evidence that acts of terrorism have become the ideology of resistance, that is, acts of terrorism are no longer carried out in the name of groups but have evolved into individuals with suicide bombings.
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The ideology of resistance by this anti-establishment group arises because of the increasingly severe poverty rate in Indonesia. Evidence that acts of terrorism have become the ideology of resistance, that is, acts of terrorism are no longer carried out in the name of groups but have evolved into individuals with suicide bombings. The definition of a child here is not only children who are still young but also children who are approaching adulthood according to the applicable Marriage Law.

Therefore according to the regulation, children who are considered immature who have committed a crime cannot be directly convicted but must first be protected in accordance with the provisions of the Child Protection Act. Whereas every criminal should be sentenced, not only adults but also children. But because of the rules in the Child Protection Act Law No. 23 of 2002 which stipulates that the child must and must be given legal protection by the government, whether the child is proven guilty or not. According to Law No. 23 of 2002 article 59 namely, the government is obliged and responsible to provide special protection especially for children who are in an emergency situation, children in conflict with the law, children from minority and isolated groups, children who are exploited economically or sexually, children trafficked persons, children who are victims of narcotics, alcohol, psychotropic, and other addictive substances, children who are abducted, sold, and trafficked, children who are physically or mentally abused, children who have disabilities, and children who are victims mistreatment and neglect.

The rules of article 59 are the benchmark of the government to protect minors. In accordance with this problem, therefore the writer is interested in adopting and
discussing children who participate in terrorism offenses, can the child be convicted according to the Terrorism Law, the child must be sanctioned or should get legal protection because the child has been indoctrinated by his parents so that he acts that matter.

II. Method

Research is a scientific activity related to analysis and construction carried out by certain methods, is systematic and consistent to reveal the truth. The type of research used by the author is Normative or Normative. In connection with the type of normative juridical research, the approach used is the legal approach applicable in Indonesia (positive law) which usually uses or is based on data sources in the form of a statutory approach. Normative research is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The materials are arranged then reviewed and drawn conclusions about the relationship with the problem under study. An analysis essentially emphasizes the deductive method as the main handle, and the inductive method as a work procedure supporting normative analysis using library materials as a source of research data. 

III. Main Heading of the Analysis or Results

In criminal law, inclusion is regulated in article 55 and article 56 of the Indonesian Criminal Code (KUHP). Article 55 of the Criminal Code is divided into 4 forms of participation and 1 form of participation in Article 56 of the Criminal Code. If it is related to the Terrorism Act, then in the Criminal Acts of terrorism, what happens is:

1. Those who do (Pleger), commonly called the executor, in this case, are the father of the child, because his father did the act.

2. Those who order to do (Doen Pleger), in this case are the leaders in the terrorism group, or the mastermind of act

3. Those who take part in and do (Medepleger), not only as bomb makers but also participate in executing terrorist activities, in this case families are doing because the teachings given are wrong.

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4. Those Who Intentionally Advocate (Uitlokker), just like Doen Pleger the perpetrators of this activity are leaders of the Terrorism group, usually done by giving teachings to their followers that their actions are right according to them.

5. Assistance (Medeplichtige), in this case the child enters this type of participation because he only follows what his father does. Because at the time of the incident the child was at the scene and the father was doing what he did.

Through this form of participation, children who participate in criminal acts of terrorism are included in the form of participating Medeplichtige. According to the Indonesian Criminal Code (KUHP) for children to participate can not be convicted must have a violation offense, following Article 60 of the Criminal Code. In this Terrorism Crime case the child is not included in Article 60 of the Criminal Code, so that the child can still be convicted for following Article 56 of the Criminal Code in the form of Medeplichtige participation. If viewed from the rules that are violated, namely concerning Article 56 form of participation, the child can still be convicted. But if you look at the principle of mistakes that are not violated and the child is less capable to account for his actions. So Article 56 cannot be used for minors because the child is considered incompetent and does not understand the actions done by his parents so that the child does not violate the principle of error.

In addition to the principle of error, bearing in mind the Child Protection Act is based on the principle of lex specialis derogat legi generalis, a review of the Special Law is also needed. The Special Law that states children cannot be convicted is based on Article 59 of Law No. 23 of 2002 concerning Child Protection. So through Article 59 the child gets Preventive Legal Protection. Based on the description above, the authors see that the child cannot be convicted. Because an underage child, who is not legally competent, and when he follows his parents away the child does not know if the actions of his parents are illegal, and he is protected Preventatively by the Government Through the Child Protection Act Article 59. Thus, through the form of participation and non-violation of the principle of wrongdoing, children who participate in criminal acts of terrorism must be given maximum legal protection because these children will be the successors of future generations. So that if the children who commit the crime of terrorism must be educated properly by the people around so that the teachings of the wrong teachings are
not repeated. But to be children who grow normally in their environment. So that it will not be the seeds of terrorism offenders because of their upbringing when they become victims of terrorism perpetrators, namely their parents, and it is expected that in criminal acts involving children in them get legal protection not only through the Child Protection Act but also to be strengthened by other laws. Based on the description above, children who are involved in terrorism offenses cannot be held responsible for their actions and these children are considered victims.

