Merging Cases For Children In Conflict With The Law

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Abstract

This research aims is to describe the problem of legal protection for children, both from a criminal and civil perspective. By identifying differences and weaknesses in existing protection systems, this research seeks to provide an in-depth look at the steps that need to be taken to improve the situation. The research method used in this research is judicial normative with primary sources from journals regarding child protection as well as positive legal products on legal protection for children, especially children in conflict with the law. Legal ideology regarding children in Indonesia still shows differences in approach at various levels and legal domains. The implementation of the law to children and the role of parents as guardians and protectors of children do not yet have sufficient clarity. This condition places children in a very vulnerable position, where protection of their rights and welfare is often not optimal. The role of parents in protecting children is still limited, and the state has not standardized their role or provided adequate space to help children face legal problems.

I. Introduction

As an entity in society, children cannot be treated uniformly with other groups of society. Despite being part of the overall social structure, children are unique in the essence of their nature and character. The importance of understanding this difference becomes very real when people deal with children who face legal problems or become legal subjects (Budiyanto, 2014; Fitri et al., 2015). Children, by their nature still in the stages of physical, mental and emotional development, are vulnerable to environmental influences and life experiences that can shape their thought patterns and behavior. Therefore, children approaches in the legal context must take these unique dynamics to be consideration. Considering that children have their own problems, it means they are not simply small versions of adults (Strathearn et al., 2020; Williams & Beidas, 2019).

When children are dealing with legal problems, this understanding demands more sensitive handling and focused on protecting children's rights. Legal processes involving children must consider their welfare and pay special attention to aspects of education, health, and protection from exploitation or neglect. Therefore, it is necessary to involve child psychologists, social workers, and child law experts in handling cases involving children (Setyorini et al., 2020). Recognizing this uniqueness also builds the basis for a preventive approach, where society and government can work together to create an environment that supports children's positive development. Education about children's rights, support for families, and increasing children's access to education and health services become an integral part of efforts to protect children as legal subjects.

In essence, a deep understanding of the differences between children and the rest of society provides a strong basis for creating a legal system that not only involves punitive aspects, but also supports the development and sustainability of children's welfare. This ensures that any legal action involving children is implemented with wisdom and a sense of responsibility to create a better future for them.

However, legal protection for children in Indonesia is still not based on one understanding both in the criminal and civil frameworks. Therefore, there are several differences in understanding the definition and role of children. The problem is that legal products, both criminal and civil, do not take into consideration that children have their own level of vulnerability. This research was conducted to test hypotheses and understand the problems that occur regarding legal protection issues for children, especially those who are in conflict with the law and how they have to face the court combining cases involving criminal and civil elements together, for example the Mario Dandy Ozora's case.

This research highlights the imperfection or shortcoming of the child legal protection system in Indonesia, where there is not yet a common understanding both criminal and civil frameworks. Differences in understanding the definition and role of children between these legal frameworks create complexity in handling legal issues involving children. The main focus of this research is to test hypotheses and understand the problems that arise in connection with the legal protection of children.

One of the problems is the lack of attention to the special level of vulnerability that children have. Children are a very vulnerable group to various forms of exploitation, neglect, and violence. However, legal products in both the criminal and civil realms have not fully considered this unique situation. As a result, legal protection for children is fragmented and not fully effective. The final aim of this research is to describe the problem of legal protection for children, both from a criminal and civil perspective. By identifying differences and weaknesses in existing protection systems, this research seeks to provide an in-depth look at the steps that need to be taken to improve the situation.

2. Research Method

The research method used in this research is judicial normative with primary sources from journals regarding child protection as well as positive legal products on legal protection for children, especially children in conflict with the law.

3. Results and Discussion

Children's rights are something that has not understood and agreed upon by the majority of Indonesian citizens. Children are still very vulnerable as they are immature individuals but often face pressures that are beyond their capacity as children. Children's rights are often ignored because social structures and norms permit such action. This is in direct contradiction to approaches advocated by the UN, for example, which states that children are equal human beings and have the right to have protection according to their capacities (Tobin, 2019). The children approach must be based on the assumption that children are subjects, not objects that can be controlled or according to the expectations of adults. The idea that adults 'know better' or are 'more knowledgeable' is a misguided understanding because it ignores adults as humans who have weaknesses and also exploitative sides towards weak groups, especially children (Apsari & Ratih, 2021; Bander, 2019). In fact, the protection of children's rights has even been stated in the Constitution, namely Article 28B paragraph 2 of the 1945 Constitution.

