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Parental Responsibility Toward Child as Criminal Offender in Indonesian Criminal Reform

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ABSTRACT

Parents as the first guardian of the child make their role irreplaceable for children. The negligence of parents in interpreting their role as caretakers of children can have an impact on children's development. True children do not have the ability to plan a crime. ABH is more accurately seen as a victim. This study reveals the responsibility of parents to child offenders of criminal offenses in Indonesian law today and its reforms in the future. This study uses a qualitative approach and normative juridical research methods. Code No. 11 of 2012 concerning the Juvenile Criminal Justice System implies the use of Restorative Justice in every settlement of juvenile crime. There is no formal legality of parents' responsibility for criminal acts committed by children, however, the Law on the Criminal Justice System for Children only regulates the responsibility of parents in the form of compensation in terms of diversion. The principle of Vicarious Liability can be applied to child crimes in the future. The principle of Vicarious Liability can be clearly stated in the regulations relating to juvenile punishment. The principle of vicarious liability can be applied to parents for criminal acts committed by children in the context of the transfer of criminal acts, based on legal objectives, namely justice, certainty

and legal usefulness in the application of criminal law in Indonesia.

KEYWORDS

Parental responsibility, Vicarious liability, child offender

1 INTRODUCTION

Children are the foundation and hope of all parents as well as the successors of the nation who have great responsibility for the achievement of the ideals of the nation. The role of a child as the nation's successor has shown that the rights of children in Indonesia have been expressly stated in the constitution (Hassan, 2000: 29). Indonesia has ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990 about Ratification of the Convention on the Rights of the Child. This ratification is a state effort to provide protection for children in Indonesia.

The child is not aware of the act he has committed, the child who has committed a criminal act does not have a criminal motive in committing the action, very different from an adult who has committed a criminal act because there is indeed a criminal motive (Marlina, 2012: 2). The delinquency of children, which is often seen as normal behavior, indirectly actually causes children to commit crimes and other illegal acts at a young age.

Indonesia has established child protection regulations which have been stipulated in Code No 11 of 2012 concerning the Child Criminal Justice System (hereinafter referred to as SPPA). Particularly in the case that the responsibility for criminal acts committed by children can be minimized by means of diversion, this diversion attempt is a facility to transfer cases outside the court. The diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or their parents/guardians, community counselors, and professional social workers based on a restorative justice approach.

Mudzakkir stated that the victim can hold parents accountable for their social humanity. One form is the civil lawsuit mechanism. As regulated in Article 1367 of the Civil Code (BW), namely: "Parents and guardians are responsible for the harm caused by minors living with them and against whom they exercise parental or

guardian power” (Marlina, 2012: 2). Liability for damages can be asked to the biological parent / guardian of the child, or the adult who lives with the child.

The author sees that there is often weak parental supervision of children so that not a few children commit criminal acts. When an action falls into the realm of crime, according to the applicable law in Indonesia, the one who is obliged to be criminally responsible for the act is the perpetrator, in this case the child. Even though it does not have to be such a very worrying thing when parents have carried out their obligations in supervising children who are in their ability and responsibility. Thus, it is also fitting that in the case of criminal acts children as perpetrators, guilt and criminal responsibility can not only be imposed on the child, but can also be given to the parents as their advocate.

2 THEORETICAL FRAMEWORK

Article 1 paragraph (1) Code No. 35 of 2014 concerning Child Protection determines that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (Mafiana, 2015). The UN General Assembly in the Standard Minimum Rules for the Administration of Juvenile Justice or what is known as the Beijing Rules defines a child with legal problems as “a child or young person who is alleged to have committed or who has been found to have committed an offence. who is suspected, accused or acknowledged of violating the provisions of the criminal law).

The process of solving cases of children who are involved in legal problems should be different from those of adults. The procedure must be carried out carefully, so that the child still gets maximum protection. The meaning is that the handling of criminal cases must be resolved specifically in the trial process which reflects efforts to protect the law against children with problems (Maskur, 2012).

Restorative justice itself is a court with restorative justice (Zulfa, 2010). So, in essence, the restorative judicial process is carried out through an alternative discretion of diversion, namely efforts to divert from the formal criminal justice process through deliberative settlement (Mulyadi & Djaya, 2012).

Protection of children normatively Indonesia has no less than 15 pieces of legal products, either specifically regulating children or not. However, none of these rules pertain to the criminal responsibility of parents when their child commits a criminal act. With the idea that the development of children's attitudes is inseparable from the role of supervision and parental education, then the parents are also worthy of being able to take responsibility for the criminal acts of children. This is to increase

awareness of parents so that they can pay more attention to the psychological, physical, and mental development of the child. So that it can prevent the child from actions that are prohibited according to applicable law.

