

Juridical Studies on Children in Conflict with Law as the Result of Divorce Parents(Case Study of Religious Court and District Court of Stabat)

Nina Ismaya

Postgraduate Student, Faculty of Social Science, Universitas Pembangunan Panca Budi, Medan, Indonesia

ABSTRACT

Children in conflict with law are the children who face legal matters, either as a witness or a victim of a criminal offence and children who are in conflict with law is anyone is 12 years old but has not yet turned to 18 years old (eighteen) which is suspected to do criminal offense. Divorce is the legal dissolution of a marriage decided by religious courts and also it results the children are in conflict with law. Therefore, the writer is interested to do research about the children who are in conflict with law as the result of divorce parents. The study addresses three research questions which are; first, why the children who conflict with law is caused by the divorce parents? Second, what are factors that cause the children conflict with law? Third, how is the application of *Restorative Justice* in protecting the children conflicting with law as the result of divorce parents? The research employs qualitative method by adopting juridical empiric approach. The research method is *field research*; interview of research was conducted in Religious Court of Stabat, and the District Court of Stabat, dated 16 March 2018. Research data were collected by using second data which consist of primary, secondary, and third legal materials. Children in conflict with law are closely related with the divorce parents because the children are in vulnerable situation and are easily influenced to do actions beyond the controls of adult people. The vulnerable position of the children is because the children do not get their rights as it should be and cannot get concretely and intensively guidance from their parents (Article 4-19 Act Number 23 Year 2002 about child protection). New paradigm on children case resolution system is by adopting *Restorative Justice* by considering all party in order to resolve and to restore the first situation without imprisonment. The conclusion is that the Religious Court of Stabat gains the third highest rank of divorce cases after Medan and Deli. Furthermore, the District Court of Stabat is the third rank after District Court of Medan and Deli Serdang of children in conflict with law. The role of government is to reregulate the certain purposes of Act Number 11 Year 2012 About Children Criminal Justice System. The suggestion is that all government apparatuses both of religious court as well as ministry of religion to educate actively any program that prevents the divorce rate at Religious Court of Stabat.

1. INTRODUCTION

Children are gifts from Allah (Exalted Him) that have to be protected and to be loved by parents, family, state and country. Children are also future generation of family and continue the future goals of Country as well as starting point of world civilization.

The initial destruction of civilization of a Nation is that children do not get their appropriate right whether from parents, family, state, and nation. Rights are right to live, to grow, and develop optimally and to get protection from all aspects of discriminations and violence. The absolute right is the rights that children have to gain if the children do not get is the human right violation and put the children in difficult situation, and it may cause the children are in conflict with law.

Children who are in conflict in law are the children get contact with law as the witnesses from a criminal offense, and as the victims of

criminal offenses. The children in conflict with law are anyone is 12 (twelve) Years old, but under 18 (eighteen) years old that is accused or suspected of a criminal offense.

Data reveal that consecutively in 2016, 2017, 2018 at District Court of Stabat, at least there are 30 (thirty) cases of children who are in conflict with law. The main factor that causes the case is divorce parents. At least, there are 3.177 cases within 3 years, which means that thousands of cases are handled every year by Religious Court of Stabat about family disputes or divorces. If each divorce parents has 2 children based on the number of cases above, it means that there are 6.354 children who are as the victims of divorce parents and it is the highest source of children in conflict with law.

The divorce parents are legal dissolution of a marriage decided by Religious Court with law with latter on that may affect any possibility of the termination of relationships between both extended divorce family such as aunt, uncle,

nephew, and so forth. It causes the children lose their company to share their experience from outside of the house (bad social control), the consequence is the children break the norms without any guidance, and supervision from their parents, therefore, it put the children in conflict with law.

Children in conflict with law are juvenile delinquency or breaking the norms applied in society such as robbery, drug uses, and murders. The results are the children are liable of the criminal offenses that bring them to the Court and put them in prison that are forbidden extremely by Child Convention.

Article 19 states that "Right of child to have protection from legal process for a child charged or punished or of committed breaching the law". Furthermore, in Article 37 Convention on the Rights of the Child (hereafter CRC), is stated that: "The torture and cruelty of child are forbidden (along with physical punishment and life punishment)". Article 33 Verse (1) Act Number 39 Year 1999 about Human Rights states, "Anyone has right of liberty from torture, cruel punishment, inhumane, degrading of human dignity". Furthermore Article 34 states that "Any person cannot be arrested, detained, tortured, ostracized, stranded, or arbitrarily disposed".

