



## Legal Protection of Street Children for Exploitation in Criminal Law Perspectives

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Received Maret 2 2020, Accepted April 2 2020, Published May 31 2020

### Abstract

Article 34 paragraph 1 of the 1945 Constitution states that "the poor and neglected children are maintained by the state. The research method uses normative law, specifications of descriptive analytical research, primary data sources and additional data sources, primary data collection methods and secondary data sources, the method of presenting data is descriptive analytical, data analysis methods of legal material analysis techniques using content analysis. Research results show that the factors that cause the emergence of street children in the Kendal area are economic factors, unemployment, low parent income. The efforts of Kendal District Social Service in handling street children formally and non-formally in Kendal are Preventive Efforts, Repressive Efforts, Rehabilitation Efforts. Legal protection for street children who commit criminal acts committed by street children in the Kendal area, handling is done through open houses. To provide alternatives other than open houses, other forms of opportunity use criminal sanctions as a last resort. street children who do the shopping on the road can be arrested. Then it is accommodated and then given a kind of action (*maatregel*) with the judge's decision entered into a special penitentiary or rehabilitation institution.

**Keyword:** Street Children; Exploitation

### INTRODUCTION

The existence and development of street children is an issue that needs attention from various government parties, people because the problem of street children is a common problem. As stated in the Government Regulation of the Substitute Law Number 1 Year 2016 Article 20 states "the State, Government, society, family, and parents are obliged and responsible for the protection of children." The problem of street children is still a serious problem of social welfare and needs attention. It is given that children who live on the road are very vulnerable to bad situations for both physical and mental exploitation. This will greatly interfere with the development of children mentally, physically, socially, as well as cognitive, and children do not get the right to obtain proper education and livelihood. Conditions that are not conducive to

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the streets with various problems faced by the child will also affect the life of children in the future. The implementation of this protection is held with the aim that each child is able to develop its potential and grow naturally (Gultom, 2008)

The forms of criminality often done by street children in the problem of children in the area of Kendal, such as drugs, stealing, miras and fights. The fact of the field shows the steps that have been taken by the local government of Kendal in addressing the problem of street children is still less effective, and about the application of criminal law for street children involved in criminal acts also still many irregularities. The phenomenon of the street children is a problem that must immediately be sought root problems and roads exit (Sukoco, 2008).

The problem of street children is an iceberg phenomenon that from year to year there is an increase in both the number and the spread area. On the other hand, street children's problems are social pathology affecting child behavior, with patterns and sub cultures developing on the road as an attraction for children who still live at home but are vulnerable to street children, to descend into the streets.

Attention to the fate of street children seems not so great and there has been no definitive solution. The government as the highest policy holder in the country, until now has not been able to find a clear method as well as informal social institutions (house layover or orphanage) in solving the problem of street children because they do not see the root problem of the existence of street children.

In the Indonesian Constitution 1945 Article 34 paragraph 1 "The abandoned child is maintained by the state" means the government has a responsibility to the maintenance and construction of abandoned children, including street children. The human rights of neglected children and street children, substantially equal to human rights in general, as stated in the Law No. 39 Year 1999 on Human Rights has included the rights of children, the implementation of obligations and responsibilities of parents, family, society, Government and state to provide protection to children, and Presidential decree No. 36 year 1990 on the Ratification of the Convention on the Rights of children. They need to obtain their rights normally as a child, namely civil right and freedoms, family environment and altrrnative care, basic health and welfare, education, leisure and culture activites, and special protection.

Given the characteristic characteristic and nature of the child and for the protection of children, the problem of children facing the law must be heard in the Criminal Court of the child in the general judicial environment. Children's judicial proceedings since being arrested, imprisoned, and tried, the construction must be done by a special officer who understands the child's problem. However, before entering the judicial process, law enforcement, family, and the community are obliged to pursue the process of settlement outside the Court of Justice, i.e. through versioning based on restorative justice approaches.