Problems in the legal protection of children can be found through these conditions. Ethics and moral responsibility in the position of children are still far from ideal. In something as simple as the definition of a child, there are still very contradictory laws and is also controversial. For example, in the Civil Code and the Marriage Law, it is considered that a person is no longer a child just because they are legally married. The basis of this idea is not scientific and even provides the impression that parents can abandon their obligations as parents when their children marry. Child marriages can only be carried out through a marriage dispensation issued by a district court without any clear standards. For example, this dispensation in positive law is regulated in the latest amendments to the Marriage Law. The conditions proposed are only urgent needs. Where, the definition of urgent needs is not given clearly. Therefore, various justifications are provided that endanger the child's future. Such situation show that legal protection for children needs to be criticized sociologically, especially in positive legal terms, where the state often participates without realizing it in efforts to suppress children through legal products

that are not pro-child as subjects (Ayuwardany & Kautsar, 2022; Soleman & Elindawati, 2019).

For this reason, the implementation of legal protection to children is still problematic (Juliana & Arifin, 2019). For example, in the Criminal Code, namely in article 45, a child is defined as someone who is not yet 16 years old. Meanwhile, in the Child Protection Law, it is stated that a child is someone who is not yet 18 years old. In the Civil Code, the definition of a child is someone who is not yet 21 years old and is not married (Article 330). The discrepancy in the definition of a child's age itself shows that child protection is not taken seriously. Even if the expression is not serious, it is considered tendentious. Therefore, a more appropriate expression is the absence of the principle of caution or prudence in the harmony of legal protection for children. If legal protection for children is implemented based on the precautionary principle and the principle of priority, then this overlapping definition should not occur. In other words, even if it happens, it should be resolved within the shortest possible time. In reality, neglect occurs, resulting in various debates regarding the legal protection of children. This is what will be discussed in the next sub-chapter, as well as answering the first question of this research.

Comparison of Criminal and Civil Child Protection

In the context of legal protection for children, it must be concerned again at positive legal rules in Indonesia. The most important legal basis for child protection is the Child Protection Law or often referred to as Law No. 35 of 2014, which is an improvement and amendment to Law No. 23 of 2002. One of the problems highlighted is that children are only protected civilly, not criminally. In civil terms, children can have guardians who put their interests in a position to protect their interests, particularly in inheritance cases (Simatupang, 2023).

Not just one product, for example in the Marriage Law 74 Article 51 paragraphs 3 to 5, which states that it is mandatory for guardians to take care of the property matters of the child who is the guardian. Meanwhile, the form of protection in the Civil Code is much more comprehensive. It was explained that in Article 330 of the Civil Code, children are those under 21 years of age. In a civil context, children are always provided with a guardian, even if they don't have one, the law orders the judge to provide a guardian in accordance with Article 359 of the Civil Code as the several things that guardians must take care of (Nurdiansyah & Damiri, 2023; Yani D & Erwinsyahbana T, 2022).

First, guardians have an obligation to educate and care for children as well as possible. This includes responsibility for providing moral education, religious education, as well as physical and psychological attention so that children grow and develop optimally. Second, the guardian is responsible for representing the child in court or outside civil court. This includes legal protection and the interests of children in all matters, whether civil matters or other matters that may require legal representation. Third, the guardian has the responsibility to take care of the child's assets. This includes making a list of children's assets and managing them wisely and responsibly. Guardians can also place obligations in the form of mortgages or pledges for the management of children's assets, with conditions in accordance with

applicable law. Fourth, the guardian must provide accountability regarding the management of the child's assets to the supervising guardian. This includes submitting reports related to the management of children's assets on a regular basis so that transparency and accountability are maintained. Fifth, the guardian is responsible for compensating for losses if he makes a mistake in managing the child's assets. It aims to protect the child's financial and material interests. Sixth, the guardian must make final responsibility for the management of the child's assets at the end of the guardianship. This includes preparing a final report that reflects the current condition of the child's assets and the steps taken to safeguard and manage them. Finally, the guardian has the obligation to hand over all assets to the children if they are 21 years old or married. This marks the end of the guardianship and gives the children full rights to their assets.

Thus, the guardian's obligations towards children include aspects of education, legal protection, property management, accountability, as well as returning full rights to assets to the child at the right time. This is similar to the Child Protection Law, which is explained in Articles 20, 23, 24, 33, and 64.