The statement above means that the child has to be protected regardless of the reason of his/her criminal offense, they remain as the children civilization of Nation and possess the human rights with dignity thus anyone who does not protect the child from criminalization meaning that he/she is destroying the civilization of the nation and committed the criminal offense of breaching human rights.

In line with this, Indonesian government establishes the Law Number 11 Year 2012 about child justice system ratified on 30 July, 2012. It aims to give protection to the children in conflict with law. It is expected that the children will get protection and justice, put *Restorative Justice* at the first place by diversion approach.

The *Restorative Justice* is resolution of child case by involving the victim/perpetrator/parents of victim or parents of perpetrator and stake holders, in order to find justice solution and to restore the first situation instead of revenge. It is considered that by punishing the child, it will cause negative stigma to the child that can worsen the growth of the child and the punishment will prepare the perpetrators to be professional criminals in the future because the education that the child received during imprisonment period will be the best criminal education.

According to the data from regional commission of child protection (hereafter KPAID) of Sumatera Utara at the end of 2008,

District of Langkat were in the second position with the number are 991 of the children in conflict with law. This is the largest number of the children in conflict with law after Medan. Unfortunately, according to the Statistic Data Centre (hereafter BPS) in 2010, with the number of population in Langkat currently is only 966.133, previously it was well-known as educational, religious, and cultural City. However, in 2014 there were 1005 965.00 population of Langkat District, it also does not decrease the number of children in conflict with law.

In responding to the fact mentioned above, at the end of 2009, the government of Langkat District formulates regional child protection commission (hereafter P2TP2A) in order to promote the children rights as regulated in Law 23 Number 2002 about Child Protection and to do mentoring for children in conflict with law.

The establishment of two bodies is responded positively by District Court of Stabat by providing exclusive Courtroom for children in conflict with law when investigation process and the demand of confiscation done by the police, and attorney, when first trial was conducted, the detain was postponed by the Judge of District Court of Langkat. District Court of Stabat was the only District Court after the District Court in Java Island which conducted the child trial.

Based on the discussion above and in considering the increasing cases faced by children in conflict with law as the effect of divorce parents, the writer is interested to write the thesis about this issue with title is:

“ JURIDICAL STUDIES ON CHILDREN IN CONFLICT WITH LAW AS THE RESULT OF DIVORCE PARENTS (CASE STUDY OF RELIGIOUS COURT AND DISTRICT COURT OF STABAT)”.

2. RESEARCH PROBLEM

The research study will focus on some following questions:

Why the children who are in conflict with law are caused by the divorce of parents?

What are factors that cause the children conflict with law?

How is the application of Restorative Justice in protecting the children in conflict with law as the result of divorce parents?

3. RESEARCH METHODOLOGY

The study was conducted by employing the empirical law/qualitative sociology approach with

descriptive analysis which research focuses on the discrepancy of theory/regulation corresponding to reality (*Das sein/ law in action*) that are related to the children in conflict with law as the result of divorce parents.

This study also employs the juridical normative approach to identify a problem rises based on the standard legal norms, community who lives in society, documents such as data, result of research and so forth to achieve the result of this research.

The method in this research is by empirical approach meaning that the research conducts the interview with the Judge of the child and Judge who handled the divorce cases.

4. RESULT AND DISCUSSION

4.1 Children in Conflict with Law Are Caused by the Divorce of Parents

Children in conflict with law is the children who are in contact with the justice to anyone who is 12 (twelve) years old but has not yet turned to 18 years old (eighteen) which is suspected or accused to commit the criminal offense.

Children in conflict with law which are caused by the divorce parents are the children who are on venerable situation, are not able to get out from the problem because the parents do not fulfil their obligation as it should be thus the children are not able to explore themselves due to the loss of guidance where they have to rely on, and to share their experiences from outside of the house because some of children activities are done outside of the houses such as going to school and playing. Further, the children become uncontrolled, searching the places that they consider comfortable, doing anything that they believe it is true which are not supervised, mentored, guided by their parents. Furthermore, the children become the contributors of supreme crimes.

Rights of the children are regulated by child convention from Article 1 to Article 54 and Act Number 23 Year 2002 About Child Protection from Article 4 to Article 18, all legislations aim to protect the children from any discrimination.