Restorative justice is a fair solution involving the perpetrators, victims, their families and other related parties in a criminal act, jointly seeking a solution to the criminal act and its implications, emphasizing recovery and not retaliation. Restorative justice is an attempt to support and enforce the provisions as stipulated in Article 16 of the Law No. 35 Year 2014 on Child Protection stating that the arrest, detention or imprisonment of the child shall only be conducted in accordance with applicable law and can only be undertaken as a last resort.

Restorative justice is a change in the way of view that provides solutions to the handling of mischief problems of children who consider that the criminal justice system does not meet the substantive justice, so it is necessary to be a consideration to the handling of child mischief problems, because this approach involves all parties in the

process of settlement to sit together with the aim to be achieved is to recover the losses from the "wounds" that have resulted from the event of the child's mischief. In addition, a child's moral improvement is needed so that children no longer repeat their actions and avoid imprisonment that can affect the child's physical, mental and psychological development. In this regard, Barda Nawawi Arief argues that Penal mediation "is an alternative form of dispute resolution outside the courts" (Nawawi Arief, 2008).

## RESEARCH METHOD

This approach to the problem is a juridical approach to empirical. Juridically because the problems that will be researched are the norm of legal norms and their implementation. So the law is defined as the norm of legislation or regulation. Empirically, because the law is defined as patterned behavior and understanding of social significance. In the efforts of the research process using empirical research as the objects researched are in the field and functions rather than empirical research to analyse the laws seen as patterned community behaviour in people's lives that are always interacting and related in community aspects. Therefore, the research is further as a socio legal research. Socio-legal review is an interdisciplinary approach to the law. The study focuses on various legal issues, challenges and questions, but the approach is interdisciplinary, borrowing social science or humanities methods. This research aims to describe the reality that corresponds to the phenomenon in detail and complete as well as the collection of data from natural background by using the researcher as a key instrument as the solver of the problem to be researched (Sukoco, 2008). Location in this research is the District of Kendal.

## FINDING AND DISCUSSION

Based on the data owned by the local government of Kendal District in 2020 the population of Kendal District is 1,065,980 inhabitants (one million sixty five thousand nine hundred eighty souls) high levels of population density can give positive and negative influence for the inhabitants of the District of Kendal. Street children give a negative influence to the life of the district of Kendal with the existence of bummer and beggar that interfere with public order. Developments that occurred for five (years 2016 S/d in 2020) in the area of Kendal shows that the street children as beggars and bums mostly run their activities in public places, such as in market terminals, shopping centers and public roads that disrupt public security and order including threatening the safety of his soul and others.

Based on the data owned by the local government of Kendal District namely the social service of Kendal District, the overall number of street children as beggars and bummer in the area of Kendal for the last five years (year 2016 to 2020) is 1,256 people (a thousand two hundred fifty six). The above amount is based on the outcome of operations or raids conducted by the Social Service area of Kendal cooperation with other relevant agencies.

It can be noted that over the past five years in the district of Kendal turns out the number and distribution of street children as bummer and beggars are still quite high, although the number of each year has increased and decreased. The total number of street children as a bum and beggar can also be an overview of the number of criminal cases for street children as a bummer and beggar that occurs in the area of

Kendal. Conditions like this are certainly quite disturbing the community and need to get serious attention from the government of Kendal district and related law enforcement officers. In 2016 street children as bummer and beggar were 211 people then in 2017 street children as homeless and beggars experienced an increase of 50% with the number of street children in Kendal area as bummer and beggars reached 309 people. Year 2018 the number of street children the number of street children in the area of Kendal bum and beggars had decreased to 235 people, and the next year 2019 fell to 201 people. In 2020 the number of street children in the area of street children in Kendal as a bum and beggar is experiencing a run-down because Covid 19 is 300. The Data spread that the number of street children in the area of Kendal as the highest bummer and beggar occurred in 2017, and the lowest number was in 2019. However, in 2020 it was drastically increased due to a Covid 19 pandemic.

The starting point of the data table above can also be seen that during the last five years the number of street children as a bummer and beggar in the region of Kendal the number of the packaging is much more than the number of bummer. The total number of beggars is 1,256 people from the whole number of beggars and bummer in the city area of Kendal. While the total number of bums only 65 people, from the total number of street children as bummer and beggars in the district of Kendal. This means that over the past five years the community or local government of Kendal is more faced with the dominance of the beggar problem scattered in some corners of the city compared with the problem of emergence of street children phenomenon as a bummer.