This paper is intended to analyze what is the form of parental responsibility towards children as perpetrators of criminal acts in Indonesian criminal law today? and what is the responsibility of parents towards children as perpetrators of criminal acts in Indonesian criminal law in the future?

3 METHOD

The type of research used is the juridical normative research type (Soekanto, 1986). The specification of this research is analytical descriptive. The research data in the form of primary data and secondary data were then analyzed using qualitative analysis (Soekanto, 1986).

4 RESULT AND DISCUSSION

A. Forms of Parental Responsibility toward Child as Criminal Offender in Indonesian Criminal Law at Present Time

Contains descriptions of research results that are presented briefly and clearly, can be added with tables, pictures/graphs, or photos. The discussion is an explanation, interpretation, meaning and benefits of the overall research results and is an answer to the problem to be solved.

Article 1 point 3 of the SPPA Law provides a minimum age limit of Responsibility for children at the age of 12 but not yet 18 years of age. Determination of 12 years of age is based on the Constitutional Court Verdict No. 1 / PUU-VIII / 2010 which in its consideration states that it is necessary to set an age limit for children to protect children's constitutional rights, especially the right to protection and the right to grow and develop.

Looking at the conclusion of the UN Committee on the Rights of the Child Observations that the Committee welcomes the implementation of Code No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), increases the minimum age of criminal responsibility and prioritizes the use of restorative justice. However, the Committee underlined that the minimum age for criminal responsibility is still low, namely 12 years old (VOA Indonesia, 2020).

Institute for Criminal Justice Reform (ICJR) believes that Indonesia needs to pay attention to the conclusions of the committee. The committee has recommended

increasing the minimum age of Responsibility to 14 years. ICJR sees that increasing the minimum age of Responsibility for children needs to be done considering several strong reasons (VOA Indonesia, 2020).

The pattern of criminal liability in legislation is basically impossible to transfer the responsibility to other people. It can be seen in the main principle in criminal law, especially in the Continental European system or Civil Law, then this Responsibility is direct liability based on law or what is often referred to as strict liability (VOA Indonesia, 2020).

In the judiciary that processes children's cases, the criminal responsibility is not fully carried out by the child, in practice there has been a transfer of responsibility where the child who carries the child should be transferred to the parent of the child who has a position as the perpetrator, through a diversion process.

Diversion is the transfer of handling of a person's cases, for example a child who is suspected of having committed a criminal act. The purpose of imposing diversion in the case of a child, among others, is to avoid the process of detaining children and labeling children as criminals. Children are encouraged to take responsibility for their mistakes. So that diversion is a diversion from the criminal justice process to outside the formal process to be resolved by deliberation.

The formulation in Code No 11 of 2012 concerning the Juvenile Criminal Justice System, among others as stipulated in Articles 6, 7, and 8 which regulate the diversion process, implies that it is possible for parents to be responsible for criminal acts of children. Article 8 paragraph (1) of Code No 11 Year 2012 states that the diversion process is carried out through deliberation involving the parents / guardians of the child, social advisers, and professional social workers, apart from the child himself.

The interpretation of this Article cannot be other than that without involving the parent / guardian of the child, diversion will not be carried out properly and smoothly. This is because at the age of the children they will not be able to fulfill their obligations, even their own needs without any intervention from the child's parents / guardians. On the other hand, child protection is an effort to create conditions for every child to exercise their rights and obligations. In addition, child protection is a manifestation of justice in a society. On that basis, child protection must be endeavored in various fields of state and social life, including in the field of law.

Article 1 point 7 of the Juvenile Criminal Justice System Law states that diversion is the transfer of a juvenile case from a criminal justice process to a process outside the criminal court. According to the author, the provisions of Article 7 of the SPPA Law, diversion can only be applied to children who are threatened with imprisonment of

less than 7 (seven) years and is not a repetition of a crime (residue). It is hoped that this will be given great attention to minimize the potential for coercion and intimidation at all stages of the diversion process. A child should not feel pressured or pressured into agreeing to diversion programs. The diversion agreement must obtain the consent of the victim and / or the victim's family and the willingness of the child and his family, except for criminal acts in the form of offenses, minor crimes, criminal acts without victims, or the value of the victim's loss is not more than the value of the local provincial minimum wage.