From the interview done by the writer with the Judge of the child, Dr. Edy Siong, SH. Mhum, from District Court of Stabat the states the reason of the child to do delinquency or the criminal actions are; first is because of broken home family. Based on the data of the children in conflict with law in 2016, it reached to 15 cases and in 2017, there were 13 cases; the data was 100% broken home as the reason the children doing delinquency. Second are economic limitations, uncontrolled lifestyle, that cause juvenile delinquency in order to achieve their

lifestyles. Third; children cannot differentiate between needs and wants. The consequence of divorce parents is very harmful to the children compared with the deceased of parents.

Based on the result of this research, in Religious Court of Stabat, the age of marriage couples who have family disputes are still in young age, between 20 and 30 years old. It happens due to early-age marriage, unwed pregnancy, arranged married, and so forth.

The study reveals that the causes of parents get divorce if the data is synchronized to the data from police department, Langkat District, between the latest 2 and 3 years, are dominantly caused by first; narcotic drugs, the wife and the children who need financial supports, education, and so forth and as the husband is intoxicated and addicted by drugs just being lazy to earn money, negative attitude such as temperamental character. Second; economic circumstance, the bias attitude causes economic family is threaten and ruined because the husband as breadwinner or main person who earns money to support his family does not perform his obligation appropriately. Third; early-age marriage, the result is that the young marriage couple does not comprehend the meaning of marriage, obligation, and function of each couple. Fourth; culture, the development of millennial culture currently causes the housewives and husbands do not have attention with their household, easy to decide divorce without considering the negative consequences to their children.

The data shows that from 2016, there were 1.357 cases, in 2017 there were 1.413 cases and in 2018, there are 407 cases, the number of divorces in Religious Court of Stabat is 3.177. Based on this data, the cases that are able to be solved by Religious Court within 3 (years) is 3.018 cases. If referred to the successful rank of the Court in conducting mediation, it is only 5% (five percentages). The data are still incomplete because many of family disputes are not registered to Religious Court or unregistered divorce. The divorces about 98% are caused by narcotic drugs, and the other causes are as the results of drug uses.

High number of divorces in District of Langkat is triggered by high number of Narcotic drug addicts, which can be found within the last 2-3, the rate of divorces increases significantly that apparently the rate of divorce is higher than birth rate.

The effort that has been done by Religious Court of Stabat is by maximizing mediation process or peaceful settlement. However, this effort is also not successful even only 5% (percent).

The hindrance factor from mediation is the absence of each party to do mediation and paradigm of the dispute party if the case is coming to the court, the final result is divorce. The peaceful settlement conducted by court does not run well. The promotion from Religious Ministry related to regulation of Director General of Islamic Society Guidance Number: DJ.II/542 Year 2013, about implementation guidelines of pre-wed course ratified on 5 June, 2013 in order to prevent the increasing number of divorces.

Based on the fact discussed above, it can be concluded that the result of divorce parents does not only influence the children but also the safety of nation because it becomes the measurement to be a big nation which is stated from harmonic family as basic foundation of the country.

However, according to a scholar Hurlock, divorce is the culmination of poor marriage settlement, and the final result if marriage couple is not able to find any solution that can satisfy each other. It has to be realized that many marriages do not bring happiness but are not ended with divorces. This is due to the consideration of religion, morality, condition, economic condition, and so forth. The separation of termination of marriage can be done legally or illegally and sometimes marriage couple (husband/wife) leave the family (flee).

According to the discussion above, the writer believes that the divorce factors are not from social factor but rather than society mind-set that is needed to be studied on underlying the household which is based on the belief of one God and prioritizes the need of children beyond the other needs and the quality of the parents in caring their families.

4.2 Factor Causing the Children in Conflict with Law

Factor that causes the children in conflict with law is environmental factor, cultural deviation, and biological deviation. First; environment is fundamental factor. Environmental factor is fundamental factor as causality of juvenile delinquency. The time spent by children is greater from outside environment than the time at home because the activities of children such as playing and studying are done outside of the house. Second; cultural deviance derived from family such a child who grows at wrong time and wrong moment do not become concerned factor by parents but it is considered as an achievement by parents instead. For instance are the parents let their son drives motorcycles at the age 9-10, or taking their friend belonging without permission or let their daughter to put make up on before the time.

Third is biological factor from child intellectuality in responding many things that may indicate what future action that the child will probably take to do delinquency. For example, of what the response of the child is when the parents talk rudely/consume drugs, sooner or later, children will imitate their parents' attitude.

This study reveals that the types of juvenile delinquency including criminal offense according the data from District Court of Stabat are: Narcotic drugs use, robbery, and murder.