Special talk about the development of the number of street children as a bummer in the region of Kendal, then over the last five years shows the number of numbers up and down. In 2016 the number of street children as homeless in the area of Kendal was 5 people. And in the following year 2017 increased to 9 people. In the year 2018 the number of bummer returns showed increased numbers to 13 people. In 2019 the number of bummer declined to 11 people. However, in 2020 it was increased to a total of 27 people. The number of street children as homeless in the highest area of Kendal in 2020, and the lowest amount shown in the state of 2016.

From the explanation above, it can be described that the number of street children as the highest beggars occurred in 2017, while the lowest number in the year 2019. The ups and downs of the street children as bums and beggars as above are the accumulation and interaction of various problems such as the performance and the intercessiveness of the relevant agencies, high rate of urbanization, poverty, low education level, lack of skills owned, public attitudes towards the amusement and beggars, environment, mental bummer and the beggars themselves.

Factors of the cause of street children (Bagong, 2010):

a. Family Economic Issues

Most of the street children come from the underprivileged, they make a living on the street in order to fulfill their needs, ranging from the need for food to the clothes they wear everyday. Often we encounter directly on the streets, their parents have taught them to be street children when they are young. It is not uncommon for a mother to carry a toddler to beg in the streets in the hopes of the person who sees it will feel sorry.

b. Community Children and Environmental Influences

Friends can also cause a child to descend to the streets, i.e. social support or enticing persuasance from a friend. In the social development of adolescents, positive self-esteem plays a role in strong personal formation, healthy and has the ability to determine options, including being able to say "no" to negative things. In other words it is not easily affected by the various temptations that a teenager faces

- every day from their own peers
- c. The Cracks and Violence of The Household Life of Parents
- The study conducted by UNICEF in children who were categorized as children of the street, showed that their motivation to live in the streets was not merely the insistence on domestic economic needs, but also because of the violence and cracking of the parents' household life.

The cause of the exploitation of street children in Kendal area is as follows:

- a. economic factors
- b. unemployment
- c. low parental income

The local government of Kendal Regency has established the Regional Regulation of Kendal District No. 16 of 2013 on Street Children Construction, Bummer and Beggars in Kendal District.

The purpose of the establishment of the regional regulation of Kendal District No. 16 of 2013 are for:

- a. preventing and anticipating the growing community of street children, bummer and beggars;
- b. preventing the misuse of street children, homeless and beggars from the exploitation of certain parties;
- c. educating street children, homeless and beggar communities to live worthily and normally as community life generally;
- d. empowering street children, bummer and beggars to be able to live economically and socially independently; dan
- e. enhancing the participation and awareness of local governments, businesses and other community elements to participate in the handling of street children, bummer and beggars.

Efforts of social service of Kendal District in the handling of formal and non formal street children in the area of Kendal are as follows:

- a. preventive efforts
- b. repressive efforts,
- c. rehalititation efforts

Criminal acts made by street children in Kendal area, among others, faking, racking and committing threats to victims. However, the behavior of the street child can still be said to be a criminal act when fulfilling criminal elements. In this case, the necessary treatment for the street child is to enter the child into the institution or house of stopover to get an education that is appropriate to the age.

## CONCLUSION

Factors of the cause of street children in Kendal area. According to the results of observations, observations, and interviews of researchers with several street children who are in the area of Kendal are as follows: economics, unemployment, low parental income.

Efforts of social service of Kendal District in the handling of formal and non-formal street children in the area of Kendal are a preventive effort, repressive efforts, rehabilitation efforts.

Legal protection of street children who commit crimes committed by street children in the area of Kendal, handling is done through the house layover.

For the local government of Kendal Regency, the social office of Kendal District and also law enforcement officers in Kendal district to pay more attention and

to act explicitly on the issue of street children exploitation both in terms of coaching and legal sanctions for the exploitation of street children and the need for counseling to the community or parents, such as about the prohibition to give something good in the form of money or goods to the street children and also negative impact for street

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