However, criticism needs to be levelled at this protection concept because the only guardianship concept that is standardized is inheritance issues. There is no other form of guardianship oversight or evaluation. In Indonesia, other trust requirements do not have a supervisory body that is implicitly considered to be primarily responsible. The phrases that emerge place responsibility on the state and society. However, it is not stated to whom and how the technical implementation will be carried out. This reflects a biased way of thinking regarding inheritance as a civil matter that has a strong connection to children, while other issues that are no less urgent, such as education, social mental welfare, and other children's rights, are neglected.

In developed countries, such as the United States and other European countries, there are bodies that carry out standardized evaluations related to guardianship protection (Forslund et al., 2022; Meier, 2020). This understanding is very narrow because it speaks as if the civil problems experienced by children only revolve around inheritance. One thing that has never been considered is what happens when a child faces civil legal issues. For example, this is illustrated in the case illustration described below.

Many children's civil issues are thought to only revolve around inheritance. An example is the case of children's social gathering fraud (*Kasus Penipuan Berkedok Arisan Rp 1,9 M: Polisi Akan Panggil Mahasiswi Unisba | Kumparan.Com*, 2023). The perpetrator was still an under-age, but she committed fraud. There is a criminal context to this matter, namely a violation of Article 1313 of the Civil Code concerning agreements. Indeed, in this case, the perpetrator who is still an under-age escapes responsibility for child protection because she is married. However, when returning to sound legal logic whether it is justifiable that parental responsibility is immediately disappears when a minor child marries? This exposes the weaknesses of our laws, which place children in a weak position. In fact, according to Article 28B paragraph 2 of the 1945 Constitution, child protection is the state's obligation. Thus, it can be concluded that legal protection is not comprehensive. Considering Satjipto

Rahardjo's progressive legal term (Rahadjo, 2006), a problem appears where the law is late in catching the phenomenon when children can commit investment fraud or similar things, which then have civil and criminal impacts. In civil terms he is dealing with the person he deceived and criminally the state has the right to take measures to protect the public and prosecute him.

Such problems are often not taken into comprehensive consideration in resolving children's cases in the civil context.

Child Protection in a Criminal Context

In our society, it is necessary to review whether there is concern and response to children as criminals. Our society often places children in the position of adults in extraordinary criminal cases. For example, what happened in the David Ozora case several time ago. Society does not seem to consider that one of the perpetrators is still a high school student and thus cannot be held accountable like an adult. In fact, as a child, the main female perpetrator is still under the supervision of her parents and the responsibility for her mistakes cannot actually be placed on the child alone. Besides, the principle of vicarious liability can be used or some of the child's responsibilities must also be placed on the parents. However, this cannot be implemented because the juvenile criminal justice system only treats children as special objects with leniency in accordance with Articles 5, 8, and 17 of Laws No. 11 of 2012. In this law, children are placed only as individuals, even though in Article 18 of Law 11/2012 has an order to treat children with special care. The legal reduction in this case is only an announcement, but the background for providing relief is again returned to 'policy'. In this case, there is no legal certainty for children to be treated as children in this case and they are only metaphorically placed as adults who are still very young (Minggulina Damanik, 2020).

This attempt at simplification is certainly not in accordance with the spirit of making children as subjects. In this case, criticism can be pinned on the juvenile justice system law in the concept of diversion introduced in the Juvenile Justice System Law. It can be found inappropriate attempts to simplify the problem. Even though children cannot be punished like adults, it is also inappropriate to resolve child criminal cases if they are considered to be resolved through mediation. This effort can be said to the problem of complications. It shows that efforts to become a middle way to save children from their own mistakes or those of their environment have not been realized as well (Lynch & Liefaard, 2020).

The concept of restorative justice is not an explanation, but rather how children are saved from patterns of crime and trauma that prevent them from developing. The state takes responsibility where children are saved from their own actions, not in a context as if the actions did not exist, but rather to achieve a sense of justice where crime victims are saved but children are not left behind. However, what is happening now is that juvenile criminal courts are being simplified and reducing their meaning as an excuse because the perpetrators are still young. This is far from an effort to save children and is feared to fall just as a practical effort without paying attention to the impact on children (Kiswanto & Mashdurohatun, 2021; Pan, 2023).

In the end, there are still many legal problems in efforts to legally protect

children as explained in the table below.

a. Merger of Cases

In the context of uncertainty regarding the definition of children and their protection, merging cases becomes a particular complexity in Indonesia, especially when it refers to cases of Mario Dandy Satrio, where differences in legal understanding between criminal and civil cases create obstacles to efforts to uphold justice. Although combining cases is intended to increase efficiency in handling legal cases in accordance with article 98 of the Criminal Procedure Code, especially those involving criminal and civil aspects, in reality, this can actually make it difficult to uphold justice, particularly in the context of child protection rights.