4.3 How is the Application of Restorative Justice in Protecting the Children in Conflict with Law as the Result of Divorce Parents

The District Court of Stabat is located on Proklamasi Street No. 49 Stabat with chairman is R. Aji Suryo, SH.MH and as Judge of the child is Dr. Edy Siang, SH.MH. According the Judge of the child, in consecutive years 2016-2017-2018, there are 30 (thirty) cases of children in conflict with law that is handled by District Court of Stabat. The application of Restorative Justice at District Court of Stabat has been conducted since the Chairman of the Court was Diah Sulastridewi, S.H., M.H. in the middle of year 2010. Even, the District Court of Stabat in that year was the only Court from outside of Java Island which prepared the specific courtroom, mediation room for the children, and friendly waiting room for the children. Although regulation of Act Number 11 Year 2012 about child justice system has not yet been effective, the children in conflict with law during the investigation process and prosecution, the detain is conducted by polices and prosecutors, however, on the first trial, the detain was postponed by the Judge of the child of District Court, Stabat.

The solution for the children in conflict with law that is prioritized by the Judge in District Court of Stabat in tackling the cases is by adopting restorative justice approach, which is conducted by diversion approach. Restorative justice is resolution process done outside of criminal justice system by considering the victim, the perpetrator, and the family of the victim and the perpetrator, as well as the community and the concerned parties related to the criminal offense in order to achieve the agreement and solution. Restorative justice is considered as new way of thinking/paradigm in envisaging a criminal action done by the children. This approach is also taken into account by Indonesian Supreme Court in deciding the District Court of Stabat as a pilot child trial in Indonesia in 2016.

Based on the juvenile delinquency handled by District Court of Stabat, the effort taken by the

Court is to prioritize the best needs of the children such as training venue instead of imprisonment. Although this effort does not run effectively due to following factors, which are; first the child is not willing to be put on the venue (flee) or lack of supervision to the child thus the child is easy to flee. Second; inappropriate regulation of Act Number 11 Year 2012 About Child Justice System, that Article 23 Verse (1) (2) articulates, "in any investigation, the child has to get legal assistant and accompanied by social mentor or by others based on the regulation in Article (2) which states that in any investigation level, the victim or the child as the witness has to be accompanied by the parents or trustee of the victim and/or witness or social worker."

In reality, the children in conflict with law most of the time are not accompanied by legal advisor and parents. Thus the Judge has to find out legal advisor to accompany the child during court trial. The reasons that the children in conflict with law are not accompanied by their parents are because the parents feel embarrassed and disappointed to the action of their children thus most of the time the parents are absence and let other parties to accompany their children.

Third is inadequate of facility and infrastructure. The high expectation of government to provide protection and justice to the children does not correspond with optimal supports.

5. CONCLUSION

The Religious Court of Stabat gains the third rank after Medan and Deli, but the highest rank on divorce cases. Further, District Court of Stabat gain the third rank after District Court of Medan and Deli Serdang of the children in conflict with the law. The effort of Religious Court in preventing the divorce rate is by optimizing mediation. However, this effort is not successful to achieve of 5% (five percent). The effort done by District Court of Stabat is that the judge prioritizes the best needs of the children by

placing the children in training venue. The cases of children in conflict with the law in District Court of Stabat that of 100% (hundred percent) of factors, 95% (ninety five percent) is caused by divorce parents, poor economy, early-age marriage, and love affairs.

6. SUGGESTIONS

Religious Court needs to maximise the cooperation with local government, educating and promoting for society intensively about the results of parents getting divorce to their children. The Court also needs to maximize the verdict that heavily considers the best need for the children in conflict with law. The review is needed extensively on Act Number 11 Year 2012 about child justice system and systematically arranged by involving the stakeholders in implementing the statements of Acts so that any Article has the proven certainty and balance. Parents are expected to educate their children with qualified religious knowledge and the future parents have to participate the pre-wed and post-wed training which are part of Indonesian Religious Ministry program at least to equip the knowledge about marriage before implementing wedding so that the future parents have adequate knowledge about marriage.

REFERENCES

- Saraswati Rika, *Hukum Perlindungan Anak di Indonesia*, PT. Citra Aditya Bakti, Bandung, 2015.
- Marlina, *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi*, PT. Rafika Aditama, Bandung, 2009.
- Reskrim Polda Sumatera Utara Tahun 2005, Dikutip dari Marlina, *Peradilan Pidana Anak di Indonesia*, Bandung: PT. Rafika Aditama.
- Act Number 11 Year 2012 About Child Justice System
- Source of Statistic Body of Langkat District
- Source of Religious Court of Stabat, 2018