The author is of the opinion that even though by using the provisions of the Criminal Code there is a transitional pathway for the responsibility of parents to children who commit criminal acts, but based on observations at an empirical level, the settlement of criminal cases committed by children is carried out in a diversion process, the type of settlement of children's cases is chosen because of the existence of The Law on Juvenile Justice which is the *Lex Specialis* of the Criminal Code, which is in Article 1 number (7) of Code No. 11 of 2012 concerning the Juvenile Criminal Justice System recognize the term diversion which is defined as the transfer of settlement of juvenile cases from the criminal justice process to the out-of-court process, hereinafter Article 5 paragraph (3) it is stated that in the juvenile criminal justice system it is obligatory to seek diversion. The word "obligatory" can be understood as something that cannot be negotiated and the emphasis of something that must be done.

In the juvenile criminal justice system, there is the term restorative justice, this is stated in Article 1 Number 6 of Code No 11 of 2012 concerning the Juvenile Criminal Justice System, where Restorative Justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.

For the sake of realizing restorative justice, diversion is possible in the Juvenile Criminal Justice System. Diversion is clarified in Article 1 point 7 of Code No 11 of 2012 is the transfer of settlement of juvenile cases from criminal justice processes to processes outside of criminal justice. The substance stipulated in the Law on the Criminal Justice System for Children includes the placement of children who undergo judicial processes to be placed in the Special Development Institution for Children (LPKA).

The repressive system for handling juvenile cases by imposing imprisonment and conditional punishment does not reduce the number of crimes that reach the court. In other words, there is no correlation with the purpose of punishment to deter

other people from repeating the same act at a later date, so that it can be said that punishment has not become a lesson for other children not to repeat criminal acts.

B. Forms of Parental Responsibility toward Child as Criminal Offender in Indonesian Criminal Law on the Future

The transition of responsibility of the child which shifts to the parents because the child's position is not a subject in the process and does not fulfill the elements of an error in the context of criminal law even though he has actually committed a criminal act, but cannot be held responsible for the crime and the criminal act can be analyzed as a mistake. from parents either because of negligence or on purpose, therefore in this case the position of the child as a victim.

Even though the child who is involved with the law is in fact the perpetrator, the child is also categorized as a victim, the meaning of the victim in this case is the victim of the negligence of the parents that caused the child to commit a crime. Although the basic concept of criminal law states that the person who commits the crime is responsible for his actions, in this case the child is considered a victim of negligence of his parents causing the parents to also be responsible for the criminal acts that have been committed by their children.

The responsibility of parents for criminal acts committed by children, which indicates the parents are participating or assisting in legal provisions whose elements are close to the usual context of the parent's position when the child commits a crime is Article 56 paragraph (2), namely in the form of giving opportunities, facilities and information and Article 57 paragraph (3) and (4) of the Criminal Code, that is, additional punishment for assistance is the same as the crime itself and the determination of the punishment against the assistant which is counted is only the act which is deliberately facilitated or facilitated along with its consequences.

However, in the case of parental involvement in the inclusion or assistance of a criminal act, it is not certain that the child who commits the crime is truly free from criminal responsibility. However, if we return to the initial context, that the child is a victim of negligence from his parents as well as a subject who is unable to be held accountable, then it is clear that the responsibility is transferred to the parents because the child is also under the control of the parent.

When parents fail to carry out their obligations to children to ensure social welfare, they are responsible for that failure. Children must be saved from various "disabilities" as "imperfect" legal subjects. Saving children from adversity, especially in the field of law, is far more humane than just enforcing formal procedures.

Vicarious liability is the legal responsibility of one person for the wrongful acts of another. It can be interpreted that vicarious liability is a criminal responsibility imposed on someone for the actions of another person. Vicarious liability is rarely applied in criminal cases. Vicarious liability must be applied in two conditions, namely the existence of a work relationship and the action is still within the scope of the work. Such conditions usually exist in the relationship between employer and worker. So that vicarious liability in its application in Indonesia is still limited to criminalization against companies and / or corporations (Wahyudi, 2011).

The principle of Vicarious Liability for parents of children who commit criminal acts can be done in the form of transferring criminal responsibility. The mechanism, form and implementation of the transfer of criminal responsibility need to be regulated in such a way so that this transfer of criminal responsibility is not seen merely as a "door" to forgiveness for children.

Children's awareness needs to be built through the transfer of criminal responsibility, so that the child can understand that what he is doing has created a burden on others. In relation to the Responsibility of parents in this juvenile justice system, it can be analogized that a corporation is a child who makes a mistake and cannot be fully blamed for his actions. So that the role of parents is an important and main factor in the formation of morals and behavior carried out by children. Thus, parents will be able to pay more attention to their children and educate their children so that they do not commit disgraceful acts in society to commit a crime even more.