The form of legal protection provided to such children is a form of preventive legal protection. Where legal protection is preventively given to prevent children from becoming perpetrators of criminal acts of terrorism. In addition to getting preventive legal protection in the form of proper education for the child until the child graduated, spiritual/religious deepening of the child, and giving attention both financially and mentally the child until the child works. form, these children are considered victims of a crime. This is based on the provisions of Article 59 of the Child Protection Act. The legal protection provided for these children must be approached so that there is comfort so that they will feel close to the community and minimize the criminal acts of these children, as well as preventive legal protection.

IV. Conclusion

Children who participate in criminal acts of terrorism cannot be convicted under the Child Protection Act. In this case the form of inclusion of children in the Criminal Code according to criminal acts of terrorism, in this case, is included in the form of Medeplichtige inclusion in which this inclusion is the inclusion of assistance, the child is indirectly in the scene. So if referring to the Criminal Code the child is proven guilty and can be sentenced to a crime, it’s just that the practice of the child is only followed/piggybacked by his parents to the location of the incident where the terrorism crime occurred. So that children who should be sentenced to criminal, can be released in the form of this inclusion. Because the child is proven to not actively participate in assisting his parents in committing criminal acts and was formed not to meet the requirements of Article 56 of the Criminal Code and obtain protection through Article 59 of the UUPA. In this case the child enters into the lex specialis derogate legi generalis, where the special law overcomes the general law.
The child cannot be convicted following Article 57 of the Criminal Code concerning criminal sanctions for inclusion. So that the child is free from criminal sanctions and cannot be subject to criminal law. The form of legal protection for children participating in the Terrorism Act based on the Child Protection Act granted by the government to the child is a form of preventive legal protection, where this form of protection is provided to prevent the child from committing terrorism or other criminal acts. Because this form of protection directs the child to form themselves spiritually and mentally. So that their parents' children are terrorism offenders do not follow in the footsteps of their parents, so a form of preventive legal protection is needed and is only devoted to children who are involved in any criminal offense including terrorism. In addition to obtaining preventive legal protection for children involved in terrorism offenses, they also receive legal protection through the UUPA because children who are involved with the law must have legal protection through UUPA accompanied by KPAI. It is through these two forms of legal protection that children who participate in the criminal act of terrorism cannot be convicted.

Acknowledgments

1. Mr. Dr. H. Sutrisno, S.H., M.Hum., As Dean of the East Java ‘Veteran’ UPN Faculty of Law.

2. Mrs. Mas Anienda Tien F, S.H., M.H as Deputy Dean I of the Faculty of Law, UPN ‘Veteran’ East Java.

3. Mrs. Dra. Ec. Nurjanti Takarini, as Deputy Dean II of the Faculty of Law at UPN ‘Veteran’ of East Java.

4. Mr. Fauzul Aliwarman, S.HI., M.Hum Vice Dean III and at the same time Lecturer Guardian at the Faculty of Law, UPN ‘Veteran’ East Java.

5. Mr. Eko Wahyudi, S.H., M.H., as the Coordinator of the Study Program of the Faculty of Law at the ‘Veteran’ UPN of East Java.

6. Mrs. Yana Indrawati, S.H., MKn., As a Supervising Lecturer both during the course and during this thesis research.

7. Mr or Mrs Lecturer of the Faculty of Law of the National Development University of Surabaya ‘Veterans’ who have helped a lot during this education.
8. Ladies and gentlemen of the thesis examiner team who have provided evaluations, criticisms, and suggestions that are important for future writers.

9. Ladies and Gentlemen at the Administrative Department of the Law Faculty of the National Development University of ‘Veterans’ of East Java, which has provided ease in administration.

10. Parents Writers who have supported and prayed for fluency in writing this research.

11. Valdha Regytha, Festus Hizkiah, Nisrina Salsabila and Shofa thank you very much for your time and moral support.

12. Layly, Novia, Regards support, assistance, cooperation, and enthusiasm.

13. Ms. Ardel who has helped and provided input during the author doing research.

14. NCT, EXO, and bias kpop who have accompanied the author in doing research.

15. Friends like guidance who have helped and reminded one another.


17. All parties who are helpful but cannot be mentioned by the authors one by one. Perfection only belongs to God, so the Author realizes that the writing of this Thesis is far from perfect. In the end the author hopes that this thesis can be useful for readers.

References


Interview with Mr. Sugito. Investigator of Dirreskrimum Kepolisian Daerah Jawa Timur. Wednesday 25 September 2019 at 12.00 WIB