Problems arise because criminal and civil laws treat children in different ways. Merging cases, which should result in continuity of legal handling, actually results in confusion and lack of clarity regarding child protection. In this framework, children's position becomes vulnerable and weak because they do not receive consistent and integrated treatment among various legal aspects.

The unclear definition of a child and the lack of coordination between criminal and civil law also have a serious impact on the role of parents as protectors of children. These limitations in legal harmonization cause uncertainty in safeguarding children's rights, and often, these rights can be neglected. Therefore, serious efforts need to be carried out to review the implementation of combining cases, considering the need for comprehensive protection of children, so that their rights are not marginalized in this complex justice system.

It has been proven in the Indonesian justice system that children have not been placed in accordance with their nature. For this reason, their legal implications have not received careful consideration and are far from being a viable solution.

b. Role of Parents/Guardians

The juvenile justice system faces serious challenges in achieving consistency and uniformity, especially in aspects of legal ideology related to the role of parents. In the realm of civil law, the role of guardians is actively recognized, providing a clear legal basis regarding the protection and guidance of children. However, complexity appears when entering the realm of criminal law, where children are considered as independent legal subjects. However, the position of parents is not clearly explained, creating ambiguity in their responsibilities and involvement in the child legal process (Carmela & Suryaningsi, 2021).

In criminal cases, children are considered independent legal subjects, but the lack of clear guidelines regarding the role of parents creates confusion and uncertainty. This can result in children being treated like adults who receive dispensations, without paying attention to the special needs and rights inherent in their status as children. These problems create long-term challenges in providing developmentally appropriate protection and guidance for children. This leads to confusion in status when children have to face both criminal and civil charges.

The various age placement systems for children in legal regulations can cause ambiguity in enforcing children's status. The Civil Code and Criminal Code have

different definitions of children, creating difficulties in identifying and providing consistent protection for children across various legal contexts. Even though the definition of children in the Civil Code and Criminal Code is explicit, this diversity can make it difficult to enforce firm and uniform laws regarding children's rights and obligations (Saraswati, 2009; et al., 2023; Wibowo & Srijadi, 2023).

The principle of Lex Speciali derogate legi generali, which indicates that special laws override general laws, can be a guide in determining the age standard for children. In this case, the Child Protection Law or Law No. 35 of 2014 can be used as the main reference, which states that children are people who are not yet 18 years old. However, although this benchmark can provide clarity in the definition of a child's age, it does not completely solve the existing problems.

Definitions of children based on age boundaries are often assumptional and may not fully reflect the complexity of children's physical, mental, and social development. Therefore, long-term solutions must involve comprehensive adjustment efforts in legal products to create harmony and consistency in the handling of cases involving children (Perkins, 2014).

It is important to understand that legal adjustments are not just about age, but also about empowerment and protection appropriate to the child's developmental stage. Harmony in the definition of children and legal approaches can result in more effective and consistent protection for children's rights in various legal domains.

Combining cases that cover criminal and civil aspects raises fundamental problems because these two legal domains have different principles. This issue highlights misalignments in law enforcement regarding children, which can result in solutions that are unacceptable to all parties involved. Merging cases with the aim of saving the budget also raises ethical questions, considering the legal principle of Fiat Justicia Ruat Caellum, which states that the law must continue to be enforced even if the sky falls. Therefore, cost considerations should not be the main reason for sacrificing the principles of justice.

Before merging cases, the main issue that must be concerned is how the legal ideology of protecting children must be put back on track. This includes an in-depth discussion of the legal principles of child protection, both in criminal and civil contexts. Child protection must not only be a celebratory agenda, but reflect a commitment to provide maximum security, rights, and welfare for children.

The importance of developing a consistent legal ideology for child protection creates a strong foundation for handling legal cases involving children. This includes an in-depth understanding of children's developmental stages, the special rights inherent in child status, and efforts to prevent long-term damage that may occur to children involved in the legal system.

By refocusing the ideology of child protection law, it is expected that the merger of the courts can be a more effective and meaningful step. At the same time, harmony between civil and criminal law principles relating to children can be achieved, creating a legal framework that is fair, consistent, and in accordance with the needs and rights of children.