Vicarious liability actually is a criminal responsibility imposed on someone for the actions of another person (the legal responsibility of one person for the wrongful acts of another). vicarious liability is related to the problem of children who face legal problems where there is no transfer of settlement of children's cases in court proceedings but it remains to the court process as regulated in our Criminal Procedure Code, another difference is the transfer of responsibility where the parent or guardian of the child is involved legal issues are responsible for this based on the principle of vicarious liability. So that seen from this aspect of Responsibility, the mistakes are not fully given to the child.

In determining mistakes and issues of responsibility for children who have been proven guilty of committing a crime, it does not only concern the child himself but also the responsibility of the parents. Because if a child commits a criminal act, it is not solely the child's fault but also includes the negligence of the parents so it is only natural that the parents must be responsible for the consequences of the act committed by the child. Thus when a child is socially abused because, for example, being a

suspect / defendant, the parents are also responsible for them.

One of the prospective forms of criminal liability implemented in the upcoming reform of the juvenile criminal justice system is related to the concept of criminal liability. As for what is meant is the teachings contained in the principle of Structural Responsibility (structural responsibility). This principle is a deviation from the principle of Personal Responsibility (individual responsibility). It says deviation because in structural responsibility, what can be held accountable for the occurrence of a criminal act is not only the perpetrator of the criminal act (according to the teachings of personal responsibility), but can be extended to other parties who are structurally related to the occurrence of the crime.

The application of criminal sanctions for parents based on the Principle of Vicarious Liability for criminal acts committed by children must pay attention to the position and role of parents as the life support for other children, where children still need the existence of parents so it is very appropriate if criminal sanctions are can be applied is a minor criminal sanction, one of which is in the form of a fine. The act of being returned to the parents is also one of the references that can be used in the sanction of action.

Not all actions of children in conflict with the law can be held accountable to their parents, the authors formulate certain criminal conditions that can be enforced according to the principle of Vicarious Liability, namely first, is a criminal offense with a sentence of not more than seven years. Second, the action taken is not a repetition. and Third, the criminal acts in the form of violations, minor crimes, crimes without victims and the value of the victim's loss is not more than the value of the local provincial minimum wage.

The reason parents / guardians are charged with punishment for the actions of their children is because of the position of parents as the child's life support. In formal legality, there are no provisions in the articles that regulate the responsibility of parents or guardians for criminal acts committed by children, but it is regulated in the Law on the Criminal Justice System for Children, the responsibility of parents in the form of compensation in the case of diversion. So that it can be a suggestion to related parties to make further and explicit arrangements in the law on children regarding the application of the Vicarious Liability doctrine to criminal acts of children whose responsibility is transferred to the parents or guardians who take care of them. So that the application of criminal sanctions carried out by the child is not only borne and accountable for by the child.

The use of the Vicarious Liability principle can be applied to child criminal acts in the future, as long as it is fully accepted as a form of criminal responsibility. It is hoped that the principle of Vicarious Liability can be clearly stated in laws or regulations relating to child punishment, of course this is also accompanied by guidance for the child himself so as not to repeat his actions in the future. Of course, the interests of victims and society must also be considered as a form of restorative justice.

In order to create justice and legal certainty, the author emphasizes the existence of further research on the application of Vicarious Liability, especially in child crime. Parents are expected to always be vigilant and pay extra attention in providing facilities in any form to minors that can cause harm to others. The government is advised to put strict limits on the application of this doctrine so as not to cause multiple interpretations and injustice to the parties that are disadvantaged due to the absence of clear sanctions on the perpetrators of criminal acts.

5 CONCLUSION

This paper concluded that there is no law regulating parental responsibility, however, Code No 11 of 2012 concerning the Criminal Justice System for Children only regulates the responsibility of parents in the form of compensation in the event of diversion. The principle of vicarious liability can be applied to parents or guardians, for criminal acts committed by children in the context of a diversion of the crime, based on the objectives of the law itself, namely justice, certainty and legal usefulness in the application of criminal law in Indonesia. The use of the principle of Vicarious Liability can be applied to child crimes in the future, as long as it is fully accepted as a form of criminal responsibility. It is hoped that the principle of Vicarious Liability can be clearly stated in the laws or regulations relating to child punishment, of course this is also accompanied by the guidance of the child himself so as not to repeat his actions in the future. Of course, the interests of victims and society must also be considered as a form of restorative justice.

6 DECLARATION OF CONFLICTION INTERESTS

Authors declare that there is no conflicting interest in this research and publication.

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