It is important to understand that case consolidation, which should increase the efficiency of handling legal matters, must be implemented with great care so as

not to harm children. Ambiguity regarding legal status can open opportunities for corrupt practices and detrimental non-legal interventions. The principle of legal certainty is crucial, especially in the context of protecting children who are weak actors in the legal system.

First, children's weakness in defending themselves appropriately is exposed to the possibility of external intervention that could harm them. Without clarity of legal status, children become vulnerable to practices that are incompatible with their rights. Second, legal ambiguity can give privileges to some children in conflict with the law because they are in a good social class. This creates the potential for inequality in the justice system.

If this lack of clarity is allowed to continue, we risk harming society's stability and trust in the legal system. Children who should be protected and treated fairly can instead become victims of this legal vacuum. Therefore, there needs to be a synchronous and continuous effort to overcome unclear legal status, especially in the context of merging cases. The balance between the efficiency of case handling and the protection of children's rights must be carefully maintained so that the legal system continues to function in accordance with the principles of justice and legal certainty.

Description of the Role of Parents and Guardians

The position of parents or guardians in protecting children is still limited. In addition, their role is often not properly accounted for by the state. In a civil context, the role of a guardian is very large, especially in relation to inheritance or material matters. However, this greater focus on material aspects sometimes neglects children's emotional and human rights. The concept of guardian should include protection of children's emotional rights so that their growth is in accordance with their nature. Even though it is recognized, enforcement still requires further explanation regarding who is responsible and how enforcement is carried out.

In the context of criminal law, the position of children is often ignored, so that children are considered as 'adults who are not yet of the appropriate age.' This does not consider the psychological aspects and uniqueness of children as a group that requires special treatment. Furthermore, not seeing children as victims is also negligence because they may not realize the impact of their actions. Therefore, children need to be returned to the appropriate path of emotional growth so that they do not harm themselves.

Existing legal products do not fully reflect the need for comprehensive protection for children. The enforcement of children's emotional and unique rights in the civil context needs to be clearer. In criminal law, a more holistic view of children as individuals who are still in the stage of growth and development is required. Legal protection for children should not only focus on the punitive side, but also on understanding and rehabilitating children as part of efforts to build a society that is more just and cares for future generations. Therefore, there needs to be further change and development in legal products that accommodate the special needs of children, both in the civil and criminal realms.

Merging cases, which should be a solution for efficient handling of legal cases, apparently does not solve the existing problems. On the contrary, this actually creates

conflict and difficulties for parents in carrying out their roles and obligations towards their children. Such situations bring a number of problems that can create negative impacts in the future. Parents may feel overwhelmed and disengaged from responsibility, or conversely, they may provide interventions that threaten the integrity of our country's justice system.

The uncertainty that arises from the merger of these cases needs to be ended immediately before the negative implications and precedents for the development of Indonesian law continue. There needs to be concrete steps to enforce legal certainty, especially in terms of child protection. Parents must be empowered to fulfill their obligations without legal confusion that could harm children.

Preventive measures also need to be taken to prevent the possibility of parents abdicating responsibility or intervening that is detrimental to the justice system. By ending this uncertainty, we can prevent the emergence of bad precedents and ensure that the development of Indonesian law proceeds in accordance with the principles of justice, legal certainty and protection of children's rights. Thus, the steps taken must be proactive, comprehensive, and sustainable so that the negative impact can be minimized.

4. Conclusion

Legal ideology regarding children in Indonesia still shows differences in approach at various levels and legal domains. The implementation of the law to children and the role of parents as guardians and protectors of children do not yet have sufficient clarity. This condition places children in a very vulnerable position, where protection of their rights and welfare is often not optimal. The role of parents in protecting children is still limited, and the state has not standardized their role or provided adequate space to help children face legal problems. This weakness can create a situation where children do not receive appropriate protection and guidance from parents or the state in dealing with legal problems. Combining cases based on the principles of economical, fast and efficient justice is actually not in line with the main objective of law, namely achieving justice. Laws should not only aim to save the budget, but more importantly to uphold justice. The legal principle that states fiat justitia ruat caelum (let justice be done, let the sky fall) shows that the main goal of law is to create justice, even if it requires financial sacrifice. When justice is served properly, there should be no other issues that need to be discussed. Therefore, thinking that ignores the principles of justice in the context of economic savings is not in accordance with basic legal values. In the context of children, continued efforts to create consistent and effective legal protection must be a priority, involving the role of parents, government institutions, and all stakeholders involved.

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